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Filing date: **02/21/2017**

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

Proceeding	91232150
Party	Defendant Amusement Art, LLC
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Submission	Motion to Suspend for Civil Action
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Date	02/21/2017
Attachments	91232150.pdf(154802 bytes) Exhibit A.pdf(523063 bytes) Exhibit B.pdf(526332 bytes) Exhibit C.pdf(1273958 bytes)

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

LIFE IS BEAUTIFUL, LLC, Opposer, V. AMUSEMENT ART, LLC, Applicant.	Opposition No.: 91232150 Mark: LIFE IS BEAUTIFUL Serial No.: 86917366 Filing Date: January 9, 2017
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**APPLICANT'S
MOTION TO SUSPEND
OPPOSITION PROCEEDING**

Applicant respectfully moves the Trademark Trial and Appeal Board ("T.T.A.B.") to suspend all proceedings in the above-captioned Opposition proceeding, pending the final outcome of a pending litigation between the parties in the United States District Court for the Central District of California, Western Division, involving virtually identical subject matter, facts, and evidence, between the same parties.

FACTUAL BACKGROUND

Applicant and Opposer are currently involved in a dispute in the United States District Court for the Central District of California, Western Division, captioned *Amusement Art, LLC v. Life is Beautiful, LLC, et al.*, Case No. 2-14-cv-08290-DDP-JPR (the "Civil Action"). Attached hereto as **Exhibit A**, are true and correct copies of the First Amended Complaint filed by Applicant in the Civil Action, and Opposer's Answer and Counterclaims to Applicant's First Amended Complaint in the Civil Action.

As evident from the face of the pleadings themselves, the Civil Action raises the issue of whether the Opposer and a related company are infringing upon Applicant's trademark, LIFE IS BEAUTIFUL, the same trademark that is the subject of the Opposition proceeding brought by Opposer. The Civil Action also relates to the legal and equitable rights of both Applicant and Opposer with respect to the mark, LIFE IS BEAUTIFUL.

Among other claims, in the Civil Action, Applicant accused Opposer of infringing certain of Applicant's federal and common law trademark rights in the mark "LIFE IS BEAUTIFUL". In response, Opposer asserted a defense of unclean hands and counterclaimed to cancel eight (8) federal trademark registrations owned by Applicant for the mark, LIFE IS BEAUTIFUL (the "Eight Registrations"), alleging that the Eight Registrations were obtained by Applicant through fraud on the Trademark Office.

The Eight Registrations were filed by Patrick Guetta and Debora Guetta on behalf of the Applicant. Patrick Guetta and Debora Guetta are not attorneys, they are not from the United States, and English is not their native language. It recently came to the attention of the Applicant that the Eight Registrations contained inadvertent errors – attributable to the honest mistakes of such lay applicants – at which point the Applicant acted in good faith by promptly and voluntarily surrendering the Eight Registrations.

On November 29, 2016, the district court issued an Order Re Motions For Summary Judgement in which the court granted summary judgement in favor of Opposer on all of Applicant's claims and also granted Opposer's motion for summary judgment of cancellation of Applicant's Eight Registrations ("November 29 Order").¹ Subsequently, on December 14, 2016, the court entered judgment against Applicant ("Final Judgment"). Because Applicant believes that the district court erred in granting Opposer's summary judgment motions, Applicant timely appealed the district court's entry of Final Judgment, which appeal is currently pending.²

The TTAB has previously stayed Cancellation Proceeding No. 92064019 involving the same parties and LIFE IS BEAUTIFUL mark as is at issue in the present opposition proceeding. Now, on January 9, 2017, Opposer filed the instant opposition proceeding.³ As reflected by Opposer's Notice of Opposition, Opposer relies heavily on the district court's November 29 Order and attaches a copy

¹ Attached hereto as **Exhibit B** is a true and correct copy of the district court's November 29 Order in the Civil Action.

² Attached hereto as **Exhibit C** is a true and correct copy of Applicant's Notice of Appeal To The United States Court of Appeals For The Ninth Circuit.

³ On the same day as Opposer filed the instant opposition, Opposer also filed opposition proceedings against Application Nos. 86912677, 86947862, 86947862, 86969619, 86952674, and 86947827, which seek to register the LIFE IS BEAUTIFUL mark for other goods.

of it as Exhibit B to the Notice of Opposition. The issues raised in the Notice of Opposition are also closely intertwined with many of the issues that are now on appeal to the Ninth Circuit. Indeed, in Count 4 of the Notice, Opposer raises Claim and Issue Preclusion based on issues that the district court decided in the November 29 Order.

LEGAL ARGUMENT

Because the final outcome of the Civil Action and Applicant's appeal therefrom will yield a construction of both the Opposer's and the Applicant's rights that would undoubtedly affect the present Opposition proceeding, or obviate the need for the Opposition proceeding, to conserve both public and private resources litigating duplicative matters in different *fora*, the Applicant respectfully requests suspension of the present Opposition proceeding pending a final, non-appealable resolution of the pending Civil Action between the Applicant and the Opposer.

The Trademark Trial and Appeal Board Manual of Procedure ("T.B.M.P."), June 2016, expressly provides in Section 510.02(a), 37 C.F.R. Section 2.117(a):

Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or other Board proceeding.

It is worth noting that decisions of federal district courts are binding on the T.T.A.B., but not *vice-versa*. 15 U.S.C. § 1119. Thus, the Board itself has frequently noted that suspension of administrative *inter partes* proceedings in the T.T.A.B. makes perfect sense when a related civil action is pending because "[a] decision by the district court may be binding on the Board whereas a determination by the Board as to a defendant's right to obtain or retain a registration would not be binding or *res judicata* in respect to the proceeding pending before the court." New Orleans Louisiana Saints LLC v. Who Dat? Inc., 99 U.S.P.Q.2d 1550, 1552 (T.T.A.B. 2011), citing Whopper-Burger, Inc. v. Burger King Corp., 171 U.S.P.Q. 805, 805 (T.T.A.B. 1971); see also General Motors Corp. v. Cadillac Club Fashions Inc., 22 U.S.P.Q.2d 1933, 1936-37 (T.T.A.B. 1992) (Motion to suspend Board proceedings granted because "[a] decision by the district court will be dispositive of the issues before the Board."); Toro Co. v. Hardigg Industries, Inc., 187 U.S.P.Q. 689, 692 (T.T.A.B. 1975),

rev'd on other grounds, 549 F.2d 785 (C.C.P.A. 1977) (noting Board's suspension of proceedings pending outcome of pending infringement action in district court); Other Telephone Co. v. Connecticut National Telephone Co., 181 U.S.P.Q. 125, 126-27 (T.T.A.B. 1974); petition denied, 181 U.S.P.Q. 779 (Comm'r 1974); Tokaido v. Honda Associates Inc., 179 U.S.P.Q. 861, 862 (T.T.A.B. 1973).

Because the Civil Action and the Opposition raise overlapping factual and legal issues between the exact same parties, the above-captioned Opposition proceeding should be suspended.

In any event, the issues presented in the Civil Action between the parties in the District Court need not be identical, but only have a "bearing" on the outcome of the T.T.A.B. proceeding to justify suspension. See, e.g., Other Telephone Co. v. Connecticut National Telephone Co., 181 U.S.P.Q. 125, 126-27 (T.T.A.B. 1974) (decision in civil action for infringement and unfair competition would have bearing on outcome of Trademark Act § 2(d) claim before Board), pet. denied, 181 U.S.P.Q. 779 (Comm'r 1974); see also New Orleans Louisiana Saints LLC v. Who Dat? Inc., 99 U.S.P.Q.2d 1550, 1552 (T.T.A.B. 2011) (civil action need not be dispositive of Board proceeding, but only needs to have a bearing on issues before the Board); General Motors Corp v. Cadillac Club Fashions, Inc., 22 U.S.P.Q.2d 1933, 1936-37 (T.T.A.B. 1992) (relief sought in federal district court included an order directing Office to cancel registration involved in Cancellation proceeding); see also Tokaido v. Honda Associates Inc., 179 U.S.P.Q. 861, 862 (T.T.A.B. 1973); Whopper-Burger, Inc. v. Burger King Corp., 171 U.S.P.Q. 805, 806-07 (T.T.A.B. 1971); Martin Beverage Co. Colita Beverage Corp., 169 U.S.P.Q. 568, 570 (T.T.A.B. 1971).

Disposition of the Civil Action will determine whether Applicant or Opposer holds superior rights to the mark, LIFE IS BEAUTIFUL. Further, count 4 of the Notice raises claim and issue preclusion based on the Court's November 29 Order. Thus, the issues presented in the Civil Action, and which are now on appeal, are likely to have a direct bearing on the Opposition proceeding filed by Opposer.

Therefore, Applicant respectfully moves that the above-captioned Opposition proceeding be suspended, pending the final, non-appealable outcome of the Civil Action and Applicant's Appeal

therefrom.

February 21, 2017

Respectfully submitted,

AMUSEMENT ART, LLC



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Attorneys for Applicant

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing APPLICANT'S MOTION TO SUSPEND
OPPOSITION PROCEEDING was served by email, on this 21st day of February, 2017, upon Opposer and
Opposer's counsel at the following addresses of record as identified:

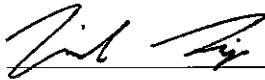
OPPOSER – PTO ADDRESS:

Life is Beautiful, LLC
302 E. Carson Avenue, Second Floor
Las Vegas, NV 98101

OPPOSER'S COUNSEL:

Lori N. Boatright
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Los Angeles, CA 90025

Dated: February 21, 2017



Michaelangelo G. Loggia

EXHIBIT A

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

AMUSEMENT ART, LLC,

Plaintiff,

v.

LIFE IS BEAUTIFUL, LLC;
DOWNTOWN LAS VEGAS
MANAGEMENT LLC; LIVE NATION
ENTERTAINMENT, INC.;
TICKETMASTER, L.L.C.; and DOES 1-
10, inclusive,

Defendants.

CASE NO.: 2:14-cv-08290-DDP-JPR

[Assigned for all purposes to the
Honorable Dean D. Pregerson, Judge
Presiding]

FIRST AMENDED COMPLAINT FOR:

1. Trademark Infringement Under §32(1) of the Lanham Act;
2. Unfair Competition, False Designation Of Origin, Passing Off And False Advertising Under Lanham Act § 43(a);
3. Copyright Infringement;
4. Unfair Competition in Violation of Bus. & Prof. Code § 17200, et seq.;
5. Common Law Trademark Infringement and Unfair Competition; and
6. Declaratory Relief

JURY TRIAL DEMANDED

JURISDICTION AND VENUE

1
2 1. The Court has original subject matter jurisdiction over plaintiff's federal
3 claims pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1338(a) since the complaint
4 involves issues arising under a federal statute, the Lanham Act. The Court has
5 original subject matter jurisdiction over Plaintiff's federal claims arising under the
6 Copyright Act of 1976, Title 17 U.S.C., § 101 et seq. under 28 U.S.C. § 1331(m),
7 1338 (a) and (b). The Court also has original subject matter jurisdiction over
8 plaintiff's federal claims pursuant to 28 U.S.C. § 1332(a)(1) because this action is
9 between citizens of different states and the amount in controversy exceeds \$75,000.
10 The Court also has supplemental subject matter jurisdiction over plaintiff's state law
11 claims under principles of pendent jurisdiction and pursuant to 28 U.S.C. § 1367(a).

12 2. This Court has personal jurisdiction over the defendants because the
13 events or omissions giving rise to the claim occurred, the tortious acts occurred, and a
14 substantial part of the injury took place and continues to take place, in this judicial
15 district.

16 3. Venue is proper in the United States District Court for the Central District
17 of California pursuant to 28 U.S.C §§ 1391(b), 1391(c), and 1400(a) as this is a
18 judicial district in which a substantial part of the events giving rise to the claims
19 occurred the tortious acts occurred, and a substantial part of the injury took place and
20 continues to take place.

PARTIES

21
22 4. Plaintiff Amusement Art, LLC ("Plaintiff") is, and at all times relevant
23 hereto was, a limited liability company organized and existing under the laws of the
24 State of California and at all times relevant herein was and is doing business in this
25 judicial district.

26 5. Upon information and belief, defendant Life Is Beautiful, LLC ("LIB") is,
27 and at all times relevant hereto was, a limited liability company organized and
28 existing under the laws of the State of Nevada and at all times relevant herein was and

1 is doing business in this judicial district.

2 6. Upon information and belief, defendant Downtown Las Vegas
3 Management LLC (“Management”) is, and at all times relevant hereto was, a limited
4 liability company organized and existing under the laws of the State of Nevada and at
5 all times relevant herein was and is doing business in this judicial district. Upon
6 information and belief, Management is the manager of LIB.

7 7. Upon information and belief, defendant Live Nation Entertainment, Inc.
8 (“Live Nation”) is, and at all times relevant hereto was, a Delaware corporation with
9 its principal place of business in Beverly Hills, California, and at all times relevant
10 herein was and is doing business in this judicial district.

11 8. Upon information and belief, defendant Ticketmaster, L.L.C.
12 (“Ticketmaster”) is, and at all times relevant hereto was, a Virginia limited liability
13 company with its principal place of business in Beverly Hills, California, and at all
14 times relevant herein was and is doing business in this judicial district.

15 9. Plaintiff is presently unaware of the true names and identities of Does 1-
16 10 and will seek leave to amend this complaint when their true names become known
17 to Plaintiff.

18 10. Plaintiff is informed and believes and based thereon alleges that in
19 committing the acts complained of herein, defendants LIB, Management, Live Nation,
20 Ticketmaster, and the Doe defendants (collectively, “Defendants”), and each of them,
21 acted in concert and conspiracy with each other.

22 11. Plaintiff is informed and believes and based thereon alleges, that
23 Defendants are the alter egos of each other, are characterized by a unity of interest in
24 ownership and control among themselves such that any individuality and separateness
25 between them have ceased; that each is, and at all relevant times was, a mere shell
26 instrumentality and conduit through which the other defendants carried on their
27 business; and that these Defendants completely controlled, dominated, managed, and
28 operated each other's business to such an extent that any individuality or separateness

1 of the defendants does not and did not exist, and that defendants intermingled the
2 assets of each to suit the convenience of themselves in order to evade payment of
3 obligations and legal liability.

4 12. Plaintiff is informed and believes, and on such information and belief
5 alleges, that adherence to the fiction of separate existence of these Defendants as
6 entities distinct and separate from one another would promote injustice in that some of
7 these Defendants are inadequately capitalized, have used the other Defendants as a
8 mere shell, simply to transfer the earnings of one another while attempting to avoid
9 legal liability. As such, Plaintiff is informed and believes, and on such information
10 and belief alleges, that the Defendants are the alter egos of each other and are
11 responsible in damages to Plaintiff, to the full extent of all other Defendants' liability.

12 **BACKGROUND**

13 13. Thierry Guetta aka Mr. Brainwash ("Mr. Guetta") is a prominent artist
14 whose work has received significant press in numerous publications around the world.
15 As a result of his innovative artwork and efforts, Mr. Guetta has received many
16 awards and has gained recognition as an industry leader in developing and exhibiting
17 creative artwork that has gained widespread popularity and demand among
18 consumers.

19 14. Mr. Guetta has an ownership interest in Plaintiff and Plaintiff is the
20 registered owner of various trademarks and copyrights created by Mr. Guetta.

21 **The "Life Is Beautiful" Trademark**

22 15. Its A Wonderful World, Inc. ("Wonderful World") is a California
23 corporation in which Mr. Guetta has an ownership interest.

24 16. In June 2008, Wonderful World held an art show in Los Angeles,
25 California that was called and known among the public as "LIFE IS BEAUTIFUL", in
26 which artwork that Mr. Guetta had created was prominently showcased. The event
27 was highly advertised and received a great amount of unsolicited media attention
28 throughout the United States.

1 17. Based upon this use in commerce, Wonderful World filed USPTO
2 Trademark Application, bearing Serial No. 86405252 in International Class 41 for
3 “Arranging, organizing, conducting, and hosting social entertainment events; Art
4 exhibition services; Art exhibitions; Audio production services, namely, creating and
5 producing ambient soundscapes, and sound stories for museums, galleries, attractions,
6 podcasts, broadcasts, websites and games; Audio recording and production;
7 Augmented reality video production; Book publishing; Organizing community
8 festivals featuring primarily Art exhibitions and also providing film, fashion shows
9 and exhibitions” on a 1A basis alleging a date of first use in 2008 (the “Application”).

10 18. Wonderful World has assigned any and all right, title and interest,
11 including all rights to sue and recover for and the right to profits or damages in
12 connection therewith, in the Application to Plaintiff.

13 19. Plaintiff is also the owner of numerous trademarks for the name “LIFE IS
14 BEAUTIFUL” including, without limitation, the United States Patent and Trademark
15 Office (“USPTO”) Registration Nos. 4230609, 4222551, 4230601, 4230603,
16 4230604, 4230605, 4568728, and 4400693 (the “Registrations”) (collectively, the
17 Application and the Registrations shall be referred to herein as the “Marks”).

18 **The Heart Designs**

19 20. Plaintiff is also the owner of certain trademarks and copyrights for various
20 images of splashed paint heart designs (the “Heart Designs”).

21 21. As early as 2009, Plaintiff and/or Mr. Guetta began using and continue to
22 use the Heart Designs in commerce in connection with his art work and art shows in
23 addition to various products, including but not limited to clothing such as T-shirts,
24 kitchenware such as plates, and cell phone covers.

25 22. Plaintiff owns copyrighted images of the Heart Designs including, without
26 limitation, the 2009 United States Copyright Office Registration No. VAu 1-000-397
27 (the “Copyright Registration”).

28 ///

23. To the extent that any of Plaintiff's alleged right, title, or interest in any of the Heart Designs was previously owned by Mr. Guetta, any and all right, title and interest therein, including all rights to sue and recover for and the right to profits or damages in connection therewith, has been assigned to Plaintiff.

Defendants' Infringement

24. In or around late 2012, Defendants began using the name "LIFE IS BEAUTIFUL" and a splashed paint heart design in commerce in connection with their own art and entertainment shows (the "Infringing Marks"). Such use includes, without limitation, use of the marks on the websites, www.lifeisbeautiful.com, www.livenation.com, www.ticketmaster.com, social media sites such as Facebook, Instagram, and Twitter, advertisements, signage and merchandise including, but not limited to, posters and clothing.

25. Defendants sold tickets to each of their shows to patrons throughout the United States, including this judicial district, either directly or through third parties whom Defendants knew would sell its tickets within this district.

26. Upon information and belief, Defendants have gained access to Plaintiff's Marks and have used the identical name LIFE IS BEAUTIFUL in connection with Defendants' art and entertainment shows. Upon information and belief, Defendants have similarly gained access to Plaintiff's Heart Designs and have used a substantially and confusingly similar splashed paint heart design in connection with Defendants' art and entertainment shows.

27. The Infringing Marks directly infringe Plaintiff's Marks by using the exact term "LIFE IS BEAUTIFUL" as the entirety and/or part of the Infringing Marks. The Infringing Marks similarly infringe upon Plaintiff's Heart Designs by incorporating a splashed paint heart design in the Infringing Marks that is substantially and confusingly similar to Plaintiff's Heart Designs.

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1 28. In or about May 2013, Defendants contacted Plaintiff regarding Plaintiff's
2 rights in the name LIFE IS BEAUTIFUL and the use by Defendants of the same name
3 for their art and entertainment show. Plaintiff informed Defendants that Defendants'
4 use of the name LIFE IS BEAUTIFUL infringed upon Plaintiff's Mark and that
5 Defendants' use of the splashed paint heart designs infringed upon Plaintiff's Heart
6 Designs, and that Plaintiff did not consent to such use.

7 29. Despite a series of correspondence and meetings between Plaintiff and
8 Defendant between May 2013 and September 2014, Plaintiff never agreed to
9 Defendants' use of the Marks or Heart Designs.

10 30. In mid-September 2014, Plaintiff learned, to its great surprise, that
11 Defendants, without Plaintiff's consent or knowledge, filed four (4) USPTO
12 Trademark Applications bearing Serial Nos. 86367025, 86367058, 86366989, and
13 86366959 for the Infringing Marks in International Class 41 for "Organizing
14 community festivals featuring primarily music performances and exhibitions and also
15 providing art exhibitions, film, fashion shows and exhibitions, food and wine tastings,
16 wine festivals, and live entertainment shows in the nature of speaking performances"
17 with filing dates of August 14, 2014 (the "Infringing Applications").

18 31. Plaintiff's use of the Marks and the creation and use of the Heart Designs
19 precedes Defendants use of said marks or any marks confusingly or substantially
20 similar thereto. Defendants' Infringing Applications list dates of first use in late 2012,
21 approximately four (4) years after the date of first use in Plaintiff's Application and
22 approximately three (3) years after the date of Plaintiff's Copyright Registration.

23 32. Upon learning about the Infringing Applications, it became apparent to
24 Plaintiff that Defendants intended to use the Infringing Marks at their upcoming art
25 and entertainment show, planned for October 24 through 26, 2014, even without
26 Plaintiff's consent.

27 33. Even after filing the Infringing Applications, Defendants continued to
28 contact Plaintiff in a purported effort to acquire Plaintiff's consent to use the

1 Infringing Marks. Defendants, however, at no time mentioned to Plaintiff that they
2 have filed the Infringing Applications.

3 34. In or about late September 2014, Defendants sent Plaintiff a written
4 proposal whereby Defendants would make a payment to Plaintiff in return for the
5 rights to use the name LIFE IS BEAUTIFUL in connection with Defendants' art and
6 entertainment shows as well as various merchandise. However, no payment amount
7 was proposed.

8 35. Plaintiff did not accept Defendants' written proposal and no agreement of
9 any sort was ever reached.

10 36. On or about October 21, 2014, Plaintiff once again informed Defendants,
11 in writing, that it does not consent to Defendants' use of the Infringing Marks in
12 connection with Defendants' upcoming festival.

13 37. However, Defendants still held their show on October 24, 2014 and made
14 use of the Infringing Marks in connection therewith. Upon information and belief,
15 Defendants will similarly hold its show as planned on October 25 and 26, 2014 and
16 will continue to make use of the Infringing Marks in such manner.

17 **Live Nation and Ticketmaster**

18 38. Upon information and belief, defendant Live Nation is the largest live
19 entertainment company. Among other things, Live Nation and Ticketmaster operate
20 everything from concert promotions, venue operations, sponsorship, and ticketing.

21 39. Upon information and belief, from in or about 2012, Live Nation and
22 Ticketmaster sponsored, promoted, advertised, organized, produced, facilitated and/or
23 sold tickets in connection with Defendants' infringing art and entertainment shows,
24 and continues to do so to date. In connection with such actions, Live Nation and
25 Ticketmaster directly made substantial and material use of the Infringing Marks.

26 40. Upon information and belief, on or about May 27, 2013 and on or about
27 June 12, 2014, Ticketmaster and LIB entered into User Agreements whereby
28 Ticketmaster agreed to and did provide various services to Defendants, including but

1 not limited to ticketing services for Defendants' infringing shows.

2 41. Upon information and belief, Defendants Live Nation and Ticketmaster
3 have displayed and, to date, continue to display the Infringing Marks (both the "Life
4 Is Beautiful" mark and the splashed paint heart design) in connection with
5 Defendants' infringing art and entertainment shows on their websites,
6 www.livenation.com and www.ticketmaster.com, which, among other things, provide
7 the public with detailed information about, reviews of, and/or photos of the shows.

8 42. Upon information and belief, Live Nation and Ticketmaster have also
9 displayed, and, to date, continue to display the Infringing Marks in connection with
10 Defendants' infringing shows on printed matter including, without limitation, printed
11 tickets and advertisements.

12 43. Upon information and belief, at all times relevant herein, Live Nation and
13 Ticketmaster made use of the Infringing Marks with knowledge and/or constructive
14 knowledge of Plaintiff's rights in the Marks and Heart Designs.

15 44. Defendants have engaged in such infringing and tortious conduct in an
16 illicit effort to unfairly exploit the popularity and fame of Plaintiff's Marks and Heart
17 Designs by causing confusion among consumers as to the source of its products and
18 shows and to cause false association or approval by Plaintiff of Defendants' products
19 and shows. Although Plaintiff has repeatedly notified Defendants of their infringing
20 and tortious conduct, Defendants continue to engage in such willful infringing and
21 tortious acts.

22 **FIRST CAUSE OF ACTION**

23 **(Trademark Infringement Under §32(1) of the Lanham Act - Against All** 24 **Defendants)**

25 45. Plaintiff repeats, reiterates and re-alleges each and every allegation
26 contained in paragraphs designated 1 through 44, inclusive, of this Complaint, as if
27 fully set forth herein at length. Plaintiff owns the trademark rights in the Registrations
28 which have acquired federal registration with the USPTO.

1 46. Defendants have used, and intend to continue to use the Infringing Marks,
2 which are confusingly similar to the Registrations to capitalize on Plaintiff's goodwill
3 associated therewith in order to attract customers.

4 47. Defendants' use of the Infringing Marks, or other confusingly similar
5 imitations of Plaintiff's Registrations, is willful and deliberate and with an intent to
6 reap the benefit of Plaintiff's goodwill.

7 48. Defendants' use of the Infringing Marks, or other confusingly similar
8 imitations of Plaintiff's Registrations, is likely to continue to cause, confusion among
9 the public about whether Plaintiff has authorized or endorsed the Defendants' goods
10 and services, and about whether Plaintiff is affiliated with the Defendants' goods and
11 services.

12 49. Defendants' use of the Infringing Marks, or other confusingly similar
13 imitations of Plaintiff's Registrations, in connection with goods and services
14 unconnected to that of Plaintiff and without the authorization of Plaintiff infringes
15 Plaintiff's exclusive rights in its trademark in violation of § 32(1) of the Lanham Act,
16 15 U. S.C. § 1114(1), in that the public is likely to be confused, deceived or mistaken
17 regarding the source or sponsorship of Defendants' goods and services, or to
18 erroneously believe that Defendants' goods and services emanate from or are
19 authorized by Plaintiff, or to believe that Plaintiff is the creator of, or has otherwise
20 affiliated with the Defendants' goods and services.

21 50. Defendants' actions, as alleged herein, constitute direct, contributory,
22 and/or vicarious trademark infringement.

23 51. Defendants' acts of trademark infringement have caused and are causing
24 great and irreparable injury to Plaintiff and to the Registrations and to the business
25 and goodwill represented thereby, in an amount that cannot be ascertained at this time
26 and, unless restrained, will cause further irreparable injury, leaving Plaintiff with no
27 adequate remedy at law.

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52. By reason of the foregoing, Plaintiff is entitled to injunctive relief against Defendants permanently restraining further acts of trademark infringement and, after trial, to recover any damages proven to have been caused by reason of Defendants' aforesaid acts of trademark infringement, together with all other remedies available under the Lanham Act, including, but not limited to, treble damages, disgorgement of profits, costs and attorney's fees.

SECOND CAUSE OF ACTION

(Unfair Competition, False Designation of Origin, Passing Off and False Advertising under Lanham Act § 43(a) - Against All Defendants)

53. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs designated 1 through 44, inclusive, of this Complaint, as if fully set forth herein at length.

54. Plaintiff is the owner of the trademark rights, whether registered or unregistered, in the Marks and the Heart Designs.

55. Plaintiff has developed and maintained substantial secondary meaning in the Marks and the Heart Designs in the US and abroad.

56. The Marks and the Heart Designs are valid, entitled to protection and, in part, registered with the USPTO. Moreover, the Marks and the Heart Designs are strong in that they are fanciful and have acquired substantial secondary meaning.

57. Defendants have used, and intend to continue to use, the Marks and the Heart Designs in the United States to capitalize on Plaintiff's reputation in order to attract patrons to its art and entertainment shows.

58. Defendants' use of Plaintiff's Marks and the Heart Designs is willful and deliberate and with an intent to reap the benefit of Plaintiffs' goodwill.

59. Defendants' use of the Marks and the Heart Designs in the United States, or a colorable imitation thereof, in connection with its art and entertainment shows and merchandise is likely to cause confusion and has caused actual confusion among the public about whether Plaintiff has authorized or endorsed Defendant's shows or

1 products, and about whether Plaintiff is affiliated with Defendants and its imposter
2 shows and products.

3 60. By engaging in the activities described above, Defendants have made and
4 is making false, deceptive and misleading statements constituting false designation of
5 origin, passing off, false advertising and unfair competition in violation of Section
6 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

7 61. Defendants' acts of unfair competition, false designation of origin,
8 passing off and false advertising are willful, deliberate and fraudulent, and without
9 extenuating circumstances, and with an intent to reap the benefit of Plaintiff's name,
10 goodwill and reputation.

11 62. Defendants' acts of unfair competition, false designation of origin,
12 passing off and false advertising have caused irreparable injury to Plaintiff's goodwill
13 and reputation in an amount that cannot be ascertained at this time and, unless
14 restrained, will cause further irreparable injury, leaving Plaintiff with no adequate
15 remedy at law.

16 63. By reason of the foregoing, Plaintiff is entitled to injunctive relief against
17 Defendants, permanently restraining further acts of unfair competition, false
18 designation of origin, passing off and false advertising, and, after trial, to recover any
19 damages proven to have been caused by reason of Defendants' aforesaid acts of unfair
20 competition, false designations of origin, passing off and false advertising, together
21 with all other remedies available under the Lanham Act, including, but not limited to,
22 treble damages, disgorgement of profits, costs and attorney's fees.

23 **THIRD CAUSE OF ACTION**

24 **(For Copyright Infringement - Against All Defendants)**

25 64. Plaintiff repeats, reiterates and re-alleges each and every allegation
26 contained in paragraphs designated 1 through 44, inclusive, of this Complaint, as if
27 fully set forth herein at length.

28 ///

1 65. Plaintiff is the owner of the copyrights in the Heart Designs and the owner
2 of the Copyright Registration, as alleged herein.

3 66. Defendants, and each of them, had access to the Heart Designs, including,
4 without limitation, through (a) access to Plaintiff's art shows; and (b) access Plaintiff's
5 artwork.

6 67. Plaintiff is informed and believes and thereon alleges that Defendants
7 infringed Plaintiff's Heart Designs by using substantially similar splashed paint heart
8 designs in connection with their art and entertainment shows. Such use includes,
9 without limitation, use of said designs on the websites, www.lifeisbeautiful.com,
10 www.livenation.com, www.ticketmaster.com, social media sites such as Facebook,
11 Instagram, and Twitter, advertisements, signage and merchandise including, but not
12 limited to, posters and clothing.

13 68. Defendants' actions, as alleged herein, constitute direct, contributory,
14 and/or vicarious copyright infringement.

15 69. Due to Defendants' acts of copyright infringement as alleged herein,
16 Plaintiff has suffered general and special damages in an amount to be established at
17 trial.

18 70. Due to Defendants' acts of copyright infringement as alleged herein,
19 Defendants have obtained direct and indirect profits it would not otherwise have
20 realized but for its infringement of the copyright. As such, Plaintiff is entitled to
21 disgorgement of Defendants' profits directly and indirectly attributable to Defendants'
22 infringement of the Heart Designs in an amount to be established at trial.

23 71. Defendants began such wrongful activities with full knowledge of
24 Plaintiff's superior rights to the copyrights in the Heart Designs and continued such
25 wrongful activities after being placed on notice by Plaintiff that its activities were
26 wrongful and infringing.

27 ///

28 ///

72. Defendants' acts of copyright infringement as alleged above were, and continue to be, willful, intentional and malicious, subjecting Defendants to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000) per infringement. Further, Defendants' willful and intentional misappropriation and/or infringement of Plaintiff's copyrighted design renders Defendants liable for statutory damages as described herein. Within the time permitted by law, Plaintiff will make its election between actual damages and statutory damages.

73. Due to Defendants' act of copyright infringement, Plaintiff is entitled to an award of attorneys' fees as available under the Copyright Act 17 U.S.C. § 101 et seq.

FOURTH CAUSE OF ACTION

(Unfair Competition in Violation of Bus. & Prof. Code § 17200, et seq. Against All Defendants)

74. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs designated 1 through 44, inclusive, of this Complaint, as if fully set forth herein at length.

75. The actions of Defendants complained of herein constitute unfair competition within the meaning of Cal. Bus. & Prof. Code, § 17200, *et seq.*

76. Defendants' actions have caused and will likely continue to cause confusion, mistake, and deception among consumers.

77. Defendants' unfair competition has caused and will continue to cause damage to Plaintiffs, including irreparable harm for which there is no adequate remedy at law.

78. Pursuant to Cal. Bus. & Prof. Code, § 17203, Plaintiffs are entitled to preliminary and permanent injunctive relief ordering Defendants to cease this unfair competition.

///

93. Similarly, an actual controversy has arisen and now exists between Plaintiff and Defendants concerning their respective rights and duties with respect to the copyrights in the Heart Designs and the splashed heart designs used in the Infringing Marks. Plaintiff contends, among other things, that Defendants' use of the splashed heart designs in the Infringing Marks infringe upon Plaintiff's copyrighted Heart Designs. Defendants dispute this claim.

94. Plaintiff desires a judicial determination of its copyrights, including in the Heart Designs, and a declaration that the paint splashed heart design in the Infringing Marks are substantially similar to the Heart Designs such that Defendants' use of the Infringing Marks and the splashed paint heart designs incorporated therein constitutes copyright infringement and that Defendants may no longer use the Infringing Marks or any other heart designs that infringe upon the Heart Designs.

95. A judicial determination is necessary and appropriate at this time under the circumstances.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully demands the following relief against Defendants, jointly and severally:

On the First, Second, and Fifth Causes of Action:

1. That Defendants, their agents, licensees, servants, representatives, employees, attorneys, successors and assigns, and all those in active concert or participation with any of them who receive notice of such judgment directly or otherwise, be permanently enjoined from infringing the Marks and Heart Designs, whether or not registered, from falsely designating the origin, sponsorship of or affiliation of Defendants' business or services, from unfairly competing with Plaintiff, from diluting the distinctive quality of the Marks and Heart Designs and specifically:

(i) Imitating, copying, using, reproducing, displaying, maintaining on any database or computer, or authorizing or permitting any third party to imitate, copy, use, reproduce, display download by computer or maintain by computer or otherwise,

1 the Marks and Heart Designs, or any copies, simulations, variations or colorable
2 imitations thereof on or in connection with the offering of any goods or service
3 associated with any art or entertainment show or any other goods and services for
4 which Plaintiff has acquired prior rights, including but not limited to the Marks, he
5 Heart Designs and the Application;

6 (ii) Using, authorizing, maintaining or making available for use or aiding
7 in any way any third party to use or copy the Marks, Application, and Heart Designs
8 or from otherwise infringing the Marks and Heart Designs;

9 (iii) Using, any trademark, trade name, logo, business name, computer
10 address or other identifier, or acting in any fashion, which may be calculated to falsely
11 represent that the goods or services provided, promoted or offered by Defendants are
12 sponsored by, authorized by, licensed by, or in any other way associated with
13 Plaintiff;

14 (iv) Aiding, assisting or abetting any other party in doing any act
15 prohibited by any of the above sub-paragraphs;

16 (v) Committing any other act that falsely represents, or that has the effect
17 of falsely representing, that the goods and services of Defendants is licensed by,
18 authorized by, offered by, produced by, sponsored by, or in any way associated or
19 affiliated with Plaintiff;

20 2. An Order directing that Defendants abandon each of its existing and
21 pending USPTO Trademark Applications bearing Serial Nos. 86367025, 86367058,
22 86366989, and 86366959 and refrain from filing any trademark applications for, or
23 making any use of, such marks or any other marks confusingly similar to the Marks or
24 Heart Designs in the future;

25 3. Directing that Defendants file with the Court and serve upon Plaintiff's
26 counsel within thirty (30) days after entry of Judgment a report in writing under Oath
27 setting forth in detail the manner and form in which the Defendants have complied
28 with the requirements of the Injunction and Order.

1 4. Directing that Defendants account for all gains, profits, and advantages
2 derived from its acts of infringement;

3 5. A judgment in Plaintiff's favor declaring that Plaintiff is the owner of the
4 Marks, Application, and Heart Designs, that they are valid and enforceable marks, and
5 that Defendants have no interest therein.

6 6. Directing such other relief as the Court may deem appropriate to prevent
7 the public from deriving the erroneous impression that any goods or services provided
8 by or promoted by Defendants is authorized by Plaintiff or related in any way to
9 Plaintiff, its products or its services.

10 7. Awarding Plaintiff: (i) All of the Defendants' profits, gains and
11 advantages derived from the unauthorized use of the Marks and Heart Designs or any
12 imitation or simulation thereof, and that such sums be trebled; (ii) All damages
13 sustained by Plaintiffs by reason of Defendants' acts of trademark infringement,
14 dilution and unfair competition, and that such damages be trebled; (iii) Exemplary and
15 punitive damages as the court finds appropriate to deter any future willful conduct,
16 and (iv) Interest, including prejudgment interest, on the foregoing sums.

17 8. Awarding to Plaintiff its attorney's fees and costs incurred by reason of
18 Defendants' violations;

19 9. Directing such other relief as the Court may deem appropriate to prevent
20 the Defendants from participating in this or other trademark infringements.

21 **On the Third Cause of Action:**

22 10. That Defendants, their agents and servants be enjoined from creating or
23 using any splashed heart designs or other designs that are substantially similar to the
24 Heart Designs, including but not limited to in connection with the Infringing Marks,
25 or in their fashion and art shows;

26 ///

27 ///

28 ///

1 11. That Plaintiff be awarded all profits of Defendants plus all losses of
2 Plaintiff, the exact sum to be proven at the time of trial, or, if elected before final
3 judgment, statutory damages as available under the Copyright Act, 17 U.S.C. § 101 et
4 seq.;

5 12. That Plaintiff be awarded his attorneys' fees as available under the
6 Copyright Act 17 U.S.C. § 101 et seq.;

7 13. Directing such other relief as the Court may deem appropriate to prevent
8 the Defendants from participating in this or other copyright infringements; and

9 14. Such other relief as the Court may deem appropriate.

10 **On the Fourth Cause of Action:**

11 15. Preliminary and permanent injunctive relief ordering Defendants to cease
12 their unfair competition.

13 16. Disgorgement of any and all of Defendants' profits associated with this
14 unfair competition.

15 17. Such other and further relief as the Court may deem just and proper.

16 **On the Sixth Cause of Action:**

17 18. A determination that Plaintiff's Marks and Heart Designs had prior use to
18 the Defendants' Infringing Marks, and that the Infringing Marks are confusingly
19 similar.

20 19. An Order directing that Defendants abandon each of its existing and
21 pending USPTO Trademark Applications bearing Serial Nos. 86367025, 86367058,
22 86366989, and 86366959 and refrain from filing any trademark applications for, or
23 making any use of, such marks or any other marks confusingly similar to the Marks or
24 Heart Designs in the future;

25 20. A determination that Defendants' use of splashed heart designs on the
26 Infringing Marks infringes upon Plaintiff's copyrights in the Heart Designs.

27 21. An order directing that Defendants refrain from filing any copyright
28 applications for, making any use of, or creating any such designs or substantially

1 similar designs in the future, including but not limited to such use on the Infringing
2 Marks.

3
4 Date: November 20, 2015

NOVIAN & NOVIAN, LLP

5
6 By: /s/ Farhad Novian
7 Attorney for Plaintiff
8 AMUSEMENT ART, LLC

9 **JURY DEMAND**

10
11 Plaintiff hereby demands a jury trial of all issues so triable.
12

13 Respectfully submitted,
14

15 Date: November 20, 2015

NOVIAN & NOVIAN, LLP

16
17 By: /s/ Farhad Novian
18 Attorney for Plaintiff
19 AMUSEMENT ART, LLC
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Attorneys for Defendants

7 LIFE IS BEAUTIFUL, LLC and

8 DOWNTOWN LAS VEGAS MANAGEMENT LLC

9
10 UNITED STATES DISTRICT COURT

11 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

12 AMUSEMENT ART, LLC,

13 Plaintiff,

14 vs.

15 LIFE IS BEAUTIFUL, LLC;
16 DOWNTOWN LAS VEGAS
17 MANAGEMENT LLC; AND DOES 1-
10, inclusive,

18 Defendants.

Case No. 2-14-cv008290-DDP-JPR

**ANSWER AND COUNTERCLAIM
OF DEFENDANTS LIFE IS
BEAUTIFUL, LLC AND
DOWNTOWN LAS VEGAS
MANAGEMENT LLC TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT;**

DEMAND FOR JURY TRIAL

Judge: Hon. Dean D. Pregerson

Trial Date: July 19, 2016

20
21 **Answer**

22 Defendants Life is Beautiful, LLC and Downtown Las Vegas Management,
23 LLC (collectively "LIB") hereby answer the First Amended Complaint of Plaintiff
24 Amusement Art, LLC as follows:

25 1. LIB does not contest the Court's jurisdiction over the claims in the First
26 Amended Complaint at this time. Except as otherwise admitted herein, the
27 allegations in Paragraph 1 are denied.
28

1 2. LIB does not contest that this Court has personal jurisdiction over LIB
2 at this time for this matter. Except as otherwise admitted herein, the allegations in
3 Paragraph 2 are denied.

4 3. LIB does not contest venue in this Court at this time for this matter.
5 Except as otherwise admitted herein, the allegations in Paragraph 3 are denied.

6 4. LIB lacks knowledge or information sufficient to form a belief about
7 the truth of the allegations in Paragraph 4.

8 5. LIB admits that Life Is Beautiful, LLC is a limited liability company
9 organized and existing under the laws of the State of Nevada. Except as otherwise
10 admitted herein, the allegations in Paragraph 5 are denied.

11 6. LIB admits that Downtown Las Vegas Management LLC is a limited
12 liability company organized and existing under the laws of the State of Nevada.
13 LIB further admits that Downtown Las Vegas Management LLC is a manager of
14 Life is Beautiful, LLC. Except as otherwise admitted herein, the allegations in
15 Paragraph 6 are denied.

16 7. LIB lacks knowledge or information sufficient to form a belief about
17 the truth of the allegations in Paragraph 7.

18 8. LIB lacks knowledge or information sufficient to form a belief about
19 the truth of the allegations in Paragraph 8.

20 9. LIB lacks knowledge or information sufficient to form a belief about
21 the truth of the allegations in Paragraph 9.

22 10. LIB denies the allegations in Paragraph 10.

23 11. LIB denies the allegations in Paragraph 11.

24 12. LIB denies the allegations in Paragraph 12.

25 13. LIB admits that Mr. Guetta is an artist who sometimes refers to himself
26 as Mr. Brainwash. LIB lacks knowledge or information sufficient to form a belief
27 about the truth of the remaining allegations in Paragraph 13.

28

1 14. LIB admits that Amusement Art is listed on the U.S. Patent and
2 Trademark Office Database as owning certain trademarks. LIB lacks knowledge or
3 information sufficient to form a belief about the truth of the remaining allegations in
4 Paragraph 14.

5 15. LIB lacks knowledge or information sufficient to form a belief about
6 the truth of the allegations in Paragraph 15.

7 16. LIB lacks knowledge or information sufficient to form a belief about
8 the truth of the allegations in Paragraph 16.

9 17. LIB admits that Wonderful World filed a trademark application bearing
10 Serial No. 86405252, which document speaks for itself. Except as otherwise
11 admitted herein, LIB denies the allegations in Paragraph 17.

12 18. Lib lacks knowledge or information sufficient to form a belief about the
13 truth of the allegations in Paragraph 18

14 19. LIB admits the United States Patent and Trademark Office lists
15 Registration Nos. 4230609, 4222551, 4230601, 4230603, 4230604, 4230605,
16 4568728, and 4400693. Except as otherwise admitted herein, LIB denies the
17 allegations in Paragraph 19.

18 20. LIB lacks knowledge or information sufficient to form a belief about
19 the truth of the allegations in Paragraph 20.

20 21. LIB lacks knowledge or information sufficient to form a belief about
21 the truth of the allegations in Paragraph 21.

22 22. LIB admits that Mr. Guetta is listed on the United States Copyright
23 Office website as being the registered owner of 2009 United States Copyright Office
24 Registration No. VAu 1-000-397. LIB lacks knowledge or information sufficient to
25 form a belief about the truth of the remaining allegations in Paragraph 22.

26 23. LIB lacks knowledge or information sufficient to form a belief about
27 the truth of the allegations in Paragraph 23.

28

1 24. LIB denies that its use of the name “Life is Beautiful” and its heart logo
2 infringe on any trademarks or copyrights that Plaintiff owns. LIB admits the
3 remaining allegations in Paragraph 24.

4 25. LIB admits that it sold tickets to shows to patrons throughout the
5 United States. Except as otherwise admitted herein, LIB denies the remaining
6 allegations in Paragraph 25.

7 26. LIB admits that it has used the name “Life is Beautiful” as the title of
8 the festival it operates, that the festival includes art exhibitions and other
9 entertainment, and that it has used an image of a heart in connection with the
10 festival. Except as otherwise admitted herein, LIB denies the remaining allegations
11 in Paragraph 26.

12 27. To the extent Paragraph 27 states a legal conclusion, no response is
13 required. LIB denies the remaining allegations in Paragraph 27.

14 28. LIB admits that there were contacts between LIB and Wonderful World
15 in May 2013. Except as otherwise admitted herein, LIB denies the remaining
16 allegations in Paragraph 28.

17 29. LIB admits that it held meetings and exchanged correspondence with
18 representatives of Mr. Guetta between May 2013 and September 2014. Except as
19 otherwise admitted herein, LIB denies the allegations of Paragraph 29.

20 30. LIB admits that it filed Trademark Applications bearing Serial Nos.
21 86367025, 86367058, 86366989, and 86366959, which applications speak for
22 themselves. LIB lacks knowledge or information sufficient to form a belief
23 regarding Plaintiff’s knowledge or reaction. LIB denies the remaining allegations in
24 Paragraph 30.

25 31. To the extent Paragraph 31 states a legal conclusion, no response is
26 required. LIB otherwise denies the allegations in Paragraph 31.

27
28

1 32. LIB lacks knowledge or information sufficient to form a belief about
2 what Plaintiff thought when it learned of LIB's trademark applications. LIB
3 otherwise denies the allegations in Paragraph 32.

4 33. LIB admits that it had correspondence with Plaintiff through the fall of
5 2014. LIB denies the remainder of the allegations in Paragraph 33.

6 34. LIB admits that it had correspondence with Plaintiff through the fall of
7 2014. LIB denies the remainder of the allegations in Paragraph 34.

8 35. LIB admits that it had correspondence with Plaintiff through the fall of
9 2014. LIB denies the remainder of the allegations in Paragraph 35.

10 36. LIB admits that it had correspondence with Plaintiff through the fall of
11 2014. LIB denies the remainder of the allegations in Paragraph 36.

12 37. LIB admits that it held its festival from October 24 to October 26, 2014
13 and that it used its heart design and the phrase Life is Beautiful in connection
14 therewith. To the extent Paragraph 37 states a legal conclusion, no response is
15 required. LIB denies the remainder of the allegations in Paragraph 37.

16 38. LIB lacks knowledge or information sufficient to form a belief about
17 the truth of the allegations in Paragraph 38.

18 39. LIB admits that Ticketmaster sold tickets for its 2013 and 2014
19 festivals. To the extent Paragraph 39 states a legal conclusion, no response is
20 required. LIB denies the remainder of the allegations in Paragraph 39.

21 40. LIB admits that it entered into an agreement with Ticketmaster on May
22 27, 2013, which document speaks for itself. LIB denies the remainder of the
23 allegations in Paragraph 40.

24 41. LIB admits that the websites named in Paragraph 41, which speak for
25 themselves, exist. LIB denies the remainder of the allegations in Paragraph 41.

26 42. LIB denies the allegations in Paragraph 42.

27 43. LIB denies the allegations in Paragraph 43.

28 44. LIB denies the allegations in Paragraph 44.

FIRST CAUSE OF ACTION

(Trademark Infringement Under §32(1) of the Lanham Act—Against All Defendants)

45. Answering Paragraph 45 of the First Amended Complaint, LIB reincorporates its answers to Plaintiff's allegations in Paragraphs 1-44 as if fully set forth herein.

46. LIB lacks knowledge or information sufficient to form a belief about what rights Plaintiff owns, if any. LIB denies the remaining allegations in Paragraph 46.

47. LIB denies the allegations in Paragraph 47.

48. LIB denies the allegations in Paragraph 48.

49. LIB denies the allegations in Paragraph 49.

50. LIB denies the allegations in Paragraph 50.

51. LIB denies the allegations in Paragraph 51.

52. LIB denies the allegations in Paragraph 52 and denies that Amusement Art is entitled to any of the relief listed in Paragraph 52.

SECOND CAUSE OF ACTION

(Unfair Competition, False Designation of Origin, Passing Off and False Advertising under Lanham Act § 43(a)—Against All Defendants)

53. Answering Paragraph 53 of the First Amended Complaint, LIB reincorporates its answers to Plaintiff's allegations in Paragraphs 1-52 as if fully set forth herein.

54. LIB denies the allegations in Paragraph 54.

55. LIB denies the allegations in Paragraph 55.

56. LIB denies the allegations in Paragraph 56.

57. LIB admits that it has used and continues to use in the United States the four trademarks described in Paragraph 29 of the First Amended Complaint. LIB denies all other allegations in Paragraph 57.

1 58. LIB denies the allegations in paragraph 58.

2 59. LIB denies the allegations in Paragraph 59.

3 60. LIB denies the allegations in Paragraph 60.

4 61. LIB denies the allegations in Paragraph 61.

5 62. LIB denies the allegations in Paragraph 62.

6 63. LIB denies the allegations in Paragraph 63 and denies that Amusement
7 Art is entitled to any of the relief listed in Paragraph 63.

8 **THIRD CAUSE OF ACTION**

9 **(For Copyright Infringement—Against All Defendants)**

10 64. Answering Paragraph 64 of the First Amended Complaint, LIB
11 reincorporates its answers to Plaintiff's allegations in Paragraphs 1-63 as if fully set
12 forth herein.

13 65. LIB lacks knowledge or information sufficient to form a belief about
14 Plaintiff's ownership rights, if any. LIB denies the remaining allegations in
15 Paragraph 65.

16 66. LIB denies the allegations in Paragraph 66.

17 67. LIB denies the allegations in Paragraph 67.

18 68. LIB denies the allegations in Paragraph 68.

19 69. LIB denies the allegations in Paragraph 69.

20 70. LIB denies the allegations in Paragraph 70 and denies that Amusement
21 Art is entitled to any of the relief listed in Paragraph 70.

22 71. LIB denies the allegations in Paragraph 71.

23 72. LIB denies the allegations in Paragraph 72 and denies that Amusement
24 Art is entitled to any of the relief listed in Paragraph 72.

25 73. LIB denies the allegations in Paragraph 73.

FOURTH CAUSE OF ACTION

**(Unfair Competition in Violation of Bus. & Prof. Code § 17200, et seq.
Against All Defendants)**

74. Answering Paragraph 74 of the First Amended Complaint, LIB reincorporates its answers to Plaintiff's allegations in Paragraphs 1-73 as if fully set forth herein.

75. LIB denies the allegations in Paragraph 75.

76. LIB denies the allegations in Paragraph 76.

77. LIB denies the allegations in Paragraph 77.

78. LIB denies the allegations in Paragraph 78 and denies that Amusement Art is entitled to any of the relief listed in Paragraph 78.

79. LIB denies the allegations in Paragraph 79 and denies that Amusement Art is entitled to any of the relief listed in Paragraph 79.

FIFTH CAUSE OF ACTION

(Common Law Trademark Infringement and Unfair Competition—Against All Defendants)

80. Answering Paragraph 80 of the First Amended Complaint, LIB reincorporates its answers to Plaintiff's allegations in Paragraphs 1-79 as if fully set forth herein.

81. LIB lacks knowledge or information sufficient to form a belief about the allegations in Paragraph 81.

82. LIB denies the allegations in Paragraph 82.

83. LIB admits it has used and continues to use the trademarks listed in Paragraph 30 of the First Amended Complaint. LIB admits it has used its heart logo in the past. LIB denies all other allegations in Paragraph 83.

84. LIB denies the allegations in Paragraph 84.

85. LIB denies the allegations in Paragraph 85.

86. LIB denies the allegations in Paragraph 86.

1 87. LIB denies the allegations in Paragraph 87.

2 88. LIB denies the allegations in Paragraph 88.

3 89. LIB denies the allegations in Paragraph 89 and denies that Amusement
4 Art is entitled to any of the relief listed in Paragraph 89.

5 **SIXTH CAUSE OF ACTION**

6 **(For Declaratory Relief—Against All Defendants)**

7 90. Answering Paragraph 90 of the First Amended Complaint, LIB
8 reincorporates its answers to Plaintiff's allegations in Paragraphs 1-89 as if fully set
9 forth herein.

10 91. Paragraph 91 states legal conclusions to which no response is required.
11 To the extent a response to the paragraph is required, LIB admits a dispute exists
12 between the parties. Except as otherwise admitted herein, LIB denies the allegations
13 in Paragraph 91.

14 92. LIB admits that Plaintiff purports to seek the relief listed in Paragraph
15 92. Except as otherwise admitted herein, LIB denies the allegations in Paragraph 92.

16 93. Paragraph 93 states legal conclusions to which no response is required.
17 To the extent a response to the paragraph is required, LIB admits a dispute exists
18 between the parties. Except as otherwise admitted herein, LIB denies the allegations
19 in Paragraph 93.

20 94. LIB admits that Plaintiff purports to seek the relief listed in Paragraph
21 94. Except as otherwise admitted herein, LIB denies the allegations in Paragraph
22 94.

23 95. Paragraph 95 states a legal conclusion to which no response is required.

24 **AFFIRMATIVE DEFENSES**

25 In addition to the affirmative defenses asserted below, LIB reserves the right
26 to assert additional affirmative defenses based on facts which are revealed during
27 discovery:
28

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim Upon Which Relief Can be Granted)

96. The First Amended Complaint and each claim for relief contained therein fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

(Unclean Hands)

97. The First Amended Complaint and each claim for relief contained therein are barred as a result of Plaintiff's unclean hands.

THIRD AFFIRMATIVE DEFENSE

(Waiver / Acquiescence)

98. The First Amended Complaint and each claim of relief contained therein are barred by the doctrines of waiver and acquiescence.

FOURTH AFFIRMATIVE DEFENSE

(Laches / Statute of Limitations)

99. The First Amended Complaint and each claim for relief contained therein are barred by the applicable statute of limitations and by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

(Innocent Intent)

100. Without in any way admitting any of the allegations in the First Amended Complaint, any infringement arising from the acts complained of in the First Amended Complaint, if any, was innocent and not intentional.

SIXTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

101. Without in any way admitting any of the allegations in the First Amended Complaint, and without admitting that Plaintiff suffered any damages at all, Plaintiff failed to take reasonable steps to mitigate those purported damages.

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 **(Fair Use)**

3 102. The First Amended Complaint and each claim of relief contained
4 therein is barred because LIB's alleged conduct constitutes fair use.

5 **EIGHTH AFFIRMATIVE DEFENSE**

6 **(First Amendment)**

7 103. The First Amended Complaint and each claim of relief contained
8 therein is barred because LIB's alleged conduct is protected by the First
9 Amendment.

10 **NINTH AFFIRMATIVE DEFENSE**

11 **(Statutory Damages and Attorney's Fees)**

12 104. The First Amended Complaint fails to state facts sufficient to entitle
13 Plaintiff to an award of statutory damages and/or attorney's fees.

Counterclaim

Defendants Life is Beautiful, LLC and Downtown Las Vegas Management, LLC (collectively “LIB”) allege as follows:

105. Thierry Guetta, through his company, Plaintiff Amusement Art LLC, uses the phrase “Life is Beautiful” in a small percentage of the works of art he sells. Neither Mr. Guetta nor Amusement Art have ever used that phrase to identify themselves as the source of goods or services.

106. Nonetheless, Amusement Art filed eight “Intent to Use” trademark registration applications (registration nos. 4222551, 4230601, 4230603, 4230604, 4230605, 4230609, 4400693, and 4568728) for the phrase “Life is Beautiful.”

107. Amusement Art’s representatives subsequently filed statements of use for each of these registrations, claiming under penalty of perjury that Amusement Art had in fact used the phrase in commerce to sell a vast variety of types goods.

108. In fact, upon information and belief, Amusement Art never sold goods in the overwhelming majority of categories described in the trademark registrations. Moreover, Amusement Art did not use the phrase “Life is Beautiful” to identify itself as the source of any goods or services.

109. As a result of its fraudulent filings, Amusement Art received eight trademark registrations for the phrase “Life is Beautiful.” Amusement Art’s registrations should be cancelled because they were obtained through fraud. *See* 15 U.S.C. § 1064.

General Allegations

Mr. Guetta’s Non-Use of the Mark

110. Mr. Guetta is known in the art world as “Mr. Brainwash.” His websites are mrbrainwash.com, mrbrainwashcreative.com, and creativeamericanproducts.com. He signs his work “Mr. Brainwash” and his art shows are always promoted as featuring the work of Mr. Brainwash. In short, he

1 uses the name Mr. Brainwash to identify his work in the minds of the public as
2 having been created by him.

3 111. Mr. Guetta includes the phrase “Life is Beautiful,” along with
4 numerous other phrases, as a visual element in a small percentage of his artwork and
5 merchandise. Mr. Guetta also uses many other inspirational phrases such as “love is
6 the answer” and “follow your dreams” in his work and sells products based upon
7 those artworks as well.

8 *Amusement Art’s Trademark Registrations*

9 112. Amusement Art filed eight “intent-to-use” trademark applications,
10 between January 2011 and March 2012, for use of the phrase “Life is Beautiful”
11 with various of goods and services.

12 113. Amusement Art subsequently filed a Statement of Use for each
13 trademark application, asserting under penalty of perjury that Amusement Art had in
14 fact use the mark in connection with the sale of goods in *each* sub-category
15 identified in the Statement of use. In fact, however, Amusement Art never sold any
16 goods in the vast majority of the categories of goods covered in the statements of
17 use. Nor did it ever use the phrase “Life is Beautiful” to identify Amusement Art or
18 Mr. Guetta as the source of any goods or services.

19 Class 002 (Paints)

20 114. On January 31, 2011 Amusement Art’s Chief Administrative Officer
21 Patrick Guetta filed a trademark application on behalf of Amusement Art with the
22 Registration No. 4222551 for use of the mark “Life is Beautiful” with International
23 Trademark Class 002.

24 115. On August 13, 2012 Patrick Guetta filed a Statement of Use on behalf
25 of Amusement Art in connection with the same application in which he swore,
26 under penalty of perjury, that “[t]he [“Life is Beautiful”] mark is in use in commerce
27 on or in connection with all goods or services listed in the application,” which the
28 Statement of Use described as “Colourants; Fingerpaint; Food coloring; Paints,

1 lacquers, varnishes; Primers; Varnish; Watercolor paints; Aerosol Spray Paints;
2 Clear and pigmented coatings used in the nature of paint.”

3 116. Amusement Art did not sell goods in any of the categories of goods
4 listed in its Statement of Use for Class 002 prior to August 13, 2012. Nor did
5 Amusement Art use the phrase “Life is Beautiful” to identify itself, Thierry Guetta,
6 or any related entities or persons as the source of any of the goods listed in its
7 Statement of Use for Class 002 prior to or after August 13, 2012.

8 Class 014 (Jewelry, Cocks, and Watches)

9 117. On February 1, 2011 Patrick Guetta filed a trademark application on
10 behalf of Amusement Art with the Registration No. 4230601 for use of the mark
11 “Life is Beautiful” with International Trademark Class 014.

12 118. On August 13, 2012 Patrick Guetta filed a Statement of Use on behalf
13 of Amusement Art in connection with the same application in which he swore,
14 under penalty of perjury, that “[t]he [“Life is Beautiful”] mark is in use in commerce
15 on or in connection with all goods or services listed in the application,” which the
16 Statement of Use described as “Ankle bracelets; Bracelets; Charms for collar
17 jewelry and bracelet; Clocks; Cuff links; Diamond jewelry; Earrings; Imitation
18 jewelry; Jewelry; Neck chains; Pendants; Rings; Tie clips; Trophies of precious
19 metals; Wall clocks; Watch bands and straps; Watch boxes; Watch bracelets; Watch
20 cases; Watches; Women's jewelry; Wristwatches.”

21 119. Amusement Art sold three bracelets and three necklaces which may or
22 may not have borne the phrase “Life is Beautiful” to a single buyer identified in the
23 sale’s invoice as “PSDI USA” on April 4, 2012.

24 120. Amusement Art did not sell a non-token quantity of goods in any of the
25 categories of goods listed in its Statement of Use for Class 014 prior to August 13,
26 2012. Nor did Amusement Art use the phrase “Life is Beautiful” to identify itself,
27 Thierry Guetta, or any related entities or persons as the source of any of the goods
28 listed in its Statement of Use for Class 014 prior to or after August 13, 2012.

Class 018 (Leather and Travel Goods)

121. On February 1, 2011 Patrick Guetta filed a trademark application on behalf of Amusement Art with the Registration No. 4230603 for use of the mark “Life is Beautiful” with International Trademark Class 018.

122. On August 13, 2012 Patrick Guetta filed a Statement of Use on behalf of Amusement Art in connection with the same application in which he swore, under penalty of perjury, that “[t]he [“Life is Beautiful”] mark is in use in commerce on or in connection with all goods or services listed in the application,” which the Statement of Use described as “All purpose sport bags; All-purpose athletic bags; Backpacks; Beach bags; Beach umbrellas; Billfolds; Book bags; Business card cases; Clutch bags; Coin purses; Cosmetic bags sold empty; Credit card cases; Duffel bags; Handbags; Key cases; Knapsacks; Luggage; Luggage and trunks; Luggage tags; Messenger bags; Purses; School bags; Shoulder bags; Sport bags; Sports bags; Suitcases; Toiletry bags sold empty; Toiletry cases sold empty; Tote bags; Traveling bags; Umbrellas; Vanity cases sold empty; Wallets.”

123. Amusement Art sold one “wristlet bag,” one “sling bag,” one “clutch bag,” and one “regular bag,” which may or may not have borne the phrase “Life is Beautiful,” to a single buyer identified in the sale’s invoice as “PSDI USA” on March 5, 2012.

124. Amusement Art did not sell a non-token quantity of any goods in any of the categories of goods listed in its Statement of Use for Class 018 prior to August 13, 2012. Nor did Amusement Art use the phrase “Life is Beautiful” to identify itself, Thierry Guetta, or any related entities or persons as the source of any of the goods listed in its Statement of Use for Class 018 prior to or after August 13, 2012.

Class 021 (Household and Kitchen Goods)

125. On February 1, 2011 Patrick Guetta filed a trademark application on behalf of Amusement Art with the Registration No. 4230604 for use of the mark “Life is Beautiful” with International Trademark Class 021.

126. On August 13, 2012 Patrick Guetta filed a Statement of Use on behalf of Amusement Art in connection with the same application in which he swore, under penalty of perjury, that “[t]he [“Life is Beautiful”] mark is in use in commerce on or in connection with all goods or services listed in the application,” which the Statement of Use described as “Bakeware; Bath sponges; Beverage glassware; Bottle openers; Bottles, sold empty; Bowls; Bread baskets for domestic use; Brushes for pets; Buckets; Butter dishes; Cake molds; Candle holders; Candle holders not of precious metal; Carafes; Cardboard cups; Ceramic tissue box covers; Cleaning sponges; Coasters not of paper and not being table linen; Cocktail picks; Cocktail shakers; Cookie jars; Cookware, namely, pots and pans; Cups; Dispensers for paper towels; Drinking glasses; Drinking glasses, namely, tumblers; Earthenware basins; Earthenware mugs; Figurines made out of fiberglass; Figurines of glass, porcelain, acrylic; Flasks; Flower vases; Hair brushes; Hair combs; Hairbrushes; Holiday ornaments of porcelain; Household utensils, namely, spatulas; Household utensils, namely, turners; Ice buckets; Ice cube molds; Ice scoops; Jugs; Knife boards; Lunch boxes; Meal trays; Mugs; Napkin holders and napkin rings not of precious metal; Non-electric egg beaters; Ovenware; Paper cups; Paper plates; Pepper grinders; Pet feeding and drinking bowls; Plastic cups; Plates; Portable coolers; Portable ice chests for food and beverages; Pots; Rolling pins; Salt and pepper shakers; Sculptures of earthenware, fiberglass; Serving trays; Soap dishes; Statues of china, earthenware, glass, terra cotta, porcelain; Tea pots; Tea pots not of precious metal;

1 Tooth brushes; Toothbrush cases; Toothbrush holders; Trash cans; Trays for
 2 domestic purposes; Vases; Work gloves; Works of art of china, earthenware, glass,
 3 porcelain, terra cotta; House ware and glassware, namely, shot glasses; holiday
 4 ornaments of glass; table center sculpture made of ceramic, china, crystal,
 5 earthenware, glass, porcelain; salt and pepper cellars.”

6 127. Amusement Art has, at various times, sold plates and bowls bearing
 7 heart images. Amusement Art has never sold plates or bowls bearing the phrase
 8 “Life is Beautiful.”

9 128. Other than plates, Amusement Art did not sell goods in any of the
 10 categories of goods listed in its Statement of Use for Class 021 prior to August 13,
 11 2012. Nor did Amusement Art use the phrase “Life is Beautiful” to identify itself,
 12 Thierry Guetta, or any related entities or persons as the source of any of the goods
 13 listed in its Statement of Use for Class 021 prior to or after August 13, 2012.

14 Class 024 (Textiles)

15 129. On February 1, 2011 Patrick Guetta filed a trademark application on
 16 behalf of Amusement Art with the Registration No. 4230605 for use of the mark
 17 “Life is Beautiful” with International Trademark Class 024.

18 130. On August 13, 2012 Patrick Guetta filed a Statement of Use on behalf
 19 of Amusement Art in connection with the same application in which he swore,
 20 under penalty of perjury, that “[t]he [“Life is Beautiful”] mark is in use in commerce
 21 on or in connection with all goods or services listed in the application,” which the
 22 Statement of Use described as “Banners and flags of textile; Bath linen; Bath sheets;
 23 Bath towels; Beach towels; Bed blankets; Bed covers; Bed linen; Bed sheets; Bed
 24 spreads; Blanket throws; Blankets for outdoor use; Cashmere blankets; Comforters;
 25 Curtains; Curtains of textile or plastic; Duvet covers; Duvets; Eiderdown covers;
 26 Eiderdowns; Fabrics for textile use; Flat bed sheets; Hand towels; Kitchen towels;
 27 Pillow cases; Pillow shams; Pillowcases; Place mats, not of paper; Plastic place
 28 mats; Shower curtains; Table linen; Table linen, namely, napkins; Table mats not of

1 paper; Tablecloths, not of paper; Throws; Towels; Vinyl place mats; Sheets, namely,
2 contour sheets, bed sheets.”

3 131. In fact, Amusement Art did not sell goods in any of the categories of
4 goods listed in its Statement of Use for Class 024 prior to August 13, 2012. Nor did
5 Amusement Art use the phrase “Life is Beautiful” to identify itself, Thierry Guetta,
6 or any related entities or persons as the source of any of the goods listed in its
7 Statement of Use for Class 024 prior to or after August 13, 2012.

8 Class 016 (Paper Goods)

9 132. On February 2, 2011 Patrick Guetta filed a trademark application on
10 behalf of Amusement Art with the Registration No. 4230609 for use of the mark
11 “Life is Beautiful” with International Trademark Class 016.

12 133. On August 13, 2012 Patrick Guetta filed a Statement of Use on behalf
13 of Amusement Art in connection with the same application in which she swore,
14 under penalty of perjury, that “[t]he [“Life is Beautiful”] mark is in use in commerce
15 on or in connection with all goods or services listed in the application,” which the
16 Statement of Use described as “Art pictures; Art prints; Art prints on canvas;
17 Blackboards and scrap books; Blank journal books; Blank or partially printed
18 postcards; Book covers; Book marks; Books in the field of art; Bumper stickers;
19 Calendar desk pads; Calendars; Cards, namely, greeting and birthday cards;
20 Children's books; Coasters made of paper; Coloring books; Comic books; Date
21 books; Day planners; Decals; Diaries; Fitted fabric notebook covers; Framed art
22 prints; Greeting cards; Heat transfer paper; Lithographic prints; Lithographic works
23 of art; Lithographs; Mounted and unmounted photographs; Napkin paper; Note
24 books; Note pads; Notebooks; Pens for marking; Photographic prints; Photographs;
25 Picture postcards; Postcard paper; Postcards; Postcards and greeting cards;
26 Postcards and picture postcards; Posters; Posters made of paper; Printed calendars;
27 School supply kits containing various combinations of selected school supplies,
28 namely, writing instruments, pens, pencils, mechanical pencils, erasers, markers,

1 crayons, highlighter pens, folders, notebooks, paper, protractors, paper clips, pencil
 2 sharpeners, writing grips, glue and book marks; Series of fiction works, namely,
 3 novels and books; Stationery; Stickers; Stickers and decalcomanias; Stickers and
 4 transfers; Talking children's books; Tear-off calendars; Wall calendars.”

5 134. Amusement Art has, at various times, sold artworks and art prints
 6 incorporating the phrase “Life is Beautiful.” At least some of the paintings sold by
 7 it bear the phrase “Life is Beautiful” on their back as well.

8 135. Amusement Art did not sell any goods in any of the other categories of
 9 goods listed in its Statement of Use for Class 016 prior to August 13, 2012. Nor did
 10 Amusement Art use the phrase “Life is Beautiful” to identify itself, Thierry Guetta,
 11 or any related entities or persons as the source of any of the goods listed in its
 12 Statement of Use for Class 016 prior to or after August 13, 2012.

13 Class 009 (Electronic and Mechanical Goods)

14 136. On September 21, 2011 Patrick Guetta filed a trademark application on
 15 behalf of Amusement Art with the Registration No. 4400693 for use of the mark
 16 “Life is Beautiful” with International Trademark Class 009.

17 137. On July 19, 2013 Amusement Art’s Vice President, Debora Guetta,
 18 filed a Statement of Use on behalf of Amusement Art in connection with the same
 19 application in which she swore, under penalty of perjury, that “[t]he [“Life is
 20 Beautiful”] mark is in use in commerce on or in connection with all goods or
 21 services listed in the application,” which the Statement of Use described as “Blank
 22 USB flash drives; Decorative magnets; Downloadable images in the field of
 23 artworks for mobile phones; Downloadable computer application software for
 24 mobile phones for use in electronic storage of games, images, and videos for use in
 25 cell phones, smart phones, or digital tablets; Eyeglass cases; Eyeglass frames;
 26 Eyeglasses; Goggles for sports; blank hard drives for computers; Headphones;
 27 Mouse pads; Mousepads; Ski goggles; Sunglasses; Faceplates and covers for cell
 28 phones, personal digital assistants and laptops.; Video and computer game software

1 for personal computer and home video game console; Cellular telephone
2 accessories, namely, hands-free audio accessories, cellular telephone covers and
3 cellular telephone face covers; Magnetically encoded cards, namely, pre-paid
4 telephone calling cards, credit cards, cash cards, debit cards, and key cards;
5 Downloadable screensaver software in the nature of a mobile application for use
6 creating screen savers for cell phones, smart phones, tablet computers, and digital
7 music players; Carrying case and bags designed for storage and transportation of
8 Consumer electronics namely; portable computers, mp3 players, Cellular telephone,
9 digital camera, digital tablets, digital music players, and personal digital assistant;
10 Downloadable images in the field of art for tablets.”

11 138. Amusement Art has, at various times, sold cellphone covers
12 incorporating the phrase “Life is Beautiful.”

13 139. Amusement Art did not sell any goods in any of the other categories of
14 goods listed in its Statement of Use for Class 009 prior to July 19, 2013. Nor did
15 Amusement Art use the phrase “Life is Beautiful” to identify itself, Thierry Guetta,
16 or any related entities or persons as the source of any of the goods listed in its
17 Statement of Use for Class 009 prior to or after July 19, 2013.

18 Class 017 (Tape)

19 140. On March 12, 2012 Patrick Guetta filed a trademark application on
20 behalf of Amusement Art with the Registration No. 4568728 for use of the mark
21 “Life is Beautiful” with International Trademark Class 017.

22 141. On September 20, 2013 Debora Guetta filed a Statement of Use on
23 behalf of Amusement Art in connection with the same application in which she
24 swore, under penalty of perjury, that “[t]he [“Life is Beautiful”] mark is in use in
25 commerce on or in connection with all goods or services listed in the application,”
26 which the Statement of Use described as “Adhesive packing tape for industrial or
27 commercial use; Duct tape; Masking tape; Plastic crime scene tape used to create a
28

1 visual barrier to deny access to a crime scene; Plastic evidence tape for sealing
2 envelopes, bags and other packages or containers holding evidence.”

3 142. Amusement Art did not sell any goods in any of the categories of goods
4 listed in its Statement of Use for Class 017 prior to September 20, 2013. Nor did
5 Amusement Art use the phrase “Life is Beautiful” to identify itself, Thierry Guetta,
6 or any related entities or persons as the source of any of the goods listed in its
7 Statement of Use for Class 017 prior to or after September 20, 2013.

8 **FIRST COUNTERCLAIM**

9 (Cancellation of Registration No. 4222551 -- 15 U.S.C. §§ 1064, 1119)

10 143. LIB hereby realleges and incorporates by reference paragraphs 1
11 through 142.

12 144. On August 13, 2012 Amusement Art filed a Statement of Use in
13 support of its trademark Registration No. 4222551. In this statement of use, Patrick
14 Guetta claimed on Amusement Art’s behalf that it had used the phrase “Life is
15 Beautiful” in commerce in connection with each of the types of goods described
16 therein.

17 145. Amusement Art did not sell goods in any of the categories of goods
18 described in its Statement of Use for Registration No. 4222551.

19 146. Amusement Art did not use the phrase “Life is Beautiful” to identify
20 itself as the source of any of the goods described in its Statement of Use for
21 Registration No. 4222551.

22 147. Patrick Guetta must have known that the Statement of Use he filed for
23 Registration No. 4222551 was false. As Amusement Art’s Chief Administrative
24 Officer he necessarily would have been aware of the relatively small number of
25 products it sold and could not have believed that Amusement Art in fact sold goods
26 in each of the myriad categories described in the Statement of Use for Registration
27 No. 4222551. And as Amusement Art’s Chief Administrative Officer he necessarily
28

1 would have been aware that Amusement Art did not use the phrase “Life is
2 Beautiful” to identify itself as the source of goods and services.

3 148. Amusement Art caused the fraudulent Statement of Use to be filed with
4 the intent of deceiving the USPTO to obtain Registration No. 4222551.

5 149. Marks obtained through fraud are subject to cancellation by the
6 USPTO. 15 U.S.C. § 1064.

7 150. This court has the power to cancel registrations for any reason,
8 including fraud, for which the Lanham Act provides the USPTO may cancel a
9 registration. 15 U.S.C. § 1119.

10 **SECOND COUNTERCLAIM**

11 (Cancellation of Registration No. 4230601 -- 15 U.S.C. §§ 1064, 1119)

12 151. LIB hereby realleges and incorporates by reference paragraphs 1
13 through 150.

14 152. On August 13, 2012 Amusement Art filed a Statement of Use in
15 support of its trademark Registration No. 4230601. In this statement of use, Patrick
16 Guetta claimed on Amusement Art’s behalf that it had used the phrase “Life is
17 Beautiful” in commerce in connection with each of the types of goods described
18 therein.

19 153. Amusement Art did not sell a non-token quantity of goods in any of the
20 categories of goods described in its Statement of Use for Registration No. 4230601.

21 154. Amusement Art did not use the phrase “Life is Beautiful” to identify
22 itself as the source of any of the goods described in its Statement of Use for
23 Registration No. 4230601.

24 155. Patrick Guetta must have known that the Statement of Use he filed for
25 Registration No. 4230601 was false. As Amusement Art’s Chief Administrative
26 Officer he necessarily would have been aware of the relatively small number of
27 products it sold and could not have believed that Amusement Art in fact sold goods
28 in each of the myriad categories described in the Statement of Use for Registration

1 No. 4230601. And as Amusement Art's Chief Administrative Officer he necessarily
2 would have been aware that Amusement Art did not use the phrase "Life is
3 Beautiful" to identify itself as the source of goods and services.

4 156. Amusement Art caused the fraudulent Statement of Use to be filed with
5 the intent of deceiving the USPTO to obtain Registration No. 4230601.

6 157. Marks obtained through fraud are subject to cancellation by the
7 USPTO. 15 U.S.C. § 1064.

8 158. This court has the power to cancel registrations for any reason,
9 including fraud, for which the Lanham Act provides the USPTO may cancel a
10 registration. 15 U.S.C. § 1119.

11 **THIRD COUNTERCLAIM**

12 (Cancellation of Registration No. 4230603 -- 15 U.S.C. §§ 1064, 1119)

13 159. LIB hereby realleges and incorporates by reference paragraphs 1
14 through 158.

15 160. On August 13, 2012 Amusement Art filed a Statement of Use in
16 support of its trademark Registration No. 4230603. In this statement of use, Patrick
17 Guetta claimed on Amusement Art's behalf that it had used the phrase "Life is
18 Beautiful" in commerce in connection with each of the types of goods described
19 therein.

20 161. Amusement Art did not sell a non-token quantity of any of the goods in
21 any of the categories of goods described in its Statement of Use for Registration No.
22 4230603.

23 162. Amusement Art did not use the phrase "Life is Beautiful" to identify
24 itself as the source of any of the goods described in its Statement of Use for
25 Registration No. 4230603.

1 163. Patrick Guetta must have known that the Statement of Use he filed for
 2 Registration No. 4230603 was false. As Amusement Art's Chief Administrative
 3 Officer he necessarily would have been aware of the relatively small number of
 4 products it sold and could not have believed that Amusement Art in fact sold goods
 5 in each of the myriad categories described in the Statement of Use for Registration
 6 No. 4230603. And as Amusement Art's Chief Administrative Officer he necessarily
 7 would have been aware that Amusement Art did not use the phrase "Life is
 8 Beautiful" to identify itself as the source of goods and services.

9 164. Amusement Art caused the fraudulent Statement of Use to be filed with
 10 the intent of deceiving the USPTO to obtain Registration No. 4230603.

11 165. Marks obtained through fraud are subject to cancellation by the
 12 USPTO.

13 166. This court has the power to cancel registrations for any reason,
 14 including fraud, for which the Lanham Act provides the USPTO may cancel a
 15 registration. 15 U.S.C. § 1119.

16 **FOURTH COUNTERCLAIM**

17 (Cancellation of Registration No. 4230604 -- 15 U.S.C. §§ 1064, 1119)

18 167. LIB hereby realleges and incorporates by reference paragraphs 1
 19 through 166

20 168. On August 13, 2012 Amusement Art filed a Statement of Use in
 21 support of its trademark Registration No. 4230604. In this statement of use, Patrick
 22 Guetta claimed on Amusement Art's behalf that it had used the phrase "Life is
 23 Beautiful" in commerce in connection with each of the types of goods described
 24 therein.

25 169. Amusement Art did not sell goods in the vast majority of the categories
 26 of goods described in its Statement of Use for Registration No. 4230604.

1 170. Amusement Art did not use the phrase “Life is Beautiful” to identify
2 itself as the source of any of the goods described in its Statement of Use for
3 Registration No. 4230604.

4 171. Patrick Guetta must have known that the Statement of Use he filed for
5 Registration No. 4230604 was false. As Amusement Art’s Chief Administrative
6 Officer he necessarily would have been aware of the relatively small number of
7 products it sold and could not have believed that Amusement Art in fact sold goods
8 in each of the myriad categories described in the Statement of Use for Registration
9 No. 4230604. And as Amusement Art’s Chief Administrative Officer he necessarily
10 would have been aware that Amusement Art did not use the phrase “Life is
11 Beautiful” to identify itself as the source of goods and services.

12 172. Amusement Art caused the fraudulent Statement of Use to be filed with
13 the intent of deceiving the USPTO to obtain Registration No. 4230604.

14 173. Marks obtained through fraud are subject to cancellation by the
15 USPTO. 15 U.S.C. § 1064.

16 174. This court has the power to cancel registrations for any reason,
17 including fraud, for which the Lanham Act provides the USPTO may cancel a
18 registration. 15 U.S.C. § 1119.

19 **FIFTH COUNTERCLAIM**

20 (Cancellation of Registration No. 4230605 -- 15 U.S.C. §§ 1064, 1119)

21 175. LIB hereby realleges and incorporates by reference paragraphs 1
22 through 174

23 176. On August 13, 2012 Amusement Art filed a Statement of Use in
24 support of its trademark Registration No. 4230605. In this statement of use, Patrick
25 Guetta claimed on Amusement Art’s behalf that it had used the phrase “Life is
26 Beautiful” in commerce in connection with each of the types of goods described
27 therein.

1 177. Amusement Art did not sell goods in any of the categories of goods
2 described in its Statement of Use for Registration No. 4230605.

3 178. Amusement Art did not use the phrase “Life is Beautiful” to identify
4 itself as the source of any of the goods described in its Statement of Use for
5 Registration No. 4230605.

6 179. Patrick Guetta must have known that the Statement of Use he filed for
7 Registration No. 4230605 was false. As Amusement Art’s Chief Administrative
8 Officer he necessarily would have been aware of the relatively small number of
9 products it sold and could not have believed that Amusement Art in fact sold goods
10 in each of the myriad categories described in the Statement of Use for Registration
11 No. 4230605. And as Amusement Art’s Chief Administrative Officer he necessarily
12 would have been aware that Amusement Art did not use the phrase “Life is
13 Beautiful” to identify itself as the source of goods and services.

14 180. Amusement Art caused the fraudulent Statement of Use to be filed with
15 the intent of deceiving the USPTO to obtain Registration No. 4230605.

16 181. Marks obtained through fraud are subject to cancellation by the
17 USPTO. 15 U.S.C. § 1064.

18 182. This court has the power to cancel registrations for any reason,
19 including fraud, for which the Lanham Act provides the USPTO may cancel a
20 registration. 15 U.S.C. § 1119.

21 **SIXTH COUNTERCLAIM**

22 (Cancellation of Registration No. 4230609 -- 15 U.S.C. §§ 1064, 1119)

23 183. LIB hereby realleges and incorporates by reference paragraphs 1
24 through 182.

1 184. On August 13, 2012 Amusement Art filed a Statement of Use in
2 support of its trademark Registration No. 4230609. In this statement of use, Patrick
3 Guetta claimed on Amusement Art's behalf that it had used the phrase "Life is
4 Beautiful" in commerce in connection with each of the types of goods described
5 therein.

6 185. Amusement Art did not sell goods in the vast majority of the categories
7 of goods described in its Statement of Use for Registration No. 4230609.

8 186. Amusement Art did not use the phrase "Life is Beautiful" to identify
9 itself as the source of any of the goods described in its Statement of Use for
10 Registration No. 4230609.

11 187. Patrick Guetta must have known that the Statement of Use he filed for
12 Registration No. 4230609 was false. As Amusement Art's Chief Administrative
13 Officer he necessarily would have been aware of the relatively small number of
14 products it sold and could not have believed that Amusement Art in fact sold goods
15 in each of the myriad categories described in the Statement of Use for Registration
16 No. 4230609. And as Amusement Art's Chief Administrative Officer he necessarily
17 would have been aware that Amusement Art did not use the phrase "Life is
18 Beautiful" to identify itself as the source of goods and services.

19 188. Amusement Art caused the fraudulent Statement of Use to be filed with
20 the intent of deceiving the USPTO to obtain Registration No. 4230609.

21 189. Marks obtained through fraud are subject to cancellation by the
22 USPTO. 15 U.S.C. § 1064.

23 190. This court has the power to cancel registrations for any reason,
24 including fraud, for which the Lanham Act provides the USPTO may cancel a
25 registration. 15 U.S.C. § 1119.

26
27
28

SEVENTH COUNTERCLAIM

(Cancellation of Registration No. 4230693 -- 15 U.S.C. §§ 1064, 1119)

191. LIB hereby realleges and incorporates by reference paragraphs 1 through 190.

192. On July 19, 2013 Amusement Art filed a Statement of Use in support of its trademark Registration No. 4230693. In this statement of use, Debora Guetta claimed on Amusement Art's behalf that it had used the phrase "Life is Beautiful" in commerce in connection with each of the types of goods described therein.

193. Amusement Art did not sell goods in the vast majority of the categories of goods described in its Statement of Use for Registration No. 4230693.

194. Amusement Art did not use the phrase "Life is Beautiful" to identify itself as the source of any of the goods described in its Statement of Use for Registration No. 4230693.

195. Debora Guetta must have known that the Statement of Use she filed for Registration No. 4230693 was false. As Amusement Art's Vice President she necessarily would have been aware of the relatively small number of products it sold and could not have believed that Amusement Art in fact sold goods in each of the myriad categories described in the Statement of Use for Registration No. 4230693. And as Amusement Art's Vice President she necessarily would have been aware that Amusement Art did not use the phrase "Life is Beautiful" to identify itself as the source of goods and services.

196. Amusement Art caused the fraudulent Statement of Use to be filed with the intent of deceiving the USPTO to obtain Registration No. 4230693.

197. Marks obtained through fraud are subject to cancellation by the USPTO. 15 U.S.C. § 1064.

EIGHTH COUNTERCLAIM

(Cancellation of Registration No. 4568728 -- 15 U.S.C. §§ 1064, 1119)

198. LIB hereby realleges and incorporates by reference paragraphs 1 through 197.

199. On September 20, 2013 Amusement Art filed a Statement of Use in support of its trademark Registration No. 4568728. In this statement of use, Debora Guetta claimed on Amusement Art's behalf that it had used the phrase "Life is Beautiful" in commerce in connection with each of the types of goods described therein.

200. Amusement Art did not sell goods in any of the categories of goods described in its Statement of Use for Registration No. 4568728.

201. Amusement Art did not use the phrase "Life is Beautiful" to identify itself as the source of any of the goods described in its Statement of Use for Registration No. 4568728.

202. Debora Guetta must have known that the Statement of Use she filed for Registration No. 4568728 was false. As Amusement Art's Vice President she necessarily would have been aware of the relatively small number of products it sold and could not have believed that Amusement Art in fact sold goods in each of the myriad categories described in the Statement of Use for Registration No. 4568728. And as Amusement Art's Vice President she necessarily would have been aware that Amusement Art did not use the phrase "Life is Beautiful" to identify itself as the source of goods and services.

203. Amusement Art caused the fraudulent Statement of Use to be filed with the intent of deceiving the USPTO to obtain Registration No. 4568728.

204. Marks obtained through fraud are subject to cancellation by the USPTO. 15 U.S.C. § 1064.

Demand for Jury Trial

Life is Beautiful LLC and Downtown Las Vegas Management LLC
hereby demand a jury trial of all issues so triable.

Respectfully Submitted,

DATED: December 3, 2015 MUNGER, TOLLES & OLSON LLP

By: /s/ Tamerlin J. Godley
TAMERLIN J. GODLEY
Attorneys for Defendants
LIFE IS BEAUTIFUL, LLC, and
DOWNTOWN LAS VEGAS MANAGEMENT
LLC

EXHIBIT B

O

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AMUSEMENT ART, LLC,)	Case No. 2-14-cv-08290-DDP-JPR
)	
Plaintiff,)	ORDER RE MOTIONS FOR
)	SUMMARY JUDGMENT
v.)	
)	[Dkts. 95, 97, 103, 137, 138]
LIFE IS BEAUTIFUL, LLC;)	
DOWNTOWN LAS VEGAS)	
MANAGEMENT LLC; AND DOES 1-10,)	
INCLUSIVE,)	
)	
Defendants.)	
)	

Presently before the court are (1) Defendant Downtown Las Vegas Management's ("DLVM") Motion for Summary Judgment; (2) Defendant Life is Beautiful, LLC's ("LIB") Motion for Summary Judgment; (3) Defendants' Motion for Summary Judgment as to Counterclaims for Cancellation of Plaintiffs' Trademark Registrations; (4) Defendants' Motion for Partial Summary Judgment as to Plaintiffs' Claims for Monetary Damages; and (5) Defendants' Motion to Exclude Expert Testimony of Jonny Joseph. (Dkts. 95, 97, 103, 137, 138.) After reviewing the parties' submissions and hearing oral argument, the court adopts the following Order.

I. BACKGROUND

Defendant LIB hosts the Life is Beautiful festival in Las Vegas, Nevada. LIB's founder, Rehan Choudhry, first began working on the idea for the festival in 2012. (Boyd Decl., Ex. 1 (Rehan Choudhry Dep.) at 152:25-155:5.) Choudhry claims that the project was inspired by his sister's battle with depression and his desire for her to see that "Life is Beautiful." (*Id.* at 154:18-155:5.) In developing the festival's style, Choudhry collected digital images from Google searches related to his concept. (*Id.* at 25:17-26:5.) Included in these images was artwork created by Thierry Guetta, also known as Mr. Brainwash, which included the phrase "LIFE IS BEAUTIFUL." (*Id.* 22:9-16.) The images Choudhry collected eventually formed the basis of a pitch document he presented to investors when promoting his festival. (*Id.* at 29:14-23.)

In the fall of 2012, Choudhry hired a graphic designer to develop the festival's logo. (*Id.* at 71:8-18.) The designer produced an image of a heart made of splattered paint. (*Id.*) According to the designer, the image was meant to evoke the concept that life is beautiful but also messy and to allude to Choudhry's own heart attack at the age of 23. In November 2012, Choudhry publicly announced the project, and the first festival was held in the fall of 2013. (*Id.* at 20:14-20, 76:21-24.) The festival, which has been held annually since 2013, features music, food and alcohol tastings, public speakers, and art exhibitions and installations.

Plaintiff Amusement Art is a company owned by artist Thierry Guetta and his wife Debora Guetta. Amusement Art's sole business is to hold and license intellectual property produced by Thierry Guetta. (Boyd Decl., Ex. 3 (Mikael Cohen Dep.) at 27:14-18; 29:21-30:8.) In 2008, Guetta held his first solo art exhibition, entitled "Life is Beautiful." (Boyd Decl., Ex. 10 (Debora Guetta Dep.) at 153:11-20.) In some of his artwork, Guetta incorporates positive phrases such as "Love is the Answer," "Follow Your Dreams," and "Life is Beautiful." (Boyd Decl., Ex. 11 (Thierry Guetta Dep.) at 35:1-36:5.) Between 2008

1 and 2012, Guetta held approximately six additional exhibitions using the “Life is
2 Beautiful” name. (*See* Boudreaux Decl., Ex. 15 (Guetta Dep.) at 51:21-25, 52:23-25.)¹

3 In mid-2013, a common acquaintance introduced LIB to Guetta’s business
4 associates and encouraged the two parties to consider possible collaboration. (Boyd Decl.,
5 Ex. 50.) Over the next few months, LIB met with Guetta’s representatives on several
6 occasions to discuss Guetta’s possible involvement in the festival. (Boyd Decl., Exs. 51-
7 54.) In mid-2014, Guetta met in person with LIB for the first time. (Boyd Decl., Ex. 55.)
8 According to LIB, the meeting did not go well. (*See* Boyd Decl., Ex. 55 (reporting that
9 Guetta felt “disrespect[ed]” at the meeting).) Nonetheless, the parties met several more
10 times to discuss possible business ventures. (Boyd Decl., Exs. 56, 57.) At some point,
11 conversations turned from collaboration to a discussion of Guetta’s intellectual property
12 and the possibility of entering into a licensing arrangement. (*See* Boudreaux Decl., Ex. 41.)
13 However, the parties were unable to reach an agreement and Amusement Art filed suit
14 asserting claims for: (1) trademark infringement under the Lanham Act; (2) unfair
15 competition, false designation, passing off, and false advertising under the Lanham Act;
16 (3) copyright infringement; (4) unfair competition in violation of Bus. & Prof. Code §
17 17200; (5) common law trademark infringement and unfair competition; and (6)
18 declaratory relief. (*See generally* FAC.)

19 At issue in this suit are Guetta’s asserted rights to “splashed paint heart designs”
20 and the phrase “Life is Beautiful.” Guetta registered a copyright for the former in 2009
21 and now asserts that Defendants have violated his copyright and trademark rights in
22 painted heart designs. (*See* FAC ¶ 20-22.) Between 2011 and 2012, Plaintiffs also filed
23 eight “intent to use” trademark applications with the Patent and Trademark Office (PTO)

24
25 ¹ Defendants contend that the shows in question had other titles such as “Untitled,”
26 “Under Construction,” “Icons,” and “Art Show 2011,” and that the only indication that
27 “Life is Beautiful” was part of the show title were promotional postcards, which had the
28 phrase “Life is Beautiful” printed in small type, upside down on the corner of the
postcard. (*See* Guetta Dep. at 49:13-55:13; Boyd Decl., Exs. 12, 30, 31, 32.) Guetta has
submitted, however, some contemporaneous media accounts that use the name “Life is
Beautiful” in association with the shows. (*See* Boudreaux Decl., Ex. 48.)

1 for the phrase "Life is Beautiful." (Boyd Decl., Exs. 13, 15, 17, 19, 21, 23, 25 and 26.) The
2 applications covered goods and services in the international classifications for paints
3 (Class 2), electronics and accessories (Class 9), jewelry (Class 14), paper goods and
4 printed matter (Class 16), rubber goods (Class 17), leather goods (Class 18), housewares
5 and glassware (Class 21), and textiles (Class 24). (*Id.*) After filing the applications,
6 executives employed by Plaintiffs filed Statements of Use, under penalty of perjury,
7 asserting that AA had actually used the phrase "Life is Beautiful" as a trademark to sell
8 approximately 257 categories of goods within the application classes. (Boyd Decl., Exs.
9 14, 16, 18, 20, 22, 24, 27 and 28.) Along with its statements of use, Plaintiffs also submitted
10 pictures of various goods with "Life is Beautiful" sales tags attached to them. In
11 September of 2014, one month before filing this suit, Plaintiffs also filed a trademark
12 registration application for the phrase "Life is Beautiful" in the classification for festival
13 and community events. (Boyd Decl., Ex. 60.)

14 After this suit commenced, Defendants determined that a number of the
15 statements of use submitted by Plaintiffs were false and that Plaintiffs did not actually
16 sell many of the goods on which it obtained trademark registrations. (Boyd Decl., Ex. 5
17 (Patrick Guetta Dep.) at 114:14-118:14, 153:1-154:20; Boyd Decl., Ex. 10 (Debora Guetta
18 Dep.) at 75:21-77:10, 77:17-80:15.) Defendants notified Plaintiffs that they intended to seek
19 cancellation of the trademarks on the basis of fraud on the trademark office. (Boyd Decl.,
20 Ex. 39.) Plaintiffs then voluntarily surrendered eight of the trademark registrations but
21 retained the 2014 registration in connection with festivals and art events. (Boyd Decl., Ex.
22 33.)

23 Defendants now move for summary judgment on all of Plaintiffs' claim and
24 Defendants' counterclaims for cancellation. Defendants also move for partial summary
25 judgment on the issue of monetary damages and to exclude Plaintiffs' expert Jonny
26 Joseph.

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II. LEGAL STANDARD

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A party seeking summary judgment bears the initial burden of informing the court of the basis for its motion and of identifying those portions of the pleadings and discovery responses that demonstrate the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). All reasonable inferences from the evidence must be drawn in favor of the nonmoving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 242 (1986). If the moving party does not bear the burden of proof at trial, it is entitled to summary judgment if it can demonstrate that “there is an absence of evidence to support the nonmoving party’s case.” *Celotex*, 477 U.S. at 323.

Once the moving party meets its burden, the burden shifts to the nonmoving party opposing the motion, who must “set forth specific facts showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 256. Summary judgment is warranted if a party “fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex*, 477 U.S. at 322. A genuine issue exists if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party,” and material facts are those “that might affect the outcome of the suit under the governing law.” *Anderson*, 477 U.S. at 248. There is no genuine issue of fact “[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

It is not the court’s task “to scour the record in search of a genuine issue of triable fact.” *Keenan v. Allan*, 91 F.3d 1275, 1278 (9th Cir. 1996). Counsel has an obligation to lay out their support clearly. *Carmen v. San Francisco Sch. Dist.*, 237 F.3d 1026, 1031 (9th Cir. 2001). The court “need not examine the entire file for evidence establishing a genuine

1 issue of fact, where the evidence is not set forth in the opposition papers with adequate
 2 references so that it could conveniently be found.” *Id.*

3 **III. DISCUSSION**

4 **A. Unclean Hands Defense to Trademark Infringement Claims**

5 As a threshold matter, Defendants contend that all of Plaintiffs claims arising out
 6 of the alleged infringement of the “Life is Beautiful” mark are barred by the doctrine of
 7 unclean hands.² “Unclean hands is a defense to a Lanham Act infringement suit.”
 8 *Fuddruckers, Inc. v. Doc’s B.R. Others, Inc.*, 826 F.2d 837, 847 (9th Cir. 1987). The Ninth
 9 Circuit has explained that the doctrine of unclean hands “bars relief to a plaintiff who has
 10 violated conscience, good faith or other equitable principles in his prior conduct, as well
 11 as to a plaintiff who has dirtied his hands in acquiring the right presently asserted.”
 12 *Dollar Sys., Inc. v. Avcar Leasing Sys., Inc.*, 890 F.2d 165, 173 (9th Cir. 1989) (citing *Pond v.*
 13 *Insurance Co. of North America*, 198 Cal. Rptr. 517, 522 (Ct. App. 1984). To prevail on an
 14 unclean hands defense, a defendant must demonstrate by clear and convincing evidence
 15 “[1] that the plaintiff’s conduct is inequitable and [2] that the conduct relates to the
 16 subject matter of [Plaintiff’s] claims.” *Fuddruckers*, 826 F.2d at 847; *see also Japan Telecom,*
 17 *Inc. v. Japan Telecom Am. Inc.*, 287 F.3d 866, 870 (9th Cir. 2002).

18 **1. Inequitable Conduct**

19 Defendants contend that Plaintiffs engaged in inequitable conduct by fraudulently
 20 registering eight trademarks for the phrase “Life is Beautiful.” Specifically, Defendants
 21 note that Plaintiffs secured these registrations by making statements to the PTO, under
 22 penalty of perjury, that Plaintiffs had used the phrase as a source identifier for nearly 250
 23 categories of good and services despite the fact that they never actually sold any such
 24

25
 26 ² In their Opposition, Plaintiffs argue that the unclean hands defense is unavailable
 27 because Defendants failed to plead sufficient facts to give Plaintiffs fair notice of the
 28 defense. (Pls.’ Opp’n LIB Mot. Summ. J. 8-9.) However, Defendants expressly pled the
 defense in their answer (Dkt. 49 at ¶ 97) and Plaintiffs never moved to strike this answer.
 Moreover, the Answer contains nearly ninety paragraphs detailing Defendants’ account
 of the asserted fraudulent registration of the “Life is Beautiful” marks. (*See* Dkt. 49 ¶¶
 112-204.)

1 items. (Def. LIB's Mot. Summ. J. 10.) Plaintiffs do not deny that their registration
 2 applications contained false statements but contend there is no evidence that the
 3 statements were made knowingly or with intent to defraud the PTO. (Pls.' Opp'n Defs.'
 4 Mot. Summ. J. for Cancellation Counterclaim 6-7.) Plaintiffs also contend that their
 5 actions did not rise to the level of "egregious misconduct," which some courts have
 6 required before invoking the doctrine of unclean hands. *See Citizens Financial Group, Inc.*
 7 *v. Citizens Nat. Bank of Evans City*, 383 F.3d 110, 129 (3d Cir. 2004).

8 It is well-established that fraud on the PTO in acquiring a patent can give rise to
 9 an unclean hands defense. *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S.
 10 806, 814 (1945). As the Supreme Court has explained:

11 [t]he possession and assertion of patent rights are issues of great moment to
 12 the public. A patent by its very nature is affected with a public interest
 13 The far-reaching social and economic consequences of a patent, therefore,
 14 give the public a paramount interest in seeing that patent monopolies
 15 spring from backgrounds free from fraud or other inequitable conduct and
 16 that such monopolies are kept within their legitimate scope.

17 *Id.* at 815–16 (citations omitted). Lower courts have found that a similar logic bars
 18 recovery in the trademark context as well. *See, e.g., Elec. Info. Publications, Inc. v. C-M*
 19 *Periodicals, Inc.*, No. 68 C 136, 1969 WL 9623, at *11 (N.D. Ill. Nov. 12, 1969) ("Plaintiff
 20 shall be denied all relief because of its unclean hands due to its procurement and
 21 maintenance of the three registrations by false or fraudulent representations and the
 22 cancellation of two of the registrations does not purge the wrong."); *see also* J. Thomas
 23 McCarthy, 6 McCarthy on Trademarks and Unfair Competition § 31:56 (4th ed. 2016) ("If
 24 plaintiff is suing for infringement of a registered trademark, his fraud in the procurement
 25 of the registration may constitute unclean hands.").

26 The operative question before the court is whether Plaintiffs' false statements to
 27 the PTO rise to the level of fraud. Typically, courts are faced with claims of fraud on the
 28 PTO in the context of cancellation actions.³ The elements of a trademark cancellation on

³ As noted above, Defendants have also moved for summary judgment on their counterclaim for cancellation of Plaintiffs' Life is Beautiful trademarks on the basis of alleged fraud in registration. The court analyzes whether Plaintiffs obtained the

1 the basis of fraud are: “(1) a false representation regarding a material fact; (2) the
 2 registrant’s knowledge or belief that the representation is false; (3) the registrant’s intent
 3 to induce reliance upon the misrepresentation; (4) actual, reasonable reliance on the
 4 misrepresentation; and (5) damages proximately caused by that reliance.” *Hokto Kinoko*
 5 *Co. v. Concord Farms, Inc.*, 738 F.3d 1085, 1097 (9th Cir. 2013). The parties do not dispute
 6 that the statements of use submitted by Plaintiffs were material false statements nor do
 7 they question whether the PTO reasonably relied on those misrepresentations.

8 As to the knowledge and intent elements, the court concludes that no rational jury
 9 could credit Plaintiffs’ claim that the false statements were innocent mistakes in light of
 10 the extent of the deception. Plaintiffs filed eight separate trademark registrations
 11 representing that they used the “Life is Beautiful” phrase to sell hundreds of categories of
 12 goods. No record evidence suggests that Plaintiffs mistakenly believed they actually sold
 13 the majority of the claimed goods. Instead, Plaintiffs explain their actions by noting that
 14 the executives who filed the applications were not native English speakers and that they
 15 filed the applications without the assistance of an attorney. (Boudreaux Decl., Ex. XX.)
 16 This explanation is implausible given that Plaintiffs have lived in the United States and
 17 spoken English for over 30 years and have also affirmed that they have filed trademark
 18 applications across the world, (See Decl. of Debora Guetta ¶¶ 2-4; Decl. Patrick Guetta ¶¶
 19 2, 7.) Most troubling, however, is the fact that Plaintiffs provide no explanation for the
 20 several deceptive photographs submitted along with the registration applications. In
 21 addition to filing statements of use, Plaintiffs staged photographs of various goods with
 22 “Life is Beautiful” tags, which they later admitted they never actually sold. (See Boyd
 23 Decl., Ex. 16; Patrick Guetta Dep. at 109:17-110:16, 114:14-118:13.) Taken together, this
 24 evidence supports the conclusion that Plaintiffs knowingly made misrepresentations to
 25 the PTO in order to fraudulently obtain trademark registrations.

26
 27
 28 registrations at issue by fraud here but will address the remainder of the cancellation
 motion below. *See, infra*, Part III.B.

Turning to the issue of damages, the court concludes that no reasonable jury could find that reliance on Plaintiffs' false representations did not cause damage. By falsely securing the registration of marks that they never used and then later suing LIB on the basis of those marks, there is no question that Plaintiffs have harmed LIB. But the more pervasive harm in this case is the cost imposed on a public that relies on the integrity of the patent system. As the Supreme Court explained in *Park 'N Fly, Inc. v. Dollar Park &*

Fly, Inc.:

The Lanham Act provides national protection of trademarks in order to secure to the owner of the mark the goodwill of his business and to protect the ability of consumers to distinguish among competing producers. National protection of trademarks is desirable, Congress concluded, because trademarks foster competition and the maintenance of quality by securing to the producer the benefits of good reputation.

469 U.S. 189, 198 (1985). Instead of furthering the Lanham Act's goal of fostering competition in the marketplace, Plaintiffs attempted to secure a monopoly over most plausible uses of the phrase "Life is Beautiful" without actually investing any resources into developing the goodwill of their brand. Plaintiffs falsely claimed ownership over the mark in eight classes of goods covering nearly 250 specific items. In doing so, Plaintiffs may have chilled potential competitors from entering the marketplace and developing their own brand identifications across an array of goods. To put into perspective the extent of the fraud, Plaintiffs registered the mark in nearly one-fifth of all possible classifications, asserting use in goods as varied as food coloring, watch boxes, beach umbrellas, cleaning sponges, talking children's books, and crime scene tape. (Answer ¶¶ 115, 118, 122, 126, 133, 141.) In fact, after eliminating trademark classifications that would plainly be inapplicable to the phrase at issue or Plaintiffs' business, the court could identify only four or five additional classifications in which Plaintiffs could have even conceivably registered this mark. While it is difficult to measure after the fact the precise magnitude of the harm of Plaintiffs' actions, the court concludes that there is no triable issue whether Plaintiffs' acted inequitably.

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2. Related to Subject Matter of Claims

The second element of an unclean hands defense requires Defendant to show that the inequitable conduct “relates to the subject matter of [Plaintiff’s] claims.” *Fuddruckers*, 826 F.2d at 847. Plaintiffs interpret this requirement to mean that the unclean hands doctrine only “bars relief in Lanham Act cases when the plaintiff has engaged in precisely the same type of conduct about which it complains.” (Pls.’ Opp’n LIB’s Mot. Summ. J. 12 (quoting *TrafficSchool.com, Inc. v. Edriver, Inc.*, 633 F.Supp.2d 1063, 1084 (C.D. Cal. 2008)).) According to Plaintiffs, this condition is not satisfied because the misconduct alleged against them is insufficiently similar to the misconduct they are alleging against Defendants. Specifically, Defendants complain that Plaintiffs committed fraud on the PTO while Plaintiffs contend that Defendants are engaged in trademark infringement. This argument is unconvincing for several reasons. First, Plaintiffs mischaracterize the conclusion in *TrafficSchool.com*, where the district court actually held that the relevant inquiry is whether “some unconscionable act of one coming for relief has immediate and necessary relation to the equity that he seeks in respect of the matter in litigation” and went on to explain that this requirement was met “[m]ost commonly . . . when the plaintiff has engaged in precisely the same type of conduct” 633 F. Supp. 2d at 1084, *aff’d in part, rev’d in part on other grounds*, 653 F.3d 820 (9th Cir. 2011). Second, as noted above, several courts have held that fraud on PTO is precisely the sort of mischief that can give rise to an unclean hands bar to future trademark infringement actions. In none of those cases did the court require both parties to make competing allegations of fraud on the PTO. *See, e.g., Precision Instrument*, 324 U.S. at 814; *Elec. Info. Publications*, 1969 WL 9623, at *11.

Contrary to Plaintiffs’ contention, courts have actually held that “precise similarity is not required” to raise an unclean hands defense. *Pom Wonderful LLC v. Welch Foods, Inc.*, 737 F. Supp. 2d 1105, 1110 (C.D. Cal. 2010). Instead, “the bad faith must be ‘relative to the matter in which [the plaintiff] seeks relief.’” *Id.* (quoting *Precision Instrument*, 324 U.S. at 814). Accordingly, “the relevant inquiry is ‘not [whether] the plaintiff’s hands are

1 dirty, but [whether] he dirtied them in acquiring the right he now asserts, or [whether]
2 the manner of dirtying renders inequitable the assertion of such rights against the
3 defendants.'" *Welch*, 737 F.Supp.2d at 1110 (quoting *Ellenburg v. Brockway, Inc.*, 763 F.2d
4 1091, 1097 (9th Cir.1985)) (alterations in original). Here, at least eight of the registrations
5 involved marks where Plaintiffs dirtied their hands in acquiring the rights now asserted
6 against Plaintiffs. Accordingly, the court concludes that these are directly related to the
7 subject matter of the pending claims. The closer question is on the ninth trademark,
8 which involves the registration of the phrase "Life is Beautiful" in connection with
9 exhibitions and festivals, which Plaintiffs filed shortly before filing suit. While that mark
10 is subject to cancellation proceedings before the PTO because of the false statements
11 made in connection with the related marks, Plaintiffs have not yet surrendered the mark,
12 and there is evidence to suggest that the mark is actually used with at least some of the
13 claimed categories of goods.⁴ Nonetheless, the court concludes that the fraud should bar
14 all of Plaintiffs' trademark infringement claims. As explained above, Plaintiffs
15 fraudulently filed for a number of trademarks on the phrase "Life is Beautiful" in 2011
16 and 2012, potentially deterring any competitors from entering the market and producing
17 goods in any of hundreds of claimed categories. After filing for these registrations,
18 Plaintiffs became aware that Defendants were using the phrase in connection with a
19 category of goods that Plaintiffs had yet to claim in one of their eight trademark
20 applications. Plaintiffs then filed another application and brought suit. The fact that this
21 final registration has not yet been surrendered does not alter the court's conclusion that is
22 a case "where some unconscionable act of one coming for relief has immediate and

23
24 ⁴ In full, the trademark application claims that the mark is used in commerce for:
25 Arranging, organizing, conducting, and hosting social entertainment
26 events; Art exhibition services; Art exhibitions; Audio production services,
27 namely, creating and producing ambient soundscapes, and sound stories
28 for museums, galleries, attractions, podcasts, broadcasts, websites and
games; Audio recording and production; Augmented reality video
production; Book publishing; Organizing community festivals featuring
primarily Art exhibitions and also providing film, fashion shows and
exhibitions.

(FAC ¶ 17.)

1 necessary relation to the equity that he seeks in respect of the matter in litigation." *U-*
2 *Haul Int'l, Inc. v. Jartran, Inc.*, 522 F.Supp. 1238, 1254 (D.Ariz.1981), *aff'd*, 681 F.2d 1159
3 (9th Cir. 1982).

4 3. Balance of Equities

5 Even though Plaintiffs have engaged in inequitable conducted related to the
6 subject matter of the claims, the unclean hands defense does not always "permit a
7 defendant wrongdoer to retain the profits of his wrongdoing merely because the plaintiff
8 himself is possibly guilty of transgressing the law." *Johnson v. Yellow Cab Transit Co.*, 321
9 U.S. 383, 387 (1944). "Rather, determining whether the doctrine of unclean hands
10 precludes relief requires balancing the alleged wrongdoing of the plaintiff against that of
11 the defendant, and 'weigh[ing] the substance of the right asserted by [the] plaintiff
12 against the transgression which, it is contended, serves to foreclose that right.'" *Northbay*
13 *Wellness Grp., Inc. v. Beyries*, 789 F.3d 956, 960 (9th Cir. 2015) (quoting *Republic Molding*
14 *Corp. v. B.W. Photo Utils.*, 319 F.2d 347, 350 (9th Cir. 1963)).

15 In the present case, the balance of equities weighs in favor of permitting
16 Defendants to assert the defense. Plaintiffs have not only engaged in fraudulent acts in
17 attempting to register the "Life is Beautiful" trademark, they have also attempted to
18 profit off that fraud both by deterring competitors and by subjecting Life is Beautiful to
19 the present litigation. Moreover, in acquiring these fraudulent registrations, Plaintiffs
20 have undermined the sanctity of a trademark registration system that relies on parties
21 truthfully representing which marks are bona fide source identifiers and which are not.
22 These wrongdoings are not offset by Plaintiffs' weak claim for trademark infringement.
23 Because the court concludes that unclean hands bars Plaintiffs' trademark infringement
24 claim as to the "Life is Beautiful" mark, the court need not resolve the merits of the
25 underlying trademark infringement claim. However, the court's determination that
26 Plaintiffs did not actually use "Life is Beautiful" as a trademark only serves to underscore
27 the court's conclusion that balance of equities weighs in favor of permitting Defendants
28 to rely on an unclean hands defense. Moreover, this conclusion would be fatal to any

1 claim for trademark infringement of the “Life is Beautiful” mark, and provides an
2 alternative ground for resolving that issue.

3 Briefly, the Lanham Act defines a trademark as “any word, name, symbol, or
4 device, or any combination thereof . . . used by a person . . . to identify and distinguish
5 his or her goods . . . from those manufactured or sold by others and to indicate the source
6 of the goods, even if that source is unknown.” 15 U.S.C. § 1127. Thus, the mark must be
7 used “in a way sufficiently public to identify or distinguish the marked goods in an
8 appropriate segment of the public mind as those of the adopter of the mark.” *Brookfield*
9 *Comm’ns, Inc. v. West Coast Entm’t Corp.*, 174 F.3d 1036, 1052 (9th Cir. 1999). Defendants
10 contend that the “Life is Beautiful” mark does not serve to identify Plaintiffs’ products in
11 the marketplace. Rather, it is an ornamental element of Plaintiffs’ art and just one of
12 several positive phrases used in his artwork. (LIB Mot. Summ. J. 14-15.) Defendants also
13 contend that the use of the phrase of the title of an art show or as a mark on the back of
14 canvasses does not qualify the phrase as a mark. Rather, if Plaintiffs have a valid
15 trademark, it is to the name “Mr. Brainwash,” which serves as Guetta’s identifying brand
16 name in the art world. (*Id.*) Rather than rebut this evidence, Plaintiffs respond by stating
17 that Plaintiffs’ registration of the mark on the Principal Register “constitutes prima facie
18 evidence of the validity of the registered mark and of [Plaintiffs’] exclusive right to use
19 the mark on the good and services specified in the registration.” (Pls.’ Opp’n LIB Mot.
20 Summ. J. 15-16.) However, where one party has presented evidence rebutting a claim to a
21 trademark, the registration is “merely evidence ‘of registration,’ nothing more.” *Tie Tech,*
22 *Inc. v. Kinedyne Corp.*, 296 F.3d 778, 783 (9th Cir. 2002) (“Once the presumption of validity
23 is overcome, however, the mark’s registration is merely evidence ‘of registration,’
24 nothing more. This approach can be characterized as rebutting the prima facie case or
25 ‘piercing the presumption.’”). Given Defendants evidence that Plaintiffs’ mark is not
26 actually a source identifier and that the majority of the marks at issue were fraudulently
27 obtained, Plaintiffs cannot solely rely on the presumption of validity without presenting
28 any other evidence substantiating their claim to a valid and protectable mark.

1 Accordingly, the court GRANTS summary judgment to Defendants on all causes of
2 action based on claims for trademark infringement as to the “Life is Beautiful” mark.

3 **B. Counterclaim for Cancellation**

4 Although Plaintiffs have surrendered the eight “Life is Beautiful” trademark
5 registrations filed with false statements of use, Defendants continue to seek summary
6 judgment on their counterclaim for cancellation of the marks. (Defs.’ Mot. Summ. J.
7 Cancellation.) According to Defendants, without an entry of judgment, Plaintiffs could
8 refile applications for the registrations at issue with new statements of use and then
9 reassert the same infringement claims against Defendants. (*Id.* 3-4.) Given that the court
10 has already concluded that Plaintiffs obtained the “Life is Beautiful” marks fraudulently,
11 Defendants would ordinarily be entitled to summary judgment on their cancellation
12 counterclaim. Having surrendered their marks, however, Plaintiffs argue that summary
13 judgment is now inappropriate because the issue is moot. (Pls.’ Opp’n Mot. Summ. J.
14 Cancellation 5-6.)

15 If this cancellation action were proceeding before the Trademark Trial and Appeal
16 Board (TTAB), the ordinary rule would require that a party attempting to surrender their
17 mark rather than face judgment must obtain “the written consent of every adverse party
18 to the proceeding.” 37 C.F.R. § 2.134(a). If a party failed to obtain this written consent,
19 judgment would be entered against it. *Id.* Discussing the analogous rule for marks subject
20 to an opposition, concurrent use, or interference proceeding, the TTAB has explained that
21 “the purpose of [the rule] is to preclude an applicant from attempting to moot the
22 opposer’s pleaded claim (and thereby avoid entry of judgment thereon) by unilaterally
23 abandoning the application after commencement of the opposition proceeding. Opposer
24 is entitled to a decision on the merits of its pleaded claim.” *Sharp Kabushiki Kaisha a/t/a*
25 *Sharp Corp.*, 2004 WL 725453, at *2 (TTAB Mar. 30, 2004).

26 Although this Court is not bound by the procedural rules as the TTAB, the logic
27 underlying such a rule is applicable in a proceeding before a federal court. Without an
28 entry of judgment, there is nothing to stop Plaintiffs from refilling their marks after the

1 conclusion of this litigation, and once again fraudulently deter potential competitors
2 from entering the marketplace or subject Defendants to renewed trademark infringement
3 actions. In fact, Plaintiffs own opposition to the cancellation motion acknowledges that a
4 finding of fraud would provide a basis for entering judgment so as to prevent future
5 fraud. (*See* Pls.' Opp'n Mot. Summ. J. Cancellation 5-6. ("Only if Defendants' had actually
6 shown that AA committed fraud in procuring the Registrations would Defendants have
7 had any basis to speculate that AA might commit the same fraud in the future."))

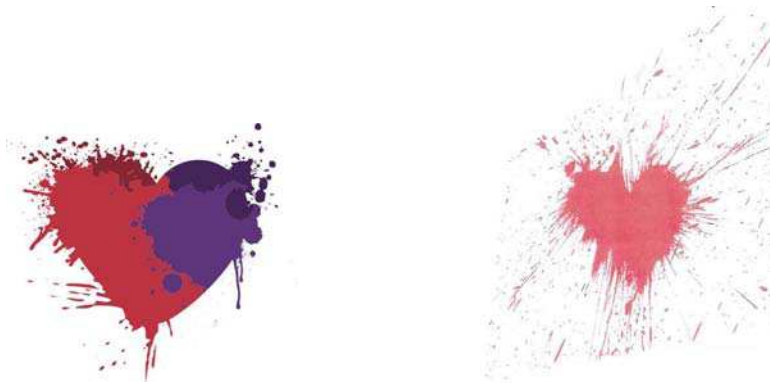
8 As to the mootness issue, Plaintiffs are correct that "an 'actual controversy' must
9 exist not only 'at the time the complaint is filed,' but through 'all stages' of the litigation."
10 *Already, LLC v. Nike, Inc.*, 133 S. Ct. 721, 726 (2013) (quoting *Alvarez v. Smith*, 558 U.S. 87,
11 92 (2009)). A case becomes moot "when the issues presented are no longer 'live' or the
12 parties lack a legally cognizable interest in the outcome." *Murphy v. Hunt*, 455 U.S. 478,
13 481 (1982) (per curiam). At the same time, "a defendant cannot automatically moot a case
14 simply by ending its unlawful conduct once sued." *Already*, 133 S. Ct. at 727. (citing *City*
15 *of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982)). Under these circumstances "a
16 defendant claiming that its voluntary compliance moots a case bears the formidable
17 burden of showing that it is absolutely clear the allegedly wrongful behavior could not
18 reasonably be expected to recur." *Friends of the Earth, Inc. v. Laidlaw Environmental Services*
19 *(TOC), Inc.*, 528 U.S. 167, 190 (2000).

20 While Plaintiffs contend that there is no risk of future fraudulent conduct, they
21 have submitted no specific evidence to meet their "formidable burden." Were the
22 positions of the parties reversed, and it was Defendants who claimed that they would
23 cease infringing, Ninth Circuit law expressly holds that their voluntary cessation would
24 not moot the infringement action. *Polo Fashions, Inc. v. Dick Bruhn, Inc.*, 793 F.2d 1132,
25 1135-36 (9th Cir. 1986). This is, in part, because "[i]f the defendants sincerely intend not
26 to infringe, the injunction harms them little; if they do, it gives Polo substantial protection
27 of its trademark." *Id.* So too here. If Plaintiffs have no intention of fraudulent refiling for
28 trademark registration, judgment harms them little while giving Defendants substantial

1 assurance that they can proceed to build their business. Thus, in light of the court's
2 determination that Plaintiffs fraudulently obtained the first eight "Life is Beautiful"
3 trademarks, the court also GRANTS Defendants' counterclaim for cancellation of those
4 marks.

5 **C. "Heart Design" Infringement Claims**

6 Defendants move for summary judgment on Plaintiffs' trademark infringement
7 and copyright infringement causes of action as to Plaintiffs' claimed trademark and
8 copyright in an image of a "splashed painted heart." As noted above, Plaintiffs assert
9 that, as early as 2009, Guetta used various heart designs in connection with his art work
10 and goods that he sold. (FAC ¶ 21.) Furthermore, Plaintiffs have registered a copyright in
11 at least one version of the heart design used by Guetta. For the first two years of the Life
12 is Beautiful festival, Defendants used a painted heart design as the logo of the festival.
13 (Boyd Decl., Ex. 58.) Defendants assert that they have since ceased using the logo but
14 Plaintiffs contend that image can still be seen in connection with the festival on social
15 media. (*Compare id. with* Boudreaux Decl. 46.) For reference, the images are depicted
16 below:



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23 (Def. LIB Mot. Summ. J. 33.) The image on the left was the logo of the Life is Beautiful
24 Festival. It features a heart composed of paint that looks like it was dripped onto a
25 canvas. The left side of the heart features two shades of red, while the right side features two
26 shades of purple. The image on the right is one of the splashed heart designs produced
27 by Guetta. It appears to be composed of paint that looks like it was splashed onto a
28

1 canvas. This particular heart features one primary color, a slightly faded red, with some
2 darker areas where more paint was used.

3 1. Trademark Infringement of Heart Design

4 Defendants contend that Plaintiffs trademark infringement claim as to the painted
5 heart design fails because Plaintiffs do not use the image as a mark or a source identifier
6 for either Plaintiffs' business or Guetta's artwork. (Def. LIB Mot. Summ. J. 30-31.) While
7 Defendants acknowledge that Guetta has used the image in some of his works and on
8 some merchandise sold by Plaintiffs, Defendants contend that the use does not rise to the
9 level of a source identifier. (*Id.*) Furthermore, Defendants note that Plaintiffs' 30(b)(6)
10 representative, Debora Guetta, did not consider the image a trademark but instead a
11 copyright. In support, Defendants present deposition testimony from Plaintiffs' corporate
12 representative where she stated:

13 Q: Okay. Let's talk about the second topic. Amusement Art and It's A Wonderful
World's use of heart images. Does Amusement Art make any use of heart images?

14 A: Amusement Art, no.

15 Q: How does It's A Wonderful World make use of heart images?

16 A: In artwork, murals, some merchandise, on postcards, I guess.

17 Q: And does – is it the company's position that it uses the heart as a trademark in
18 all these different ways?

19 MS. CALKINS: Objection. Vague and ambiguous.

20 THE WITNESS: It's a copyrighted image.

21 BY MS. GODLEY:

22 Q: And not a trademark?

23 A: It's not a trademark image, no.

24 (Debora Guetta Dep. at 160:15-161:6). In Defendants' view, this constitutes a binding
judicial admission that Plaintiffs are not asserting a trademark over the heart design.

25 Plaintiffs respond that there is a triable issue of fact as to whether they use the
26 heart design as a trademark. In support, Plaintiffs note an incident when Choudhry was
27 asked during a meeting about using Guetta's mark and Choudhry responded by
28 laughing and stating he was "inspired by Thierry's work." (Boudreaux Decl., Ex. 7 (Justin

1 Murphy Dep.) 104:15-105:4, 106:4-12.) Plaintiffs also note that one of their own employees
2 testified that the image was a mark and one of Defendants' employees admitted the
3 image was a "logo" for Guetta. (Boudreaux Decl., Ex. 14 (Roman Lefebvre Dep. 47:25-
4 48:11, 52:8-9, 52:25-53:9; Boudreaux Decl., Ex. 8 (Josh Ripple Dep.) 61:7-22.) Finally,
5 Plaintiffs contest Defendant's interpretation of the meaning and legal effect of the 30(b)(6)
6 witness's statement regarding the use of the heart image as a trademark. On this point,
7 Plaintiffs note that Debora Guetta's statement should only be read as an
8 acknowledgement that Plaintiffs did not seek to register the heart image as a trademark
9 rather than a concession that the image was not actually a mark. (Opp'n 23 (citing Debora
10 Guetta Decl. ¶ 11 ("My testimony was that IAWW had not registered a heart design as a
11 trademark with the PTO. I was not stating, as Ms. Godley is now asserting, that the 'Pop
12 Heart' at issue in this lawsuit is not a trademark of AA or Thierry Guetta.")).) Plaintiffs
13 also contend that, even if the statement could be construed as an admission the image
14 was not a trademark, it is unsettled in the Ninth Circuit whether the statement of a
15 30(b)(6) witness is binding on a corporation as a judicial admission. (Opp'n 23 (citing
16 *Coalition for a Sustainable Delta v. John McCamman*, 725 F. Supp. 2d 1162, 1172 (E.D. Cal.
17 2010)).)

18 As the parties recognize, the law in the Ninth Circuit is unsettled whether a
19 corporate representative's deposition testimony constitutes a binding judicial admission,
20 which the corporation cannot later controvert. Typically, a judicial admission is made in
21 pleadings or stipulations by a party or its counsel. As one treatise describes it, judicial
22 admissions are "not evidence at all but rather have the effect of withdrawing a fact from
23 contention." Michael H. Graham, *Federal Practice and Procedure: Evidence* § 6726. Courts
24 that have found a 30(b)(6) witness's statements binding as a judicial admission have
25 grounded this rule in the rationale that a 30(b)(6) witness has a unique responsibility to
26 participate in a deposition ready to offer accurate and binding testimony on behalf of the
27 entity they represent. See *Coalition for a Sustainable Delta*, 725 F. Supp. 2d at 1172 n.10
28 (collecting cases). But other courts have concluded that "testimony given at a Rule

1 30(b)(6) deposition is evidence which, like any other deposition testimony, can be
2 contradicted and used for impeachment purposes,” and that such testimony does not
3 “bind” the designating entity “in the sense of [a] judicial admission.” *A.I. Credit Corp. v.*
4 *Legion Ins. Co.*, 265 F.3d 630, 637 (7th Cir. 2001); see *Coalition for a Sustainable Delta*, 725 F.
5 Supp. 2d at 1172 n.11 (collecting cases).

6 A 30(b)(6) witness should be afforded no greater or less relief than that which
7 would be afforded to an individual party. The statements made by a 30(b)(6) witness
8 during deposition, depending on the circumstances, can constitute relevant and
9 probative evidence concerning the issue at hand. Of course, this does not mean that a
10 party can withdraw their representative’s prior testimony with impunity. As with any
11 other litigant, the 30(b)(6) witness faces the same uphill battle of explaining to a trier of
12 fact any retraction or qualification of a prior admission. See, e.g., *State Farm Mut. Auto. Ins.*
13 *Co. v. New Horizont*, 250 F.R.D. 203, 212-13 (E.D. Pa. 2008) (“[W]here the nonmovant in a
14 motion for summary judgment submits an affidavit which directly contradicts an earlier
15 Rule 30(b)(6) deposition and the movant relied upon and based its motion on the prior
16 deposition, courts have disregarded the later affidavit.”) (quotations and alterations
17 omitted) (collecting cases).

18 Under this standard, the court finds that Plaintiffs’ 30(b)(6) representative’s
19 testimony constitutes an acknowledgement that the heart design did not function as
20 Plaintiffs’ trademark. As the transcript reflects, the witness was asked about where
21 Plaintiffs used the heart image. (Debora Guetta Dep. at 160:15-161:6). After responding
22 “artwork, murals, some merchandise, [and] on postcards,” the follow-up question was
23 whether it was the company’s position that the image was *used* as a trademark in all of
24 those respects. (*Id.* (emphasis added).) The witness’s response was that the image was a
25 “copyright image” and not a “trademark image.” Plaintiffs’ now attempt to controvert
26 that testimony by arguing the response was actually about formal registration rather than
27 actual use. This position is unsupported by the record. There is no suggestion in either
28 the question or the surrounding transcript that anyone was discussing formal registration

1 as opposed to actual use as a mark. Accordingly, Plaintiffs' cannot rely on their 30(b)(6)
2 witness's ex post declaration to create a triable issue of fact.

3 Even if this court were to credit Plaintiffs' explanation of their witness's statement,
4 there is still no basis for concluding that there is a genuine issue of fact as to Plaintiffs'
5 trademark infringement claim. As noted above, the Lanham Act defines a trademark as
6 "any word, name, symbol, or device, or any combination thereof . . . used by a person . . .
7 to identify and distinguish his or her goods . . . from those manufactured or sold by
8 others and to indicate the source of the goods, even if that source is unknown." 15 U.S.C.
9 § 1127. If a particular image is not "used to identify a manufacturer or sponsor of a good
10 or the provider of a service," then it cannot qualify for trademark protection. *See Mattel*
11 *Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 806 n.12 (9th Cir. 2003). Unregistered
12 trademarks, such as the claim to the heart design, are only protected if they have
13 acquired "secondary meaning." *See Toho Co. v. Sears, Roebuck & Co.*, 645 F.2d 788, 790 (9th
14 Cir. 1981). Here, Plaintiffs limited use of the heart design does not rise to the level of a
15 protectable trademark. There is only sporadic use of the mark in Guetta's artwork.
16 Moreover, even if Plaintiffs' corporate representative's statement does not constitute a
17 concession that the image is not used as trademark, it nonetheless provides compelling
18 admissible evidence suggesting that conclusion. Given this evidence, the court cannot
19 conclude that the references to a single statement by one of Plaintiff's employees that the
20 image is a mark and the statement by one of Defendant's employees that the image is a
21 logo create a triable issue of fact. Thus, the court GRANTS Defendants summary
22 judgment on Plaintiffs' claim for trademark infringement as to the heart design.

23 2. Copyright Infringement of Heart Design

24 In order to establish a claim for copyright infringement, a plaintiff must prove "(1)
25 ownership of a valid copyright, and (2) copying of constituent elements of the work that
26 are original." *Feist Pubs., Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361. Defendants do not
27 contest that Plaintiffs own a valid copyright to the splashed painted heart image. Thus,
28 the question before the court is if there is a triable issue of fact whether Defendants

1 “cop[ied] anything that was ‘original’ to” Plaintiff’s work. *Id.* Plaintiffs have not
2 submitted any evidence of direct copying by Defendants. To the contrary, Defendants
3 argue that they hired a designer who independently arrived at Defendants’ version of the
4 painted heart design. (Def. LIB Mot. Summ. J. 31-32.) “Absent evidence of direct copying,
5 proof of infringement involves fact-based showings that the defendant had access to the
6 plaintiff’s work and that the two works are substantially similar.” *Funky Films, Inc. v.*
7 *Time Warner Entm’t Co., L.P.*, 462 F.3d 1072, 1076 (9th Cir. 2006).

8 To show access, a plaintiff must show that there is a “reasonable possibility” that
9 the defendant viewed the protected work. *L.A. Printex Indus.*, 676 F.3d at 846. Defendants
10 argue that Plaintiffs have not submitted any evidence that Defendants’ designer had any
11 access to the image at issue nor any evidence that the work was “widely disseminated”
12 enough to give rise to the inference of access. Plaintiffs respond that not only is Guetta’s
13 heart image broadly distributed, there is evidence that various works by Guetta were
14 included in a presentation document provided to the designer. From these documents,
15 Plaintiffs argue that there is a high likelihood that the designer had access to the heart
16 image. Because this case can be resolved on the substantial similarity prong, the court
17 will assume without deciding that Defendants had access to the heart design.

18 “When the issue is whether two works are substantially similar, summary
19 judgment is appropriate if no reasonable juror could find substantial similarity of ideas
20 and expression.” *Kouf v. Walt Disney Pictures & Television*, 16 F.3d 1042, 1045 (9th Cir.
21 1994). Although “summary judgment is not highly favored on the substantial similarity
22 issue in copyright cases,” *Berkic v. Crichton*, 761 F.2d 1289, 1292 (9th Cir. 1985), substantial
23 similarity “may often be decided as a matter of law.” *Sid & Marty Krofft Television Prods.,*
24 *Inc. v. McDonald’s Corp.*, 562 F.2d 1157, 1164 (9th Cir. 1977). “Where the image at issue is
25 ubiquitous, the copying must be exact.” *See Satava v. Lowry*, 323 F.3d 805, 812 (9th Cir.
26 2003) (copyright infringement of ubiquitous symbols requires “virtually identical”
27 copying); *Ets-Hokin v. Skyy Spirits, Inc.*, 323 F.3d 763, 766 (9th Cir. 2003) (same); *Apple*
28 *Computer, Inc. v. Microsoft Corp.*, 35 F.3d 1435, 1442 (9th Cir. 1994) (same).

1 Defendants contend that the heart image is the sort of ubiquitous image subject to
2 the heightened “virtually identical” standard. (LIB Mot. Summ. J. 24) Thus, even though
3 Guetta is entitled to protect his specific depiction of a heart, there is insufficient evidence
4 to support the conclusion that LIB’s heart design and Guetta’s heart design are “virtually
5 identical.” (*Id.*) Plaintiffs do not challenge Defendants’ contention that a copyright claim
6 based on this heart image is subject to the “virtually identical” standard in light of the
7 ubiquity of the image. Instead, Plaintiffs respond by submitting testimony from an LIB
8 employee the purports to show that the employee could not distinguish LIB’s heart
9 design from Guetta’s heart design. The excerpt provided states:

10 A. “ -- whatever -- I don’t know if it was his or ours or whatever --

11 Q. Okay.

12 A. -- but it’s a similar looking type of logo.

13 (Ripple Depo. 62:24-63:3.) Plaintiffs further contend that, even if there are some
14 differences between the heart images, the fact that both parties used similar heart images
15 along with the phrase “Life is Beautiful” supports a finding of substantial similarity.

16 The court concludes that there is no triable issue of fact as to Plaintiffs’ claim for
17 copyright infringement of the heart design. First, a number of differences between the
18 images leads to the conclusion that no rational jury could find the two heart designs
19 “virtually identical.” On the level of color, Guetta’s heart is largely a monochromatic
20 faded red while LIB uses at least two shades of two colors—red and purple—to depict
21 their heart. Guetta’s heart is composed of a much more dramatic splash of paint with
22 splatters reaching across the canvas, compared to LIB’s more controlled drip pattern on
23 the heart. Moreover, Guetta’s heart looks like a handmade image with no smooth
24 portions in the heart outline, while LIB’s looks like it may have been computer-generated
25 with extended smooth lines for several portions of the heart’s outline. Finally, the fact
26 that both heart designs were used in connection with the phrase “Life is Beautiful” does
27 not support a finding of substantial similarity. As a matter of law, the court is unaware of
28 any precedent that permits this additive approach, which allows a fact finder to consider

1 the images that a copyrighted image appears near in order to determine whether the
2 images actually in dispute are themselves substantially similar. Moreover, as a factual
3 matter, Defendants direct the court to a logo from an uninvolved third party that also
4 uses the phrase "Life is Beautiful" with a splattered heart design, suggesting that such
5 coincidences can occur without any further meaning. *See Life is Beautiful Platform*,
6 www.lifeisbeatiful.org (last accessed Nov. 20, 2016).

7 Plaintiffs' efforts to rely on the deposition testimony of Josh Ripple is also
8 inapposite. When read in context, it is evident that Ripple is not admitting that he cannot
9 tell the designs apart. (*See* Ripple Depo. 61:7-25.) Instead, he was describing an incident
10 where Guetta's representatives were showing Choudhry images during a dinner
11 meeting. When asked by counsel during the deposition whether Ripple recalled the
12 specific images shown, Ripple responded that he does not know whether "it was his our
13 ours." (*Id.*) This stray remark of limited probative value is inadequate to create a triable
14 issue of fact as to substantial similarity. Accordingly, the court grants Defendants
15 summary judgment on Plaintiffs' claims for copyright infringement as to the heart
16 design.

17 **D. Claims Against DLVM and Monetary Damages Claims**

18 Having granted Defendants summary judgment on all of Plaintiffs' claims, it is
19 unnecessary to resolve Defendant Downtown Las Vegas Management's separate motion
20 for summary judgment on the grounds that DLVM cannot be held liable, as the
21 managing company of the Life is Beautiful festival, under vicarious or contributory
22 theories of infringement. (Dkt. 95.) Likewise, there is also no need to resolve Defendants'
23 Motion for Partial Summary Judgment on the issue of monetary damages, given the
24 absence of any liability in this case, or the Motion to Exclude Expert Testimony of Jonny
25 Joseph. (Dkts. 137, 138.) Accordingly, the court VACATES those motions.

26 **IV. CONCLUSION**

27 For the reasons stated above, the court GRANTS Defendants' Motion for
28 Summary Judgment on all of Plaintiffs' Claims. Further, the Court GRANTS Defendants'

1 Motion for Summary Judgment on Defendants' Counterclaims for Cancellation. The
2 Court DISMISSES the case and VACATES all other pending motions.

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4 **IT IS SO ORDERED.**

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6 Dated: November 29, 2016

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DEAN D. PREGERSON
UNITED STATES DISTRICT JUDGE

EXHIBIT C

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AMUSEMENT ART, LLC

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

AMUSEMENT ART, LLC,

Plaintiff,

vs.

LIFE IS BEAUTIFUL, LLC;
DOWNTOWN LAS VEGAS
MANAGEMENT, LLC; and DOES 1-
10, inclusive

Defendants.

Case No. 2-14-cv-08290-DDP-JPR

[Hon. Dean D. Pregerson]

**NOTICE OF APPEAL TO THE
UNITED STATES COURT OF
APPEALS FOR THE NINTH
CIRCUIT**

EISNER JAFFE
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BEVERLY HILLS, CALIFORNIA 90210

1 Plaintiff and counter-defendant Amusement Art, LLC, appeals to the United
2 States Court of Appeals for the Ninth Circuit from the final judgment of the District
3 Court, entered on December 14, 2016 in favor of Defendants Life is Beautiful, LLC
4 and Downtown Las Vegas Management, LLC on all of Plaintiff Amusement Art,
5 LLC's claims and all of Defendants' counterclaims, and that Defendants shall recover
6 their costs.

7 A Representation Statement and Civil Appeals Docketing Statement are
8 attached to this Notice in compliance with Federal Rule of Appellate Procedure 12(b)
9 and Ninth Circuit Rule 3-2(b).

10 Dated: January 10, 2017

EISNER JAFFE

11
12
13 By: /s/ James H. Turken
14 James H. Turken
15 Attorneys for Plaintiff And Counter-
16 Defendant AMUSEMENT ART, LLC
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REPRESENTATION STATEMENT

The undersigned represents Amusement Art, LLC in this action. A service list identifying defendants' and counter-claimants' counsel of record is attached.

Dated: January 10, 2017

EISNER JAFFE

By: /s/ James H. Turken
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DOCKETING STATEMENT



USCA DOCKET # (IF KNOWN)

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT CIVIL APPEALS DOCKETING STATEMENT

PLEASE ATTACH ADDITIONAL PAGES IF NECESSARY.

TITLE IN FULL: <div style="text-align: center;"> AMUSEMENT ART, LLC, Plaintiff/Appellant v. LIFE IS BEAUTIFUL, LLC; DOWNTOWN LAS VEGAS MANAGEMENT, LLC, Defendants/Appellees </div>	DISTRICT: Central	JUDGE: Dean D. Pregerson
	DISTRICT COURT NUMBER: 2-14CV-08290 (JPRx)	
	DATE NOTICE OF APPEAL FILED: Jan 10, 2017	IS THIS A CROSS APPEAL? <input type="checkbox"/> YES
	IF THIS MATTER HAS BEEN BEFORE THIS COURT PREVIOUSLY, PLEASE PROVIDE THE DOCKET NUMBER AND CITATION (IF ANY): 	
BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW: In 2008 Amusement Art ("AA") held its first art event entitled "Life is Beautiful" and later registered the trademark in Class 41. In 2013 defendants held an art and music festival called "Life is Beautiful." AA filed suit for trademark and copyright infringement. Defendants counterclaimed alleging that AA fraudulently procured registrations in eight other classes and filed a motion for summary judgment for unclean hands and cancellation. Final Judgment was entered on Dec. 14, 2016.		
PRINCIPAL ISSUES PROPOSED TO BE RAISED ON APPEAL: AA appeals the Court's final judgment entered on December 14, 2016. The Court reached numerous conclusions unsupported by and contrary to evidence, and made determinations of triable issues of material fact properly reserved for the trier of fact.		
PLEASE IDENTIFY ANY OTHER LEGAL PROCEEDING THAT MAY HAVE A BEARING ON THIS CASE (INCLUDE PENDING DISTRICT COURT POST-JUDGMENT MOTIONS): Motion for attorney's fees brought by defendants and counterclaimants Life Is Beautiful, LLC and Downtown Las Vegas Management, LLC.		
DOES THIS APPEAL INVOLVE ANY OF THE FOLLOWING:		
<input type="checkbox"/> Possibility of Settlement <input type="checkbox"/> Likelihood that intervening precedent will control outcome of appeal <input type="checkbox"/> Likelihood of a motion to expedite or to stay the appeal, or other procedural matters (Specify)		
<input type="checkbox"/> Any other information relevant to the inclusion of this case in the Mediation Program		
<input type="checkbox"/> Possibility parties would stipulate to binding award by Appellate Commissioner in lieu of submission to judges		

LOWER COURT INFORMATION			
JURISDICTION		DISTRICT COURT DISPOSITION	
FEDERAL	APPELLATE	TYPE OF JUDGMENT/ORDER APPEALED	RELIEF
<input checked="" type="checkbox"/> FEDERAL QUESTION <input type="checkbox"/> DIVERSITY <input checked="" type="checkbox"/> OTHER (SPECIFY): Pendent state claims for B&P § 17200; C/L Trademark Infringement and Unfair Competition; Decl. Relief	<input checked="" type="checkbox"/> FINAL DECISION OF DISTRICT COURT <input type="checkbox"/> INTERLOCUTORY DECISION APPEALABLE AS OF RIGHT <input type="checkbox"/> INTERLOCUTORY ORDER CERTIFIED BY DISTRICT JUDGE (SPECIFY): <input type="checkbox"/> OTHER (SPECIFY):	<input type="checkbox"/> DEFAULT JUDGMENT <input type="checkbox"/> DISMISSAL/JURISDICTION <input type="checkbox"/> DISMISSAL/MERITS <input type="checkbox"/> SUMMARY JUDGMENT <input checked="" type="checkbox"/> JUDGMENT/COURT DECISION <input type="checkbox"/> JUDGMENT/JURY VERDICT <input type="checkbox"/> DECLARATORY JUDGMENT <input type="checkbox"/> JUDGMENT AS A MATTER OF LAW <input type="checkbox"/> OTHER (SPECIFY):	<input type="checkbox"/> DAMAGES: SOUGHT \$ _____ AWARDED \$ _____ <input type="checkbox"/> INJUNCTIONS: <input type="checkbox"/> PRELIMINARY <input type="checkbox"/> PERMANENT <input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED <input checked="" type="checkbox"/> ATTORNEY FEES: SOUGHT \$ 1,968,100.34 AWARDED \$ _____ <input checked="" type="checkbox"/> PENDING <input checked="" type="checkbox"/> COSTS: \$ 25,923.82

CERTIFICATION OF COUNSEL**I CERTIFY THAT:**

1. COPIES OF ORDER/JUDGMENT APPEALED FROM ARE ATTACHED.
2. A CURRENT SERVICE LIST OR REPRESENTATION STATEMENT WITH TELEPHONE AND FAX NUMBERS IS ATTACHED (SEE 9TH CIR. RULE 3-2).
3. A COPY OF THIS CIVIL APPEALS DOCKETING STATEMENT WAS SERVED IN COMPLIANCE WITH FRAP 25.
4. I UNDERSTAND THAT FAILURE TO COMPLY WITH THESE FILING REQUIREMENTS MAY RESULT IN SANCTIONS, INCLUDING DISMISSAL OF THIS APPEAL.

/s/ Rebecca Lawlor Calkins

Signature

Jan 10, 2017

Date**COUNSEL WHO COMPLETED THIS FORM**

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****THIS DOCUMENT SHOULD BE FILED IN DISTRICT COURT WITH THE NOTICE OF APPEAL. ****

****IF FILED LATE, IT SHOULD BE FILED DIRECTLY WITH THE U.S. COURT OF APPEALS.****

JUDGMENT

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8 and DOWNTOWN LAS VEGAS
MANAGEMENT LLC

11 UNITED STATES DISTRICT COURT

12 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

14 AMUSEMENT ART, LLC,
15 Plaintiff,

16 vs.

17 LIFE IS BEAUTIFUL, LLC;
18 DOWNTOWN LAS VEGAS
MANAGEMENT LLC; AND DOES 1-
19 10, inclusive,
20 Defendants.

Case No. 2:14-cv-08290-DDP-JPR
JUDGMENT

1 This action came on for hearing before the Court, on November 14, 2016,
2 Hon. Dean D. Pregerson, District Judge Presiding, on Defendants' Motions for
3 Summary Judgment on Plaintiff's Claims and Defendants' Counterclaims. The
4 evidence presented having been fully considered, the issues having been duly heard,
5 and a decision having been duly rendered,

6 IT IS ORDERED AND ADJUGED:

7 That judgment is entered in favor of Defendants Life is Beautiful LLC and
8 Downtown Las Vegas Management LLC on all of Plaintiff Amusement Art LLC's
9 Claims and all of Defendants' counterclaims pending in this matter, and that
10 Defendants shall recover their costs.

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13 DATED: December 14, 2016



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16 Hon. Dean D. Pregerson
17 U.S. District Judge
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