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

Proceeding no.	91285059
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application No. 97/425,455

Filed on May 24, 2022

For the mark AUTOGRAPH

Published in the Official Gazette on April 18, 2023

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)	
)	Opposition No. 91285059
Steven L. Lynch)	
)	
Opposer,)	
)	
v.)	
)	
Daniel Simoni & Marc Wieland)	
)	
Applicants.)	
<hr style="width:300px; margin-left:0;"/>)	

MOTION FOR RELIEF FROM DEFAULT JUDGMENT

Pursuant to Federal Rule of Civil Procedure 60(b)(6) and Trademark Trial and Appeal Board Manual of Procedure § 544, Registrants Daniel Simoni and Scott Wieland (hereinafter “Registrants”), by and through undersigned counsel, submits this Motion for Relief from a Default Judgment. If this Motion is granted, Applicants would request here (or separately as required) that this matter, Application at issue and Opposer’s two pending Applications all be stayed pending resolution of ongoing litigation in California which should decide the issue of ownership. In support whereof, Applicants state as follows:

I. INTRODUCTION

The Board should grant this motion for relief from default. It has broad discretion to vacate a default judgment under the Board Rules and Federal Rules of Civil Procedure, all in the interests of justice. Given the strong policy favoring adjudication on the merits, close calls should be resolved in favor of vacating a default judgment. This case presents an instance of good cause to vacate a judgment if ever there was one.

Opposer Steve Lynch (“Opposer” or “Lynch”) was one of the original five members of the 80s rock band, “Autograph.” After litigation was pending, he filed two trademark applications claiming he was the *sole owner* of the “Autograph” mark ten months after Defendants—who Lynch later brought into the band as co-members, and then himself left the band—had filed their own application in the mark, solely for services in Class 41¹. This was also eight months after Defendants filed suit in state court for declaratory relief regarding the parties’ rights in the mark.

Opposer’s trademark applications made no mention of the fact of ongoing litigation regarding ownership of the mark. He likewise made no mention of the fact that in *his* counterclaim filed in the state court case four months before he filed this application claiming to

¹ If necessary to obtain a registration, Applicants may concede to a narrow class of services, given their nearly ten years of use for live music without any actual confusion regarding the original band’s recordings. See TBMP §311.02(b)(1) (“A request by defendant to restrict its identification of goods or services under Trademark Act § 18, 15 U.S.C § 1068, must be made by way of motion under 37 C.F.R § 2.133, although the ground may also be raised as an affirmative defense in the answer (as originally filed, as amended or as deemed amended), by way of an allegation that sets forth the proposed restriction in detail and alleges that the restriction will avoid a likelihood of confusion and that plaintiff is not using the mark on the products or services being excluded from the registration.”)

be the *sole owner*, his pleading asserted that a California partnership among him and the other original band members, dubbed “Original Autograph,” was the “sole owner of common law trademark rights throughout the United States in the mark “AUTOGRAPH.” Opposer’s application is riddled with fraudulent statements and omissions of material facts.

Moreover, given the chronology, Defendants made a reasonable mistake in not realizing that they needed to file an answer before this Board. Defendants had hired a lawyer through LegalZoom to file their trademark application, but later hired separate litigation counsel to file their state court complaint for declaratory relief. By the time their answer to Opposer’s application before this Board was due, their LegalZoom attorney had withdrawn. But because they had already filed the state court litigation by this point, they mistakenly believed that the proceedings before this Board were subsumed by the state court litigation. As such, they did not realize that they needed to file an answer until after the Board entered default judgment.

Given these facts, the factors relevant to granting relief from a default judgment—absence of willfulness by Defendants, lack of prejudice to Opposer, and a meritorious defense—are all easily met here. Defendants not only acted inadvertently, but under the circumstances, their inadvertence was understandable. Opposer will suffer absolutely no prejudice, as the default judgment was entered barely a month ago, and these proceedings should probably be stayed pending the outcome of the state court litigation in any event. And Defendants have not just one but numerous meritorious defenses to Opposer’s claim, including lack of standing, fraud on the USPTO, abandonment, and unclean hands.

II. FACTS

Autograph is an American rock band formed in 1984 in Pasadena, California. The band had a few minor hits but never broke into the top level of bands from the era. Due to a friendship between Van Halen's signer David Lee Roth and Autograph drummer Keni Richards, Autograph opened for Van Halen many times. Autograph was created from existing bands to take advantage of the growing heavy rock phenomenon. (Declaration of Eric Bjorgum ("Bjorgum Decl."), ¶ 2.) Between 1983 and 1989, the chief members of Autograph were: Steve Plunkett ("Plunkett")—lead vocals, rhythm guitar, and keyboards; Lynch—lead guitar; Steven Isham ("Isham")—keyboards; Keni Richards ("Richards")—drums; and Randy Rand—bass, back-up vocals. Autograph has never had a trademark registration.

In the late 1980s, consumer tastes in music shifted away from "hair metal," and Autograph ceased performing in 1989. Opposer Lynch did not perform live with the band for over 20 years after that. (Bjorgum Decl., ¶ 4.)

In 2003, Steve Plunkett released an album of new material, called "Buzz," as "Autograph." The members of that iteration of the band were all different. Lynch was not involved and did not object. (Bjorgum Decl., ¶ 5.)

In 2012, Rand and original drummer Richards were looking to start performing as Autograph again. In November 2013, Applicant Simoni, who had a strong track record as a professional musician, songwriter and band frontman, was offered a position as guitarist and singer (without audition) based on his extensive experience. In late 2013, Simoni agreed to join Autograph with Richards, Rand, and Plaintiff Lynch re-joined. (Declaration of Daniel Simioni ("Simoni Decl.") ¶¶ 4 – 5.)

Richards, who suffered from a drug addiction, was unable to perform adequately and was replaced in or about late 2013 with Applicant Marc Wieland. (Declaration of Marc Wieland (“Wieland Decl.”), ¶ 4.) Richards passed away in 2017. In addition to being an accomplished drummer, Wieland as a recording engineer and had his own recording studio.

At that time, Wieland, Lynch, Rand and Simoni entered into an oral joint venture agreement to begin performing as a band using the band name “Autograph.” According to the agreement, when a member left the band, they would have no right to compensation for use of the name “Autograph” or right to compensation from the performances of the remaining members of the band. There was never any agreement—oral or written—covering who would own the trademark rights to the name “Autograph.” (Simoni Decl., ¶6; Wieland Decl., ¶ 3.)

Lynch and Rand, the two original members of the band who were a part of the 2013 iteration, represented to the new members, Simoni and Wieland, that they (Lynch and Rand) had the authority to reconstitute the band and make Simoni and Wieland equal members. (Wieland Decl., ¶ 6; Simoni Decl., ¶ 9.)

Had they been informed that Lynch and/or Rand reserved for themselves the ability in the future to claim rights in the “Autograph” name or in the compensation for the band’s performances even after they were to leave the band, they would not have agreed to spend the next decade investing substantial time, effort, and resources in the band. (Bjorgum Decl., ¶ 10.)

In 2019, Lynch left the band to pursue a new musical direction with his girlfriend. He wished the band well and represented that they could continue to use the Autograph name. (Bjorgum Decl., Exh. B.) The band relied upon that representation. (Wieland Decl., ¶ 8; Simoni Decl., ¶ 18.) In April, 2022, Randy Rand (the last remaining original member of the band) passed away unexpectedly. Almost immediately thereafter, Lynch began claiming that the band could

not play live as “Autograph,” even though it had been doing so with his knowledge for nearly three years. (Simoni Decl., ¶ 9.)

On May 24, 2022, Applicants here (Simoni and Wieland) filed U.S. Trademark App. file S/N 97425455 for the trademark AUTOGRAPH in Class 41. They were represented by Alec Ross of Legalzoom Legal Services, who did trademark searching and advised them to file for the mark. Wieland and Simoni limited the trademark registration for live performances. They had been performing as Autograph for over eight years and had been paid as owners of the band. They did not file for recorded music in Class 09, and were never aware of any confusion between the band they worked with after 2019 and Lynch. (Simoni Decl., ¶ 17.)

On June 2, 2022, Lynch sent a cease and desist letter to Applicants on behalf “Autograph Band LLC and the general partnership of surviving original Autograph band members, Steve Lynch and Steve Plunkett. They alleged had “exclusive rights to the AUTOGRAPH name and mark,” even though Plunkett had not played with the band for nearly 19 years, and Lynch had given his blessings to the band’s continuance three years before. (Bjorgum Decl., Exh. C.)

On July 5, 2023, Applicants filed a lawsuit in Los Angeles County Superior Court on July 5, 2022 with a single claim requesting a declaration of ownership of the Autograph mark for live musical performances. (Bjorgum Decl., Exh. D.)

On November 25, 2022, Opposer filed a counterclaim (in California, a “cross-claim”), and added as a cross-claimant “Original Autograph”, a “California general partnership of which [Opposer] is a partner and which was formed in 1984 by the original members of the rock band “Autograph”. The cross-claim asked for a Declaration that Original Autograph is the “sole owner of common law trademark rights throughout the United States in the mark “AUTOGRAPH” and the Logos as used by a musical act.” There was no request that Lynch be deemed an owner.

(Bjorgum Decl., Exh. E.) Cross-defendants then filed an answer asserting various defenses.

(Bjorgum Decl., Exh. F.)

On March 10, 2023, Opposer Lynch filed a trademark application (Ser. No. 97833499) claiming sole ownership of AUTOGRAPH for audiovisual recordings and live performances. There is no mention of the prayer in the litigation that the “Original Autograph” be deemed the sole owner of the Marks. The application is filed by his new attorney, Eric Kohli. (Bjorgum Decl., Exh. G.) Opposer also filed an Application based on the logo. (Bjorgum Decl., Exh. H.)

On May 17, 2023, Opposer filed Opposition No. 91285059 claiming to be the owner of the AUTOGRAPH mark, in contradiction to the representations in the Litigation, and asking that Original Autograph be deemed the sole owner of the Marks. That Opposition is served on Alec Allen Ross, the attorney who Applicant’s Registration.

Ross withdrew the following day, and May 25 the USPTO granted the request and gave Opposer 30 days to find a new attorney. Simoni and Wieland were confused by this because the Litigation was moving forward rapidly. They understood that the Litigation was the primary action and did not understand that they need separate representation in the TTAB. (Wieland Decl., ¶¶ 18 - 21; Simoni Decl., ¶¶ 16 - 18.)

On July 5, 2023, the TTAB issued an order allowing 30 days to show why default judgment should not be entered. On August 14, the Board entered the default judgment. The USPTO dismissed the Application. The litigation has been in intense discovery for four depositions taking place in August and September, 2023. (Bjorgum Decl., ¶ 20.)

III. LEGAL STANDARDS

All final judgments issued by the Board, including default judgments, are governed by Fed. R. Civ. P. 60(b), as made applicable by 37 CFR § 2.116(a). Once default judgment has been entered against a defendant pursuant to Fed. R. Civ. P. 55(b), the judgment may be set aside for the reasons set forth in Fed. R. Civ. P. 60(b). That Rule provides:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect; . . . or
- (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

The determination of whether to grant a Rule 60(b) motion is a matter largely within the discretion of the Board. *Djeredjian v. Kashi Co.*, 21 U.S.P.Q.2d 1613, 1615 (T.T.A.B. 1991) (citing *Case v. BASF Wyandotte*, 737 F.2d 1034, 222 USPQ 737 (Fed.Cir.1984)). However, because of the “well-established principles that a trial on the merits is favored over default judgment and that close cases should be resolved in favor of the party seeking to set aside default judgment . . . Rule 60(b) is applied most liberally to judgments in default.” *Info. Sys. & Networks Corp. v. United States*, 994 F.2d 792, 795 (Fed. Cir. 1993) (quotations and citations omitted). In fact, “[w]hen a court has denied a party's motion to be relieved from default judgment, a ‘glaring abuse’ of discretion has not been required for reversal of a court's refusal to relieve a party of the harsh sanction of default, and even a slight abuse of discretion may justify reversal.” *Id.* (citations and quotations omitted).

The factors to be considered in determining a motion to vacate a default judgment for failure to file an answer include: “(1) whether the non-defaulting party will be prejudiced, (2) whether the default was willful, and (3) whether defendant has a meritorious defense.”

Djeredjian, 21 U.S.P.Q.2d at 1615 (citing *United Coin Meter Co. Inc. v. Seaboard Coastline Railroad*, 36 FR Serv2d 478, 705 F.2d 839 (6th Cir.1983) and *Davis v. Musler*, 36 FR Serv2d 1370, 713 F.2d 907 (2nd Cir.1983)).

IV. ARGUMENT

A. Opposer Will Not Be Prejudiced By The Board Vacating the Default Judgment

The Board entered the judgment of default on August 14, 2023. This motion to vacate the default judgment comes approximately six weeks later, during intense litigation on the same issues. There is no reason to believe that during such a short delay, any witnesses or evidence have become unavailable as a result, or that Opposer's ability to prosecute his case would in any way be prejudiced. *L-Nutra, Inc. v. Marshall Nutraceuticals Pty Ltd.*, 2018 WL 4846611, *3 (T.T.A.B, Sept. 11, 2018) (“[P]rejudice typically results if witnesses or evidence become unavailable as a result of the delay. . . [W]e find no evidence that the short delay in the proceeding will prejudice Opposer's ability to prosecute its case.”); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 U.S.P.Q.2d 1154, *3 (T.T.A.B. 1991) (granting rule 60(b) motion; “Concededly, some delay will result if respondent's motion is granted. Yet, delay alone is not a sufficient basis for establishing prejudice.”). Indeed, in the state court litigation, discovery is ongoing, with four depositions taking place since August, 2023. (Bjorgum Decl., ¶ 20.)

Moreover, any prejudice Opposer might possibly claim should be given little if any weight. As discussed below in Part C, Opposer never should have opened this trademark proceeding in the first place. And because the precise legal issues at stake in this proceeding—the parties' respective ownership of and rights in the Mark—are being fully litigated in the state

court lawsuit, these proceedings should in all fairness likely be stayed in any event pending resolution of that case. (Bjorgum Decl., Ehx. D.) At a minimum, there is no prejudice to Opposer in allowing Defendants to oppose his petition because ownership of the mark has not yet been decided.

If anything, it will be Defendants who will be prejudiced by a refusal to grant relief from the default judgment. Among other things, as a result of the TTAB order, there has been confusion in the marketplace about the effect of the default judgment. For instance, Autograph is set to played a show in Alabama this weekend, but someone wrote to the venue attaching the TTAB order and saying that the venue would be in trouble financially if the band played. (Bjorgum Decl., ¶ 21, Exh. I.) Of course, the venue's rights to host live performances of music are determined by contracts that have nothing to do with the trademark dispute at issue. But if third parties are improperly suggesting that the default judgment in an administrative action was an adjudication on the merits in order to interfere with the business of the current band members, this is all the more reason why the default judgment must be said aside so that the only "order" regarding the parties' respective rights in the mark is a final order on the merits.

B. The Default Was Not Willful

As shown by the declarations of Defendants Simon Daniels and Marc Wieland, their failure to answer the petition here was not willful, but rather was entirely the result of inadvertence. (Simoni Decl., ¶¶ 17 - 19; Wieland Decl., ¶¶ 17-20.) They had hired a lawyer through LegalZoom Legal services to file their own trademark application in May 2022, which they filed upon advice that the application could be filed. After Defendant's counsel sent them a cease-and-desist letter in June 2022, they hired litigation counsel who filed a declaratory relief action seeking a declaration regarding the parties' rights in the mark in July 2022. Opposer filed

his counterclaims (called “cross-claims” in California) in the state court action in November 2022, claiming that “Original Autograph” was the “sole owner” of the Autograph Mark. (Bjorgum Decl., Exhs. C – F.)

It wasn’t until March 2023—ten months after Defendants filed their trademark application, eight months after they filed their declaratory relief action, and four months after Opposer claimed in that action that “Original Autograph” owned the mark—that Opposer filed his trademark application asserting his “sole ownership” in the mark. By this point, though, the parties were actively litigating the issue of ownership of the mark in the state court suit. (Bjorgum Decl., ¶ 18, Exh. H.)

Shortly before Defendants answer to Opposer’s trademark petition was due, their LegalZoom attorney withdrew from representing them in connection with Board submissions. But Defendants—who are professional musicians, not lawyers—did not understand the distinctions between the administrative filings before this Board and the legal proceedings in Superior Court. As such, they assumed that these proceedings were subsumed into the state court proceedings, and did not realize they needed to answer the petition. They did not retain a new attorney for this matter, nor did they believe they had too. (Simoni Decl., ¶¶ 17-19; Wieland Decl., ¶ 20.) Further, the litigation has proven quite taxing, and they simply were not aware that this is a separate matter requiring its own counsel. (Simoni Decl., ¶ 21.) As soon as they realized their mistake, they have acted diligently by asking their litigation counsel to represent them in proceedings before the Board and to file this motion seeking vacation of the default judgment. (Simoni Decl., ¶ 20.)

In light of these facts, Defendants’ mistake in not responding to the petition sooner was reasonable. Importantly, though, even if their mistake was *unreasonable*, that would still not be a

basis to deny this motion. Only *willfulness*, not *negligence*, would bar relief. *See L-Nutra, Inc.*, 2018 WL 4846611 at *2 (“Respondent has clearly been negligent in complying with the Board's deadlines. However, the record does not show that Respondent's inaction was in willful disregard for the Board's rules and deadlines. . . . [C]arelessness is not evidence of a willful intent.”

The Board, as well as numerous courts, have found that a party's confusion regarding the relationship between multiple proceedings constituted excusable neglect. *See Djeredjian*, 21 U.S.P.Q.2d at 1615 (respondent's “failure to act in this case was not willful, but rather resulted from mistake and inadvertence. Specifically, respondent was involved simultaneously in multiple court actions, and what it mistakenly believed was only one cancellation proceeding at the Board.”); *Regatta Sport Ltd.*, 20 U.S.P.Q.2d 1154, *1-2 (“Respondent argues that because Opposer and respondent are parties in a related copending opposition, it did not realize that the petition for cancellation, notice of default and entry of judgment were not related to the opposition. . . . Respondent has demonstrated that its failure to file an answer was the result of excusable neglect”); *McVicker v. Donnelly*, 95 FRD 353 (EDPa.1982) (confusion resulting from the time proximity and subject matter similarity of the two proceedings demonstrates that defendant's failure to file an answer was excusable neglect).

The fact that Defendants have been diligently pursuing the state court action confirms that their failure to respond here was merely inadvertent. Defendants would have no *reason* to willingly let their opportunity to oppose Opposer's trademark application to slip by, and potentially prejudice their position in the state court action. And as discussed below, they not only vigorously dispute Opposer's rights in the mark, but have every reason to believe they will be successful in opposing his application.

C. Defendants Have Numerous Meritorious Defenses

For purposes of setting aside a default judgment, “all that is necessary to establish a meritorious defense are plausible responses to the allegations in the petition.” *L-Nutra, Inc.*, 2018 WL 4846611 at *3 (citing *DeLorme Publ'g Co v. Eartha's Inc.*, 60 USPQ2d 1222, 1224 (TTAB 2000)). Here, Defendants’ responses to the allegations in Opposer’s petition would demonstrate that it is not just plausible but highly probable that they will prevail in defeating his claim of rights in the mark. Opposer’s application is riddled with falsehoods or the failure to disclose material facts to the Board, and there are meritorious defenses regardless of Opposer’s misrepresentations, as set forth below.

1. The Opposition Is Not Consistent With The Litigation On Standing.

First, are the serious questions about Opposer’s right to bring this Opposition, i.e., Opposer’s standing. Per the TBMP, the traditional “standing” jurisprudence is the same as the new “Zone of interests” test adopted by the Federal Circuit following *Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 109 USPQ2d 2061 (2014). The TBMP states:

Lexmark established two requirements for determining whether a party is entitled to bring or maintain a statutory cause of action: a party must demonstrate (i) an interest falling within the zone of interests protected by the statute, and (ii) proximate causation. Despite the change in nomenclature, prior Federal Circuit and Board decisions interpreting Sections 13 and 14 of the Trademark Act, 15 U.S.C. § 1063 and 15 U.S.C § 1064, remain equally applicable. There is no meaningful, substantive difference between the analytical frameworks in the Board’s prior “standing” case law, under which a plaintiff must show a real

interest in the proceeding and a reasonable basis for its belief in damage [Note 3.], and the current "entitlement" case law, under which a plaintiff must show an interest falling within the zone of interests protected by statute and damage proximately caused by registration. [Note 4.] In other words, demonstrating a real interest in opposing or cancelling a registration of a mark satisfies the zone-of-interests requirement, and demonstrating a reasonable belief in damage by the registration of a mark demonstrates damage proximately caused by registration of the mark. [Note 5.].

Opposer's positions before the USPTO regarding his rights are contradicted by his positions in the litigation. The Opposition claims that "Opposer has continuously and extensively been using the mark AUTOGRAPH ("the AUTOGRAPH Mark") in connection with Performances by a vocal and instrumental group; entertainment, namely, live music concerts; entertainment, namely, live performances by a musical band; providing information in the field of music and entertainment via a website since 1984. (Opposition at 3.) He has also personally filed for two trademark registrations as the sole owner of AUTOGRAPH audio and video recordings in Class 009 and performances by a musical group in Class 041, claiming dates of first use as far back as January 25, 1984. Opposer's applications are only for the Lynch personally, and he states under penalty of perjury that he "is the owner of the trademark/service mark sought to be registered. See U.S. Ser. No. Serial Number: 97833499 (AUTOGRAPH wordmark) and U.S. Ser. No 97833507 (AUTOGRAPH with design).

However, in the litigation, Opposer's counsel has filed multiple papers with the Court on behalf of himself and "Original Autograph." Opposer's Prayer seeks a declaration "**that Original Autograph is the sole owner of common law trademark rights throughout the**

United States in the mark “AUTOGRAPH” and of the Logos, as used by a musical act.”

(Bjorgum Decl., Exh. D.) “Original Autograph” is a “general partnership organized under the laws of California in 1984. The partnership consists of Lynch and Steve Plunkett.” (Bjorgum Decl., Exh. D, ¶ 5.)

At the time of that filing, one of the other five original members of the band, Steve Puckett, was (and is) still alive. Because someone besides Lynch has an interest in the “Original Autograph” partnership, if Opposer’s state court pleading asserting that “Original Autograph” is the sole owner of the mark is true, then Opposer’s application is necessarily false. At a minimum, Opposer (and his counsel) could not have filed both the application before this Board and the counterclaims in state court in good faith.

2. Opposer Has Committed Fraud on the trademark office: The Opposition claims that “Opposer has continuously and extensively been using the mark AUTOGRAPH (“the AUTOGRAPH Mark”) in connection with Performances by a vocal and instrumental group; entertainment, namely, live music concerts; entertainment, namely, live performances by a musical band; providing information in the field of music and entertainment via a website since 1984. (Opposition, p. 3.) Opposer has also filed for two trademark registrations as the sole owner of AUTOGRAPH audio and video recordings in Class 009 and performance by a musical group in Class 041, claiming dates of first use as far back as January 25, 1984.

In point of fact, however, Opposer has not performed with Autograph for substantial periods of time, one of which was 20 years. Fraud on the PTO occurs when an applicant knowingly makes a false, material representation of fact in connection with an application to register, or a post registration document, with the intent of obtaining or maintaining a registration to which it is otherwise not entitled. A declarant is charged with knowing what is in

the declaration being signed, and by failing to make an appropriate inquiry into the accuracy of the statements the declarant acts with a reckless disregard for the truth. *Chutter, Inc. v. Great Management Group, LLC*, 2021 U.S.P.Q.2d 1001 (T.T.A.B. 2021).

Here, Lynch obviously knew he was not performing services in Class 41 under the AUTOGRAPH mark between 1989 and 2013. He also knew that he quit the band in 2019. Indeed, since the band's formation in 1983, Lynch has been playing for a total of approximately 10 years, and he has NOT been playing for approximately 27 years.

3. Opposer Abandoned the Mark. Opposer abandoned the mark not just once, but twice. After having performed with the original band members as Autograph from 1983 to 1989, Opposer Lynch did not perform again under the auspices of Autograph for nearly a quarter of a century, from 1989 to approximately 2014 (at which point he and another original member brought in Defendants as equal co-members). (Simoni Decl., ¶ 3.)

Under Section 45 of the Trademark Act, a mark shall be deemed to be abandoned:

(1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for 3 consecutive years shall be prima facie evidence of abandonment. "Use" of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.

Viacom Int'l, Inc. v. Armstrong Interactive, Inc., 2022 TTAB LEXIS 115, *48 (Trademark Trial & App. Bd. March 11, 2022).

During that time, Lynch was aware of another original member, Plunkett, performing as Autograph in 2003, and raised no objection. (Bjorgum Decl., ¶ 5.) Then, after performing with the band once again as Autograph in 2014, Opposer Lynch waited until three years after he

voluntarily left the band in 2019 to assert ownership rights in the mark in 2022. (Bjorgum Decl., Exh. B.)

4. Opposer Has Unclean Hands. Opposer has unclean hands by virtue of his encouragement of Applicant's use of the mark in his absence, followed by his assertion of continuous rights going back to 1984. As stated by the Board:

Assertion of the defense of unclean hands, though often based on allegations of fraud, misrepresentation of source, or violation of antitrust laws, "may result from any imaginable immoral or illegal conduct." *See* 3 J. Gilson *Trademark Protection and Practice* § 8.12[13] (1999). Where the conduct alleged to have resulted in unclean hands relates to a plaintiff's acquisition, or attempt to acquire, a registration, the unclean hands defense goes only to the plaintiff's ability to rely on its registration, not to its common law rights. *See, e.g., Gilbert/Robinson Inc. v. Carrie Beverage-Missouri Inc.*, 758 F.Supp. 512, 526, 19 USPQ2d 1481, 1489 (E.D. Mo. 1991) [*20] (Even though a jury found that plaintiff had obtained its trademark registration fraudulently, the court held, "nonetheless, plaintiff is still entitled to protect its common law rights, and the doctrine of unclean hands does not act as a bar to that right."). When, however, the assertedly improper conduct relates to the use of the mark, the defense may be considered even in relation to rights acquired through use. *See Independent Grocers' Alliance Distributing Co. v. Zayre Corporation*, 149 USPQ 229 (TTAB 1966) (Though the Board did not find for applicant on the issue, it considered applicant's assertion that the opposer, relying not on a registration but on rights acquired through use, had unclean hands because it misused the statutory registration symbol.)

Hornblower & Weeks, Inc. v. Hornblower & Weeks, Inc. , 2001 TTAB LEXIS 562, *19-20 (Trademark Trial & App. Bd. July 30, 2001)

Here, Lynch stopped performing, encouraged Applicant's to use the mark in Class 41, and three years later claims to have superior rights for performances. (Bjorgum Decl., Exhs. B, C.) He misled Applicants and is attempting to usurp the goodwill they have created playing songs from the "Beyond" record that he did not engage in. (Simoni Decl., ¶¶ 8 – 10; Wieland Decl., ¶¶ 8 – 10.) Opposer has unclean hands because he encouraged Applicant's to use the mark, and there is no likelihood of confusion stopping them from being the owners of the mark. (Simoni Decl., ¶ 17.)

Applicants pursued the registration in large part because there was no registration in Autograph for Class 41, and Opposer had publicly stated in 2019 that he was leaving the band. Opposer wrote "I am officially leaving Autograph. I am on a new journey musically and I want to explore new musical ideas with the Love Of My Life. I wish my brothers well and hope for their continued happiness and success." (Bjorgum Decl., Exh. B.)

Opposer thus retired from performance in August, 2019, and has not performed as Autograph since. This was not the first time Opposer went for years without performing as Autograph. Specifically, the band quit performing live in 1989, and Opposer did not perform for over 20 years. Opposer started performing again in 2014, when Applicants began performing as well. He left the band in 2019, while they kept performing. (Simoni Decl., 22.) Thus, there is at least a plausible defense that Opposer's rights are cut off as to his claims against these Applicants.

Taken individually and collectively, these facts are more than sufficient for Defendants to meet their burden of showing a “plausible” response to Opposer’s allegations, so as to warrant relief from the default judgment.

V. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the motion be granted in all respects and the Board vacate the default judgment against them pursuant to Fed. R. Civ. P. 60(b). Applicants will file an answer if needed, but the reasonable thing to do in this situation would be to revive Applicants’ ‘455 Application, stay prosecution, and stay prosecution of Opposer’s two pending Applications.

Date: September 24, 2023

Respectfully Submitted

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Attorneys for Applicants Daniel Simoni and
Marc Wieland

CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2023, a true and complete copy of the foregoing Motion to Set Aside Default, Declaration of Daniel Simoni, Declaration of Marc Wieland and Declaration of Eric Bjorgum have been served on the designated representative, by forwarding said copy via e-mail to:

Rachel Nicholas
LEWIS ROCA ROTHGERBER CHRISTIE LLP
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ebaxter@lewisroca.com

By: /A. Eric Bjorgum/

A. Eric Bjorgum
Karish & Bjorgum, PC

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

In the Matter of Trademark Application No. 97/425,455

Filed on May 24, 2022

For the mark AUTOGRAPH

Published in the Official Gazette on April 18, 2023

)	
)	
)	Opposition No. 91285059
Steven L. Lynch)	
)	
Opposer,)	
)	
v.)	
)	
Daniel Simoni & Marc Wieland)	
)	
Applicants.)	
<hr style="width:30%; margin-left:0;"/>)	

DECLARATION OF A. ERIC BJORGUM IN SUPPORT OF MOTION FOR RELIEF
FROM DEFAULT JUDGMENT

I, A. Eric Bjorgum, under penalty of perjury of the laws of the State of California and the United States of America, declare and state as follows:

1. I am a partner at Karish & Bjorgum, PC, attorneys for Plaintiffs and Cross-Defendants in the above-entitled matter. I am a Citizen of the United States, over the age of 18 years old, make this declaration based upon personal knowledge and, if called to testify could and would testify competently to the facts set forth herein. I submit this Declaration in Support of Applicants' Motion for Relief from Default Judgment.

2. Autograph is an American rock band formed in 1984 in Pasadena, California. The band had a few minor hits but never broke into the top level of bands from the era. Due to a friendship between Van Halen's signer David Lee Roth and Autograph drummer Keni Richards, Autograph opened for Van Halen many times. Autograph was created from existing bands to take advantage of the growing heavy rock phenomenon.

3. Between 1983 and 1989, the chief members of Autograph were: Steve Plunkett ("Plunkett")—lead vocals, rhythm guitar, and keyboards; Lynch—lead guitar; Steven Isham ("Isham")—keyboards; Keni Richards ("Richards")—drums; and Randy Rand—bass, back-up vocals. The band signed a contract creating a California partnership regarding band business. A true and correct copy of the 1984 Autograph band partnership agreement is attached hereto as Exhibit A.

4. In the late 1980s, consumer tastes in music shifted, and Autograph ceased performing in 1989. Opposer Lynch did not perform live with the band for over 20 years after that.

5. In 2003, Steve Plunkett released an album of new material, called "Buzz," as Autograph. That record has been reissued in the last few years. The members of that iteration of the band were all different. Lynch was not involved, nor did he complain.

6. In 2012, Rand and original drummer Richards were looking to start performing as Autograph again. In November 2013, Applicant Simoni, who had a strong track record as a professional musician, songwriter and band frontman, was offered a position as guitarist and singer (without audition) based on his extensive experience. In late 2013, Simoni agreed to join Autograph with Richards, Rand, and Plaintiff Lynch re-joined.

7. Drummer Richards, who suffered from a drug addiction and later died in mysterious circumstances in 2017, was replaced in or about late 2013 or early with applicant Marc Wieland. In addition to being an accomplished drummer, Wieland is a recording engineer and has his own recording studio.

8. At that time, Wieland, Lynch, Rand and Simoni entered into an oral joint venture agreement to begin performing as a band using the band name “Autograph.” According to the agreement, when a member left the band, they would have no right to compensation for use of the name “Autograph” or right to compensation from the performances of the remaining members of the band. There was never any agreement—oral or written—covering who would own the trademark rights to the name “Autograph.”

9. Lynch and Rand, the two original members of the band who were a part of the 2013 iteration, represented to the new members, Simoni and Wieland, that they (Lynch and Rand) had the authority to reconstitute the band and make Simoni and Wieland equal members.

10. In addition, neither Lynch nor Rand disclosed that either of them believed there was a partnership agreement from the 1980s that was still in force and effect and that would affect the foursome’s ability to enter into their oral joint venture agreement. As the new members of the band, Simoni and Wieland reasonably relied on these representations and omissions from the original band members.

11. In 2019, Lynch left the band to pursue a new musical direction with his girlfriend. He wished the band well and represented that they could continue to use the Autograph name. The band relied upon that representation. Attached hereto as Exhibit B is a true and correct copy of Lynch’s resignation.

12. In April, 2022, Randy Rand (the last remaining original member of the band) passed away unexpectedly. Almost immediately thereafter, Lynch began claiming that the band could not play live as “Autograph,” even though it had been doing so with his knowledge for nearly three years.

13. On May 24, 2022, Applicants here (Simoni and Wieland) filed the trademark application that is the subject of this proceeding, U.S. Trademark App. file S/N 97425455 for the trademark AUTOGRAPH in Class 41 (the ‘455 App.”). They were represented by Alec Ross of Legalzoom Legal Services, who did trademark searching and advised them to file for the mark. Wieland and Simoni filed for a trademark registration for live performances in part because they had been performing as Autograph for over eight years and had been paid as owners of the band.

14. On June 2, 2022, Lynch sent a cease and desist letter to Applicants on behalf “Autograph Band LLC and the general partnership of surviving original Autograph band members, Steve Lynch and Steve Plunkett (all of whom, collectively, are referred to herein as the “partners.”” The Partners allegedly had “exclusive rights to the “AUTOGRAPH” name and mark.” Attached hereto as Exhibit C is a true and correct copy of the June 2, 2022 cease and desist letter.

15. On July 5, 2023, Applicants filed a lawsuit in Los Angeles County Superior Court on July 5, 2022 with a single claim requesting a declaration of ownership of the Autograph mark for live musical performances. Attached hereto as Exhibit D is true and correct copy of the Complaint in the California trademark litigation.

16. The Defendant in that matter is Stephen Lynch, the Opposer here. On November 25, 2022, Opposer filed a counterclaim (in California, a “cross-claim”), and added as a counter-claimant “Original Autograph”, a “California general partnership of which [Opposer] is a partner

and which was formed in 1984 by the original members of the rock band “Autograph”. The cross-claim asked for a Declaration that Original Autograph is the “sole owner of common law trademark rights throughout the United States in the mark “AUTOGRAPH” and the Logos as used by a musical act. Lynch filed a “cross-claim in California for infringement, ownership and other claims. Joining a cross-claimant for the first time in this matter was Original Autograph Original. A true and correct copy of the cross-claim is attached hereto as Exhibit E.

17. Cross-defendants then filed an answer asserting various defenses. Attached hereto as Exhibit F is a true and correct copy of the Answer filed by cross-defendants.

18. On March 10, 2023, Opposer Lynch filed a trademark application (Ser. No. 97833499) claiming sole ownership of AUTOGRAPH for audiovisual recordings and live performances. The application is filed by his new attorney, Eric Kohli. Attached hereto as Exhibit G is a copy of that application.

19. Opposer also filed an Application based on the logo. A true and correct copy of that Application is attached hereto as Exhibit H.

20. There have been four depositions conducted in the Litigation since August, 2023.

21. Since the Board entered the Default Judgment, there has been a misunderstanding in the public about what that means. For instance, Applicants recently played a concert in

Alabama, and someone wrote a threatening communication to the venue and included a copy of the Board's decision. I had to speak with the promoter to explain that the Board's decision only related to registration, not ownership of common law rights. Attached hereto as Exhibit I is a true and correct copy of the threatening email received from an unknown person attaching the Board's decision.

I declare under the penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed on the 24th day of September, 2023, at Pasadena, California.

/s/ Eric Bjorgum
Eric Bjorgum
Karish & Bjorgum, PC
119 E. Union St., Suite B
Pasadena, CA 91103
Attorneys for Applicants

Exhibit A

THE AUTOGRAPH PARTNERSHIP AGREEMENT

This Partnership Agreement ("Agreement") is made and entered into as of this 1st day of January, 1984, by and between STEVE PLUNKETT, RANDY RAND, KENI RICHARDS, STEVE LYNCH and STEVE ISHAM currently collectively professionally known as "AUTOGRAPH" (hereinafter referred to collectively as the "Partners" and individually as "Partner").

W I T N E S S E T H :

WHEREAS, the Partners have heretofore been conducting business together under an oral partnership agreement and desire to memorialize their agreement as to the conduct of their business as Partners;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, conditions, representations and warranties herein contained, the parties hereto agree as follows:

SECTION 1

AGREEMENT OF GENERAL PARTNERSHIP

The parties hereto hereby form a general partnership ("Partnership") pursuant to the provisions of the Uniform Partnership Act of the State of California, upon the terms and conditions herein set forth.

SECTION 2

NAME OF PARTNERSHIP

The name under which the Partnership is to be conducted is:

THE AUTOGRAPH PARTNERSHIP

SECTION 3

NATURE OF BUSINESS

The character and general nature of the business conducted by the Partnership is to furnish the services of

the musical group professionally known as "Autograph" in concerts and other personal appearances; motion pictures; filmed and live television; all fields of recording, including, without limitation, the recording of commercial phonograph records, tapes and audio-visual recordings or other mechanical reproductions by any method existing presently or in the future; merchandising; commercials; commercial tie-ups; endorsements; and other activities throughout the entire field of entertainment, but excluding songwriting and music publishing; as well as all related or incidental activities in connection with the advertising, exploitation or advancement of the aforesaid areas of endeavor or the results and proceeds of the aforesaid services.

SECTION 4

PLACE OF BUSINESS

The principal place of business of the Partnership shall be at such place or places within or without the State of California as the Partners may, from time to time, determine.

SECTION 5

TERM OF PARTNERSHIP

The Partnership shall commence as of January 1, 1984, and shall continue until December 31, 2033 ("Termination Date"), or the earlier termination of the Partnership as provided in Section 13 hereof.

SECTION 6

PARTNERSHIP CAPITAL CONTRIBUTIONS AND INTERESTS

6.1 Each Partner shall contribute to the Partnership his exclusive services during the term hereof in all fields of endeavor in the field of entertainment (but excluding songwriting and music publishing) and as required pursuant to any agreement heretofore or hereafter entered into by the Partnership, and all results and proceeds of such services, as further provided by Section 10.1 hereof.

6.2 Each Partner shall, subject to Section 17 hereof, further contribute any and all rights such Partner may have to the name "AUTOGRAPH" or any use thereof.

6.3 Each Partner shall have an interest in the Partnership equal to the following proportions:

Steve Plunkett	1/5
Randy Rand	1/5
Keni Richards	1/5
Steve Lynch	1/5
Steve Isham	1/5

6.4 Each Partner may be required to make additional contributions to the capital of the Partnership from time to time, to the extent determined by the parties in accordance with Section 9 hereof.

6.5 No Partner shall withdraw any portion of the capital of the Partnership under any circumstances, except as otherwise provided by Sections 15 and 16 hereof. It is the intention of the parties that the rights contributed to the capital of the Partnership hereunder shall remain until termination hereof.

SECTION 7

PROFITS AND LOSSES

The net profits of the Partnership shall be divided between the Partners and the net losses shall be borne by the Partners in the proportions set forth in Section 6.3 hereof.

For purposes of this Section, "net profits" and "net losses" shall be defined as the net profits and net losses of the Partnership, derived from any source whatsoever, for each fiscal year of the Partnership as finally determined for federal income tax purposes under the method of accounting provided by Section 12.1 hereof.

SECTION 8

DISTRIBUTIONS

8.1 Cash or assets received by the Partnership from any source, less any costs and expenses attributable thereto (including, without limitation, any business management, personal management, legal and accounting fees and agency commissions), shall be distributed on a semi-annual basis to the Partners in proportion to their respective Partnership interests (except as otherwise provided by Sections 14, 15 or 16 hereof).

8.2 Notwithstanding the foregoing, no Partner shall be entitled to receive cash or other property, compensation or remuneration in connection with or on account of performances or other services performed by the Partnership with respect to which said Partner shall fail or refuse to render his services.

SECTION 9

MANAGEMENT

Except as otherwise specified herein, the management and conduct of the Partnership business and all decisions with respect thereto shall require the approval of a majority of the Partners, plus at least one (1) additional Partner and no Partner shall have the authority to act on behalf of the Partnership in any capacity except with the approval of a majority of the Partners, plus at least one (1) additional Partner.

SECTION 10

PERFORMANCE OF PARTNERS

10.1 Each Partner hereby agrees that the Partnership shall be exclusively entitled during the term hereof to his personal services in the entire field of entertainment, and that such Partner shall perform on behalf of the Partnership all personal services which the Partnership shall request and direct. For purposes hereof, such services of such Partner shall include without limitation any and all personal appearances in musical concerts and any other entertainment event of any kind, nature or description; motion pictures; filmed and live television; all fields of recording, including without limitation the recording of commercial phonograph records, tapes and audio-visual recordings, or other mechanical reproduction by any method existing presently or in the future; merchandising; commercials; commercial tie-ups; endorsements; and any other activities customarily deemed within the entertainment field, but excluding songwriting and music publishing; as well as any and all related or incidental activities in connection with the advertising, exploitation or advancement of the aforesaid areas of endeavor or the results and proceeds of any of the aforesaid services. Each such Partner further represents and warrants that he has neither made nor will make any contractual or other commitment which would hinder to any degree the exclusive nature of or his full and complete performance of the aforesaid services.

10.2 Subject to Section 16 hereof, the failure of any Partner to render any personal services required hereunder for any reason other than death, disability, expulsion or withdrawal shall constitute a material breach of this Agreement by said Partner, and shall render said Partner liable to the remaining Partners to the full extent of any damages suffered as a result thereof. Each Partner further acknowledges and agrees that his services to be rendered hereunder are special, unique, unusual, extraordinary and of an intellectual character giving them a peculiar value, the loss of which cannot be adequately compensated in damages in an action at law, and that in the event of a breach of this Agreement by the failure of said Partner to render services as provided hereunder, the remaining Partners shall (in addition to any other available remedies) be entitled to the equitable remedies of preliminary and permanent injunction, specific performance and any other equitable relief.

10.3 No provision of this Agreement shall prevent less than all of the Partners from performing and discharging contractual obligations of the Partnership requiring the performance of personal services for the benefit and account of the Partnership; provided, however, that no Partner(s) shall have no right to perform and discharge said contractual obligations without the prior written consent of a majority of the other Partners, ~~plus at least one~~ (1) additional Partner (excluding any Partner in breach hereof).

10.4 Each Partner hereby grants to the Partnership the worldwide right in perpetuity to use and to authorize third parties to use and display his name (both legal and professional), voice and likeness and biographical materials concerning him as same may be identified or associated with that performing group professionally known as "Autograph". Said right of the Partnership shall be exclusive during the term hereof and nonexclusive thereafter. Each such Partner further agrees that he shall not transfer or attempt to transfer any right, privilege, title or interest in or to any such right, nor grant such right to, authorize, or willfully permit any person, firm or corporation to infringe upon any such right hereby granted to the Partnership, and each such Partner hereby authorizes the Partnership, in his name or otherwise, to institute any legal proceeding or proceedings to prevent such infringement.

SECTION 11

ASSIGNMENT OF INTEREST

No Partner shall have the right or power to assign, pledge, encumber, sell or otherwise dispose of its or his interest as a Partner in the Partnership, without the prior written consent of all of the other Partners (excluding such Partner).

SECTION 12

ACCOUNTING, BOOKS AND RECORDS

12.1 At all times during the continuation of the Partnership, the Partnership shall keep or cause to be kept, in accordance with the cash method of accounting, consistently applied, complete and true books of account, in which shall be entered fully and accurately all of the contributions of capital to the Partnership and each transaction of the Partnership. Any Partner shall have the right at all reasonable times to have access to or inspect or copy the books and records of the Partnership.

12.2 The fiscal year of the Partnership shall be a calendar year.

12.3 Within ninety (90) days from and after the end of each fiscal year of the Partnership, the Partnership shall deliver to each Partner a statement of profit and loss for said fiscal year, and a balance sheet prepared as of the close of said year, together with a copy of the Partnership information tax return (prior to the filing thereof with the federal and state taxing authorities), showing the profits and losses of the Partnership and distributions to each Partner for the said fiscal year. All of the foregoing shall be prepared in accordance with generally accepted accounting principles and practices.

12.4 The Partnership shall maintain checking and savings accounts at such bank or banks as a majority of the Partners shall determine. All funds shall be deposited in the name of the Partnership, and may be withdrawn only upon the signature of such person or persons designated ~~in~~ ~~writing~~ by a majority of the Partners.

SECTION 13

DISSOLUTION AND TERMINATION OF PARTNERSHIP

13.1 The Partnership shall be dissolved and terminated upon the happening of any of the following events:

(i) The adjudicated bankruptcy (or assignment for the benefit of creditors) of any Partner or of the Partnership;

(ii) Upon the happening of any event which makes it unlawful for the business of the Partnership to be carried on, or for the Partners to carry on the Partnership;

(iii) Upon the decree of a court of competent jurisdiction;

(iv) Upon the agreement of all the Partners;

(v) On the date of termination as provided by Section 5 hereof.

13.2 Notwithstanding the dissolution or termination of the Partnership, the Partnership may continue to do all acts necessary or appropriate in order fully to discharge and perform all obligations of the Partnership under all executory contracts and may, in connection therewith, exercise all rights, powers and authority, including the purchasing of goods and services.

13.3 Except as otherwise provided herein, upon dissolution and termination of the Partnership, the assets of the Partnership shall be divided in accordance with Section 15040 of the Corporations Code of the State of California, in force at the date on which this Agreement is executed.

SECTION 14

DISABILITY OF PARTNER

14.1 For purposes of this Agreement, the terms "disability" or "disabled" shall be defined as any mental or physical condition which materially interferes with or hinders the ability of any Partner to perform the services contemplated hereby, as determined in the sole judgment of a licensed physician designated by a majority of the other Partners (a "Designated Physician") based on medical reports and other objective evidence, for a period in excess of one

hundred twenty (120) consecutive days. In connection with the foregoing, each Partner shall, upon the request of a majority of the other Partners, submit to a physical examination by a Designated Physician and such other tests as that Designated Physician shall deem necessary to determine whether that Partner is disabled. For purposes hereof, the term "Disabled Partner" shall be defined as any Partner who is so disabled.

14.2 Upon the disability of any such Partner during the term hereof, the Partnership may engage one (1) or more individuals to perform any of the aforeprovided services in place of said Disabled Partner.

14.3 During the period of disability said Disabled Partner shall have no right to participate in the management of the Partnership and, accordingly, solely for purposes of Section 9 hereof, a Disabled Partner shall be deemed not to be a Partner.

14.4 During the period of disability the Disabled Partner shall be entitled to receive, in lieu of his share of any distribution hereunder, an amount equal to one-fifth (1/5) of the gross receipts of the Partnership from personal appearances in which the Disabled Partner performed services, and from all master recordings which embody the performance of the Disabled Partner, less all costs and expenses attributable thereto including, without limitation, any business management, personal management, accounting and legal fees and agency commissions applicable thereto.

14.5 The Partnership shall not be dissolved upon the disability of any Partner.

SECTION 15

DEATH OF PARTNER

15.1 In the event of the death of any Partner during the term hereof, the Partnership shall not be dissolved. For purposes hereof, the term "Deceased Partner" shall be defined as any Partner who is deceased.

15.2 In full and complete discharge of the interest of a Deceased Partner in the Partnership, the Partnership shall pay to the legal representatives of said Deceased Partner the following sums:

(i) Within ninety (90) days of the death of said Deceased Partner an amount equal to his capital

account as of the end of the month during which such death occurs, determined in accordance with the usual and customary accounting procedures of the Partnership; and

(ii) On a semi-annual basis, an amount equal to one-fifth (1/5) of the gross receipts of the Partnership from personal appearances in which said Deceased Partner rendered services, and from all "master recordings" which embody the performance of said Deceased Partner, less all costs and expenses attributable thereto including, without limitation, any business management, personal management, legal and accounting fees and agency commissions attributable thereto.

All of the foregoing payments shall be "guaranteed payments" made pursuant to Section 736(a)(2) of the Internal Revenue Code of 1954 (as amended or superseded). Notwithstanding any agreement between the Partnership and any third party, the aforesaid sums payable to the legal representatives of said Deceased Partner shall be subject to reduction, recoupment or offset solely with respect to any advances received by said Deceased Partner or recording or other costs or charges connected with master recordings which embody the performance of said Deceased Partner, and the payment of any sum hereunder shall be without reduction, recoupment or offset for any advance with respect to which said Deceased Partner did not receive his pro rata share thereof, or for any recording costs or other costs or charges connected with any master recording which does not embody the performance of said Deceased Partner.

SECTION 16

EXPULSION OR WITHDRAWAL OF PARTNER

16.1 Any Partner may be involuntarily expelled from the Partnership with or without cause ("Expelled Partner"), by the affirmative act of a majority of the other Partners, plus at least one (1) additional partner (excluding such Expelled Partner). Expulsion from the Partnership shall be effective thirty (30) days after delivery to said Expelled Partner of written notice of expulsion by the Partnership, as further provided by Section 19.1 hereof. The expulsion of any Partner shall not dissolve the Partnership or in itself constitute a breach of this Agreement.

16.2 In full and complete discharge of the interest of the Expelled Partner in the Partnership, the Partnership shall pay to the Expelled Partner the following sums:

(i) On or before the effective date of the expulsion of said Expelled Partner, an amount equal to the capital account of the Expelled Partner as of the end of the month preceding said effective date, determined in accordance with the usual and customary accounting procedures of the Partnership; and

(ii) On a semi-annual basis, an amount equal to one-fifth (1/5) of the gross receipts of the Partnership from personal appearances in which said Expelled Partner rendered services, and from all "master recordings" which embody the performance of said Expelled Partner, less all costs and expenses attributable thereto, including, without limitation, any business management, personal management, legal and accounting fees attributable thereto.

(iii) Notwithstanding Subsections (i) and (ii) hereof, if any act of said Expelled Partner constitutes or causes, directly or indirectly, the breach of this Agreement or any agreement between the Partnership and any third party, or otherwise subjects the Partnership to any damages, costs, expenses, liabilities or other obligations (whether actual or contingent), then the Partnership shall be entitled to retain such sums otherwise payable to said Expelled Partner hereunder as the Partnership shall in its sole and absolute discretion and for such periods of time shall determine, for the purpose of providing indemnity to the Partnership against any and all damages, costs, expenses, liabilities or other obligations (whether actual or contingent) arising from or connected with said breach or act. Such determination by the Partnership shall be binding and conclusive upon said Expelled Partner for all purposes, and any sums retained hereunder shall bear no interest. The Expelled Partner further agrees that to the extent the Partnership on the effective date of expulsion is contingently liable for any act or event occurring on or before said date, which liability is not reflected in computing the capital account of the Expelled Partner as of the effective date of expulsion (and to the extent sums are not retained by the Partnership hereunder with respect to such liability), the Partnership shall be entitled to immediate contribution from the Expelled Partner (or his transferee or assign) for his share of any sums required to be paid as a consequence thereof.

All of the foregoing payments (if any) shall be "guaranteed payments" made pursuant to Section 736(a)(2) of the Internal Revenue Code of 1954 (as amended or superseded). Except as otherwise provided by Subsection (iii) hereof, notwithstanding any agreement between the Partnership and any third party, the aforesaid sums payable to said Expelled Partner shall be subject to reduction, recoupment or offset solely with respect to any advances received by said Expelled Partner or recording or other costs or charges connected with master recordings which embody the performance of said Expelled Partner, and the payment of any sum hereunder shall be without reduction, recoupment or offset for any advance with respect to which said Expelled Partner did not receive his pro rata share thereof, or for any recording costs or other costs or charges connected with any master recording which does not embody the performance of said Expelled Partner.

16.3 Any Partner may withdraw from the Partnership, provided that (i) notwithstanding such withdrawal said Partner shall remain obligated to exclusively perform his personal services for the Partnership (as required by Section 10.1 hereof) to the extent the nonperformance of his said services (in the sole judgment of the Partnership) would constitute or cause, directly or indirectly, the breach of any agreement between the Partnership and any third party, or otherwise subject the Partnership to any damages, costs, expenses, liabilities or other obligations (whether actual or contingent), and (ii) provided further that such withdrawal shall not modify or limit in any respects the rights of the Partnership or of the remaining Partners with respect to any breach of this Agreement or any agreement between the Partnership and any third party otherwise committed by the Withdrawing Partner. The withdrawal of any Partner shall not dissolve the Partnership or in itself constitute a breach of this Agreement. Withdrawal from the Partnership shall be effective ninety (90) days after the delivery to all Partners of written notice of withdrawal signed by the Withdrawing Partner, as further provided by Section 10.1 hereof. The term "Withdrawing Partner" shall be defined as any partner who withdraws from the Partnership hereunder.

16.4 In full and complete discharge of the interest of the Withdrawing Partner in the Partnership, the Partnership shall pay to the Withdrawing Partner the following sums:

- (i) On or before the effective date of the withdrawal of said Withdrawing Partner, an amount equal

to the capital account of the Withdrawing Partner as of the end of the month preceding said effective date, determined in accordance with the usual and customary accounting procedures of the Partnership; and

(ii) On a semi-annual basis, an amount equal to one-fifth (1/5) of the gross receipts of the Partnership from personal appearances in which said Withdrawing Partner rendered services, and from all "master recordings" which embody the performance of said Withdrawing Partner, less all costs and expenses attributable thereto, including, without limitation, all business management, personal management, legal and accounting fees and agency commissions attributable thereto.

(iii) Notwithstanding Subsections (i) and (ii) hereof, if any act of said Withdrawing Partner constitutes or causes, directly or indirectly, the breach of this Agreement or any agreement between the Partnership and any third party, or otherwise subjects the Partnership to any damages, costs, expenses, liabilities or other obligations (whether actual or contingent), then the Partnership shall be entitled to retain such sums otherwise payable to said Withdrawing Partner hereunder as the Partnership in its sole and absolute discretion and for such periods of time shall determine, for the purpose of providing indemnity to the Partnership against any damages, costs, expenses, liabilities or other obligations (whether actual or contingent) arising from or connected with said breach or act. Such determination by the Partnership shall be binding and conclusive upon said Withdrawing Partner for all purposes, and any sums retained hereunder shall bear no interest. The Withdrawing Partner further agrees that to the extent the Partnership on the effective date of withdrawal is contingently liable for any act or event occurring on or before the date of withdrawal, which liability is not reflected in computing the capital account of the Withdrawing Partner as of the Withdrawal Date (and to the extent sums are not retained by the Partnership hereunder with respect to such liability), the Partnership shall be entitled to immediate contribution from said Withdrawing Partner (or his transferee or assign) for his share of any sums required to be paid as a consequence thereof.

All of the foregoing payments (if any) shall be "guaranteed payments" made pursuant to Section 736(a)(2) of the Internal Revenue Code of 1954 (as amended or superseded). Except as otherwise provided by Subsection (iii) hereof, notwith-

standing any agreement between the Partnership and any third party, the aforesaid sums payable to said Withdrawing Partner shall be subject to reduction, recoupment or offset solely with respect to any advances received by said Withdrawing Partner or recording or other costs or charges connected with master recordings which embody the performance of said Withdrawing Partner, and the payment of any sum hereunder shall be without reduction, recoupment or offset for any advance with respect to which said Withdrawing Partner did not receive his pro rata share thereof, or for any recording costs or other costs or charges connected with any master recording which does not embody the performance of said Withdrawing Partner.

16.5 Subject to the terms and conditions of Section 17 hereof no Expelled or Withdrawing Partner shall have any right to use the name "AUTOGRAPH" or any other name used by the Partnership (except the individual and professional name of said Partner), or any name confusingly similar thereto, for any purpose whatsoever. Said Expelled or Withdrawing Partner shall execute or cause to have executed any and all instruments, consents or other documents required in connection with his expulsion or withdrawal from the Partnership, including, without limitation, any assignment to the Partnership or its respective Partners of rights in and to any copyright, federal or state trademark or similar rights.

16.6 The expulsion or withdrawal of any Partner shall not in any respect modify or limit any rights of the Partnership under Section 10.4 hereof, which rights shall survive said expulsion or withdrawal.

16.7 From and after the effective date of expulsion or withdrawal, said Expelled or Withdrawing Partner shall have no right to participate in the management of the Partnership, nor any right to object to any consent or approval under any agreement between the Partnership and any third party and, to the extent that any such agreement requires the consent or approval of all of the Partners individually, said Expelled or Withdrawing Partner shall be deemed irrevocably to have appointed the remaining Partners as his attorney-in-fact to give or withhold such consent or approval on his behalf.

SECTION 17

USE OF NAME

Notwithstanding anything to the contrary contained herein, the name Autograph (the "Name") may not be used by the Partnership, or any Partner at any time and in any manner, unless with the consent of by Steve Plunkett and at least two (2) other Partners (or individuals who, immediately prior to the dissolution of the Partnership, were Partners) . Furthermore, upon the death of Steve Plunkett, the Name may not be used by the Partnership or by any Partner at any time and in any manner, unless with the approval of the majority of the surviving Partners, (or individuals who, immediately prior to the dissolution of the Partnership, were Partners).

SECTION 18

OUTSIDE ACTIVITIES

Each Partner shall devote his or its best efforts to the operation of the Partnership and the advancement of the business of the Partnership. Subject to the limitations of Sections 6.1 and 10.1 hereof, any Partner may engage in any activity or make any investment for his or its own benefit or advantage without the consent of the other Partners, so long as such activity does not interfere in any manner whatsoever with the business of the Partnership or with the complete and conscientious discharge by such Partner of its or his duties to the Partnership. It is further agreed that any of the foregoing activities as may be engaged in by any Partner shall be deemed individual activities outside the scope of this Agreement, and said Partner shall be entitled to retain any and all proceeds therefrom.

SECTION 19

MISCELLANEOUS

19.1 Notices: All notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if given personally, by prepaid telegram, or mailed first class mail, postage prepaid, registered or certified mail, as follows:

TO STEVE PLUNKETT:

TO RANDY RAND:

TO KENI RICHARDS:

TO STEVE LYNCH:

TO STEVE ISHAM:

Any mailed notice as given aforesaid shall be deemed received on the third business day following the deposit of the same in the United States mail. Any notice given by any other manner shall be deemed received when actually received by the party to whom addressed. Any party may change the address to which notices are to be sent hereunder, by giving notice of such change of address to the other party or parties in the manner herein specified.

19.2 Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made and to be performed in that State, including, without limitation, the Uniform Partnership Act of said State.

19.3 Survival of Rights: Subject to Section 11 hereof, this Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective successors, legal representatives and assigns of said parties.

19.4 Entire Agreement: This Agreement contains the entire agreement of the parties relating to the subject matter hereof. Any prior agreements, promises, understandings, representations or warranties relating to the subject matter hereof are of no force or effect.

19.5 Severability: In the event that any provision of this Agreement (or any part thereof) is, or is for any reason adjudged to be, void, unlawful, unenforceable or

invalid, then disregarding such provision or provisions (or any void, unlawful, unenforceable or invalid part thereof), the remaining provisions of this Agreement shall subsist and remain valid and be carried into full force and effect.

19.6 Interpretation: Section headings in this Agreement are for convenience and are not a part of the agreement of the parties and shall not be used in the construction thereof. Whenever in this Agreement the context requires, references to the singular shall be deemed to include the plural and the plural the singular, and the masculine the neuter and the neuter the masculine.

19.7 Waiver: The waiver by any party hereto of any breach or violation of any provision of this Agreement shall not operate or be construed as a waiver of a subsequent breach or violation hereof.

19.8 Remedies: The remedies herein provided shall be deemed cumulative and the exercise of one (including without limitation the retention of certain sums by the Partnership under Sections 16.2(iii) and 16.4(iii) hereof) shall not preclude the exercise of any other remedy, nor shall any specification of remedies herein exclude any rights or remedies at law or in equity which may be available hereto to the parties, including any rights to damages or injunctive relief.

19.9 Attorneys' Fees: In the event that any action, suit or proceeding in connection with or arising out of this Agreement is instituted by one or more of the parties hereto against any other party or parties, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and court costs incurred in any such action, suit or proceeding.

19.10 Counterparts: This Agreement may be executed in several counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same instrument.

SECTION 20

AMENDMENT OF AGREEMENT

This Partnership Agreement may be terminated, supplemented, modified or amended by the written consent of a majority of the Partners, plus at least one (1) additional Partner.

SECTION 21PREPARATION OF AGREEMENT

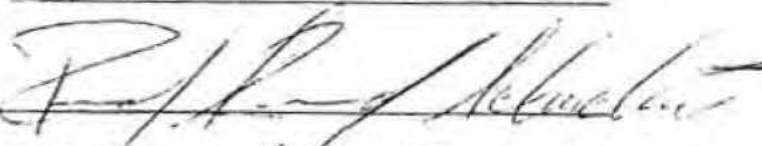
This agreement was prepared on behalf of all parties hereto by Mitchell, Silberberg & Knupp of 11377 West Olympic Boulevard, Los Angeles, California 90064, and all parties hereto have heretofore voluntarily consented to the preparation of this agreement on behalf of all parties by Mitchell, Silberberg & Knupp. Each Partner has been advised and understands that each such Partner has the right to be represented by separate and independent counsel in connection with this agreement, and each such Partner has had the full and ample opportunity to secure such separate and independent representation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

Steve Plunkett



Randy Rand



Steve Lynch



Keri Richards



Steven Isham



Exhibit B



Sleaze Roxx has received information that **Lynch** will be forming a new band with his fiancé who is a singer.

The following message was posted on **Lynch's** Facebook page yesterday:

"I am officially leaving **Autograph**. I am on a new journey musically and I want to explore new

musical ideas with the Love Of My Life.

I wish my brothers well and hope for their continued happiness and success.

There is a time when when one must follow their heart... and this is what I am doing.

I want to thank my family, friends and fans for all their support over the years..

This is not goodbye... it is a new beginning...

I LOVE YOU ALL!!!!!! Forever and always!!!!

Stay tuned for an epic experience..."

Autograph's "Blondes In Black Cars" video:

Exhibit C

ROMANO

L A W

Joshua@RomanoLaw.com

55 Broad Street, 18th Floor
New York, NY 10004

(212) 865-9848

VIA EMAIL: dsimoni1@earthlink.com; marc@marcwieland.com; sullivan@biggtimeinc.com;
reginahomedepot@gmail.com; rrandroid@aol.com; info@frontiers.it
AND FEDEX

June 2, 2022

Mr. Daniel Simoni
p/k/a Simon Daniels
15217 Morrison Street
Sherman Oaks, CA 91403

Mr. Marc Wieland
4015 Barryknoll Drive
Los Angeles, CA 90065

Mr. Sullivan D. Bigg
Bigg Time Entertainment, Inc.
74998 Country Club Drive, Suite 220-15
Palm Desert, CA 92260

Ms. Regina Folio Schucart
1505 Gathering Place
Cumming, GA 30040

Frontier Records S.r.l.
Via Giulia Gonzaga, 18
80125 Naples
ITALY

Re: "AUTOGRAPH" name and mark – revocation of license

We represent Autograph Band LLC and the general partnership of surviving original Autograph band members, Steve Lynch and Steve Plunkett (all of whom, collectively, are referred to herein as the "Partners." The Partners have exclusive rights to the "AUTOGRAPH" name and mark.

The Partners are aware that Marc Wieland and Daniel Simoni (p/k/a Simon Daniels) have for some time been performing publicly from time to time with Partner Steve Lynch and/or Randy Rand as "Autograph" with the permission of the Partners. However, as you are aware, Lynch has retired from public performance and Rand has recently passed, leaving none of the original Autograph band members to perform publicly.

Sullivan Bigg of Bigg Time Entertainment, Inc. (collectively "Bigg") representing Wieland and Simoni, has sought permission from the Partners for Wieland and Simoni, and certain other musicians, to continue performing as "Autograph" in seventeen planned performances running through the end of April 2023. It is the Partners' understanding that many of these planned performances were scheduled after Rand's passing.

The Partners are also aware that – before his passing – Rand, Wieland and Simoni, and others recorded several new tracks which Wieland and Simoni now intend, with Frontier Records S.r.l., to release as a new “Autograph” album.

Finally, the Partners note that Wieland, Simoni, Bigg and/or Rand’s widow, Regina Folio Schucart, have commandeered the autographband.com domain name and website, and at least three social media accounts under the “AUTOGRAPH” name and mark:

- Facebook: AutographBand
- Instagram: @AutographBand
- Twitter: @AutographBand

Any license to use the “AUTOGRAPH” name and mark which may have been granted, expressly or impliedly, to Wieland, Simoni and/or any other parties connected with them is hereby revoked, effective immediately. Wieland, Simoni or any other party purportedly licensed by Wieland, Simoni, Rand or Schucart are expressly barred from

(i) public performance under the name “AUTOGRAPH”;

(ii) sale of any “AUTOGRAPH” branded merchandise;

(iii) the manufacture, distribution, sale, public performance or making available to the public of any sound recording under the name “AUTOGRAPH”; and

(iv) the use of the “AUTOGRAPH” name and mark on social or in other media to promote any of the above.

Looking to the future, the Partners are willing to consider a limited term arrangement which would permit Wieland and Simoni and their bandmates to continue to use the “AUTOGRAPH” name and mark under license.

However, as a prerequisite to discussion of any such licensing arrangement, the Partners demand that control (i.e., the login and password information) for the above-mentioned social media accounts, and of the autographband.com domain name and website be returned to the Partners immediately. Should control of such accounts and the autographband.com domain name and website not be returned to the Partners by June 10, 2022, the Partners will have no choice but to take action – up to and including the commencement of litigation against Simon, Wieland, Bigg and/or Schucart – to enforce their exclusive rights.

Messrs. Daniel Simoni, Marc Wieland, Sullivan Bigg, Ms. Regina Folio Schucart, & Fronter Records S.r.l.

June 2, 2022

Page 3

Nothing contained herein or omitted herefrom shall be deemed to be a waiver of any right(s), remedy(s), claim(s), cause(s) of action and or defence(s) available to the Partners against Simoni, Wieland, Bigg, Schucart, Frontier Records S.r.l., and/or any and all persons and entities with whom they may be in privity, with each such right, remedy, claim, cause of action, and/or defense being hereby expressly reserved.

Very truly yours,

ROMANO LAW PLLC

A handwritten signature in black ink, appearing to read "J. Graubart", with a stylized flourish at the end.

Joshua Graubart
Senior Counsel

cc: Marty O'Brien (marty@martyobrien.com)

Exhibit D

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Jon Takasugi

1 S. Michael Kernan, State Bar No. 181747
2 R. Paul Katrinak, State Bar No.164057
3 THE KERNAN LAW FIRM
4 9663 Santa Monica Blvd., Suite 450
5 Beverly Hills, California 90210
6 Telephone: (310) 490-9777
7 Facsimile: (310) 861-0503

8 Attorneys for Plaintiffs
9 Daniel Simoni and Marc Wieland
10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF LOS ANGELES

13 DANIEL SIMONI, an individual; MARC
14 WIELAND, an individual;

15 Plaintiffs,

16 v.

17 STEVE LYNCH, an individual; and DOES 1
18 through 20, inclusive,

19 Defendants.
20
21
22
23
24
25
26
27
28

Case Number: 22STCV21696

COMPLAINT FOR:
(1) DECLARATORY RELIEF

THE KERNAN LAW FIRM
9663 Santa Monica Blvd., Suite 450
Beverly Hills, California 90210
(310) 490-9777

Comes now, Plaintiffs Daniel Simoni and Marc Wieland (“Plaintiffs”), by and through their attorneys of record complain against Defendant Steve Lynch and DOES 1 through 20, inclusive, as follows:

PARTIES

1. Plaintiff Daniel Simoni (“Mr. Simoni”) is an individual who resides within the County of Los Angeles. State of California.

2. Plaintiff Marc Wieland (“Mr. Wieland”) is an individual who resides within the County of Los Angeles. State of California.

3. Defendant Steve Lynch (“Defendant Lynch”) is an individual who has done business within the County of Los Angeles. State of California.

4. The true names and capacities of the Defendants named herein as Does 1 through 20, inclusive, whether individual, corporate, associate, or otherwise, are unknown to Plaintiff who therefore sues such Defendants by fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff is informed and believes that DOE Defendants 1 through 20 are California residents and/or parents, subsidiaries, and/or sister corporations to Defendants and/or individuals responsible for the acts complained of herein. Plaintiff will amend this Complaint to show such true names and capacities when they have been determined. Hereinafter Defendants Steve Lynch, and Does 1 through 20 will sometimes be collectively referred to as “Defendants.”

5. Plaintiffs are informed and believe, and on that basis alleges, that each Defendant was in some manner responsible for the acts and damages alleged herein, and/or are indebted to Plaintiff as alleged herein, and that each Defendant participated in the acts alleged herein and that, in participating in such acts, each Defendant was the agent and co-conspirator of each other Defendant, and was acting in the course and scope of such agency and conspiracy.

6. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure section 410.10. Personal jurisdiction over Defendants exists because Defendants do business in California, and Defendants have had sufficient contacts with California to warrant

1 the assertion of such jurisdiction, including but not limited to substantial contacts relating to
2 the performance of the contract at issue herein.

3 **GENERAL ALLEGATIONS**

4 7. Autograph was an American rock band formed in 1984. The band name
5 “Autograph”, which is the trademark in dispute, will sometimes hereafter be referred to as the
6 “Band Name.”

7 8. The band disbanded and stopped performing in 1989. Between the years 1989
8 and 2013, there were no performances using the Band Name, there was no merchandizing
9 using the Band Name, and there was no active marketing towards consumers using the Band
10 Name.

11 9. Between the years 1989 and 2013, Defendant Lynch ceased using the Band
12 Name trademark and there was a complete abandonment of any common law trademark to the
13 Band Name that may have existed at that time.

14 10. In 2013, Plaintiffs and Defendant Lynch entered into an oral joint venture
15 agreement to begin performing as a band using the Band Name. According to the agreement,
16 when a member left the band, they would have no right to compensation for use of the Band
17 Name or right to compensation from the performances of the remaining members of the band.

18 11. Defendant Lynch stopped playing with the band in 2019 and abandoned any
19 interest in the band.

20 12. Defendant Lynch, without any legal right to do so, claims sole ownership over
21 the trademark for the Band Name. Defendant Lynch’s conduct is harming Plaintiffs by costing
22 Plaintiffs shows, delays and problems with a record company concerning Plaintiff’s record.

23 **FIRST CAUSE OF ACTION**

24 **Declaratory Relief**

25 **(Against All Defendants)**

26 13. Plaintiff repeats and re-alleges the information contained in the foregoing
27 paragraphs and incorporates them as though fully set forth herein.

28 14. An actual controversy has arisen and now exists between Plaintiffs and

1 Defendant Lynch concerning the trademark rights for the Band Name. Defendant Lynch claims
2 the sole ownership of the trademark in the Band Name and is entitled to compensation for the
3 use of the Band Name. Plaintiffs deny and dispute that Defendant Lynch has any rights to the
4 trademark in the Band Name and denies that Defendant Lynch is entitled to any compensation
5 from the performances of Plaintiffs using the Band Name.

6 15. Plaintiffs desire a judicial determination and confirmation of the respective
7 rights and duties of Plaintiffs and Defendant Lynch with respect to the trademark for the Band
8 Name.

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs pray for declaratory judgement as follows:

- 12 1. Plaintiffs owns rights, title, and interest in and to the Band Name trademark and
13 may use the Band Name without any payment to Defendant;
14 2. Defendant owns no interest in the Band Name trademark; and
15 3. For such other and further relief as the Court may deem just and proper.

16 DATED: July 5, 2022

THE KERNAN LAW FIRM

17
18 By: 

S. Michael Kernan

19 Attorney for Plaintiffs
20 Daniel Simoni and Marc Wieland
21
22
23
24
25
26
27
28

Exhibit E

ROMANO LAW LLP
Joshua Graubart | CA Bar No. 309735
2221 Camino del Rio South, Suite 101
San Diego, CA 92108
TEL: (212) 865 - 9848
FAX: (646) 661 - 4599
joshua@romanolaw.com

Attorneys for Cross-Plaintiffs

**SUPERIOR COURT OF CALIFORNIA
LOS ANGELES COUNTY SUPERIOR COURT
CIVIL DIVISION**

DANIEL SIMONI and MARC WIELAND,
individuals;

Plaintiff,

v.

STEVE LYNCH, an individual,

Defendant.

Case No.: 22-ST-CV-21696

CROSS-COMPLAINT

Dept.: 17
Judge: Hon. Jon R. Takasugi

Date action filed: July 5, 2022
Trial date: July 3, 2023

STEVE LYNCH, an individual; AUTOGRAPH
(1984), a general partnership organized under the
law of California,

Cross-Plaintiffs,

v.

DANIEL SIMONI, MARC WIELAND, JAMES
BELL, individuals; BIGG TIME
ENTERTAINMENT, INC., a California
corporation; AUTOGRAPH BAND.1 LLC, a
Georgia limited liability company; FRONTIER
RECORDS S.r.l., an Italian limited liability
company; and JOHN DOE Nos. 1 through 10,
individuals.

Cross-Defendants.

1 Cross-Plaintiffs Steve Lynch (“Lynch”) and Autograph (1984) (“Original
2 Autograph”), by and through undersigned counsel, bring this Complaint and Jury Demand
3 against Cross-Defendants Daniel Simoni (“Simoni”), Marc Wieland (“Wieland”), James
4 Bell (“Bell”), Bigg Time Entertainment Inc. (“Bigg Time”), Autograph Band.1 LLC
5 (“2019 Autograph LLC”), Frontier Records S.r.l. (“Frontier”), and John Does nos. 1
6 through 10 (collectively, the “Doe Cross-Defendants”) seeking damages and injunctive
7 relief, and in support thereof, state as follows:

8 **SUMMARY OF THE ACTION**

9 1. Cross-Defendants Simoni and Wieland commenced the present action against
10 Lynch and certain unnamed defendants on July 5, 2022, seeking a declaratory judgment
11 that (i) Simoni and Wieland “own[] all right, title and interest in and to the [band name
12 ‘Autograph’] trademark”; and (ii) Lynch “owns no interest in the [band name ‘Autograph’]
13 trademark”.

14 2. Lynch moved to quash the Summons and Complaint for lack of personal
15 jurisdiction over him; the Court denied that motion on November 10, 2022. Lynch submits
16 an Answer to the Complaint concurrently herewith.

17 3. Now Lynch and Original Autograph, a California general partnership of which
18 Lynch is a partner and which was formed in 1984 by the original members of the rock
19 band “Autograph” (1984) bring this Cross-Complaint against (i) Simoni, Wieland and Bell,
20 three members of a separate band calling itself “Autograph” (hereinafter “Autograph
21 2019”), (ii) 2019 Autograph LLC , the Georgia LLC formed to operate Autograph 2019,
22 (iii) Bigg Time, a California booking agency which promotes and books performances for
23 Autograph 2019, and (iv) Frontier, an Italian record company which has recently released
24 in the United States a record album featuring the members of Autograph 2019 under the
25 name “Autograph.”

26 **PARTIES**

27 4. Lynch is an individual residing in Florida. He is a partner in Original Autograph.
28

1 5. Original Autograph is a general partnership organized under the laws of California
2 in 1984. The partnership consists of Lynch and Steve Plunkett.

3 6. Simoni is an individual residing in Los Angeles County, California. On
4 information and belief, he is a member of 2019 Autograph LLC.

5 7. Wieland is an individual residing in Los Angeles County, California. On
6 information and belief, he is a member of 2019 Autograph LLC.

7 8. Bell is an individual residing in Connecticut. On information and belief, he is a
8 member of 2019 Autograph LLC.

9 9. 2019 Autograph LLC is a limited liability company registered in the U.S. State of
10 Georgia in 2019. On information and belief it was created to facilitate the performance,
11 recording and merchandising business of 2019 Autograph.

12 10. Bigg Time is a booking agency incorporated in California and maintaining its
13 primary place of business in Riverside County, California. On information and belief,
14 Bigg Time is engaged by 2019 Autograph to book live performance events.

15 11. Frontier is record manufacturing and distribution company. On information and
16 belief, Frontier is organized as a limited liability company under the law of Italy.

17 12. The Doe Cross-Defendants are individuals or entities working in concert with the
18 named Cross-Defendants, who authorized or participated in infringing Cross-Plaintiffs'
19 rights in the AUTOGRAPH Mark and/or the Logos (as defined in paragraph XX *infra*)
20 and/or Lynch's personality rights under CAL. CIV. CODE § 3344.

21 **JURISDICTION AND VENUE**

22 13. Jurisdiction is proper pursuant to CAL. CIV. PROC. CODE §§ 410.10. Cross-
23 Defendants Simoni and Wieland reside in California. Simoni and Wieland maintain that
24 2019 Autograph is based in California and performs there. Bell is a member of 2019
25 Autograph. On information and belief, 2019 Autograph LLC exists to facilitate and
26 execute the business of 2019 Autograph, including in California. Bigg Time is
27 incorporated in California and maintains its primary offices in Riverside County. On
28

1 information and belief, Frontier entered into an agreement with one or more members of
2 2019 Autograph, based in California.

3 14. Venue is proper in Los Angeles County pursuant to CAL CIV. PROC. CODE §§ 393,
4 395 and 410.50, as the cause, or some part of it, arose in Los Angeles County, Cross-
5 Defendants Simoni and Wieland reside in Los Angeles County, and Simoni and Wieland
6 commenced the present action before this Court.

7 **ORIGINAL AUTOGRAPH**

8 15. In 1984, Lynch – along with Steve Plunkett, the late Steve Isham, the late Keni
9 Richards and the late Randolph Schuchart (p/k/a “Randy Rand” and referred to herein as
10 “Rand”) (collectively the “Original Autograph Founders”) – formed a rock band in Los
11 Angeles under the name “Autograph.” (the “AUTOGRAPH Mark”).

12 16. The same year, the Original Autograph Founders formed a general partnership, and
13 executed a partnership agreement governed by California law, specifying that the
14 partnership was to continue despite the deaths of one or more of the Original Autograph
15 Founders. That partnership is Original Autograph, described *supra* at ¶ 3, and is a Cross-
16 Plaintiff in the present action.

17 17. Original Autograph signed a “three record deal” with RCA Records in 1984. The
18 three records which resulted from that agreement have collectively sold more than seven
19 million copies.

20 18. In connection with its records, its live performances and other merchandise,
21 Original Autograph employed two graphic trademarks (the “Logos”), depicted below. The
22 first is a stylized rendering of the AUTOGRAPH Mark. The second is a stylized rendering
23 of the letter ‘A’ superinscribed on a circle.



19. In 1989, Original Autograph paused touring, though it continued to sell merchandise bearing the AUTOGRAPH Mark and the Logos through approximately 2007, and it continues to sell records using the AUTOGRAPH Mark and the Logos.

20. As of the date of this Cross-Complaint, only Steve Plunkett and Cross-Plaintiff Lynch remain as partners in Original Autograph, all other Original Autograph Founders having each died.

2013 AUTOGRAPH

21. In 2013, Original Autograph Founders Lynch and Rand explored the possibility of performing again under the AUTOGRAPH Mark. By this time, Steve Isham was dead, Keni Richards was dogged by health problems, and Steve Plunkett was pursuing other interests and did not want to resume performing, but the remaining Original Autograph Founders approved Lynch and Rand performing under the AUTOGRAPH Mark.

22. To fill out the band, Lynch and Rand invited Cross-Defendants Simoni and Wieland to perform with them in this new band, referred to herein as "2013 Autograph." In order to conduct business as 2013 Autograph, Lynch created a limited liability company, Autograph Band LLC, under the laws of Washington State, where Lynch then resided.

23. From 2014 to 2019, 2013 Autograph performed perhaps 25 shows a year around the country and occasionally overseas. It employed the AUTOGRAPH Mark and Logos under license from Original Autograph.

24. In 2019, Lynch, suffering from carpal tunnel syndrome, withdrew from performance, and 2013 Autograph disbanded. The Washington State LLC formed to facilitate and execute 2013 Autograph's business was dissolved in 2019.

2019 AUTOGRAPH

25. Following the dissolution of 2013 Autograph, Rand, Simoni and Wieland wanted to continue performing under the AUTOGRAPH Mark and in association with the Logos. To this end, Rand formed a new limited liability company, Cross-Defendant Autograph Band.1 LLC, in Georgia, where Rand then resided. This newly re-formed band now included Rand, Simoni and Wieland, and subsequently Cross-Defendant Bell and non-party Steve Unger. Hereinafter, this new group shall be referred to as "2019 Autograph."

26. On information and belief, 2019 Autograph performed a few shows in 2019 under the AUTOGRAPH Mark. Thereafter, as a result of the burgeoning Covid epidemic, 2019 Autograph ceased performing for nearly two years. On information and belief, it resumed public performance in late 2021.

27. Original Autograph was content to permit 2019 Autograph to perform under the AUTOGRAPH Mark and in association with the Logos as long as Rand, an Original Autograph Founder, remained with the band.

28. In April 2022, Rand died. Consequently, in June 2022, Original Autograph terminated its license to 2019 Autograph for use of the AUTOGRAPH Mark and Logos.

THE PRESENT DISPUTE

29. Since Original Autograph gave notice to Cross-Defendants of termination of the license, 2019 Autograph has continued to perform under the AUTOGRAPH Mark and in association with the Logos.

30. On November 18, 2022, despite notice of Original Autograph's termination and of the present litigation, Cross-Defendant Frontier released a record album (the "2022 Album") featuring performances by 2019 Autograph under the AUTOGRAPH Mark and displaying the Logos. A copy of the cover of the 2022 Album is attached hereto as Exhibit 1.

1 31. On information and belief, 2019 Autograph registered the domain name
2 autographband.net in August 2022, and now maintains a website at that address (the
3 “Website”). The Website promotes performances by 2019 Autograph, and directs viewers
4 to sales points for apparel and other merchandise – including the 2022 Album – bearing the
5 AUTOGRAPH Mark and/or the Logos. Screenshots of the Website are attached hereto as
6 Exhibit 2.

7 32. Cross-Defendant Bigg Time has continued to book future performances for 2019
8 Autograph under the AUTOGRAPH Mark and in association with the Logos. Notably, in
9 promoting 2019 Autograph, Bigg Time’s website overview of the band states:

- 10 • Over 5 million albums sold worldwide
- 11 ...
- 12 • Toured with Motley Crue, Dio, Van Halen & Aerosmith
- 13 ...
- 14 • Released 3 hit albums: Sign In Please [1984], That’s The Stuff [1985], &
15 Loud and Clear [1987]

16 Screenshots of Bigg Time’s website are attached hereto as Exhibit 3.

17 33. Further, on information and belief, Cross-Defendants (except Frontier) have been
18 promoting recent live performances by 2019 Autograph by using photographs of Lynch
19 and the late Rand without authorization by Lynch or by Rand’s estate. Attached hereto as
20 Exhibits 4 and 5 are, respectively, copies of promotional material for a 2019 Autograph
21 performance on September 17, 2022, and promotional material for a 2019 Autograph
22 performance non October 15, 2022.

23 34. On May 24, 2022, Simoni and Wieland applied to the United States Patent &
24 Trademark Office (“USPTO”) to register the AUTOGRAPH Mark, under serial number
25 97425455 (the “’455 Application”), asserting exclusive rights to use the AUTOGRAPH
26 Mark in connection with the following services:

27 Entertainment services, namely, providing non-downloadable playback of
28 music via global communications networks; Entertainment, namely, live

1 music concerts; Entertainment, namely, live performances by a musical
2 band; Providing information in the field of music and entertainment via a
3 website.

4 The '455 Application asserts that the AUTOGRAPH Mark was first used in commerce "at
5 least as early as 01/00/2014." A copy of the '455 Application is attached hereto as Exhibit
6 6.

7 35. Among the specimens of use Wieland and Simoni submitted to the USPTO are
8 screenshots of the online retailer amazon.com. Those screenshots submitted to the USPTO
9 are attached hereto as Exhibit 7. Those screenshots show that amazon.com is offering for
10 sale two record albums under the AUTOGRAPH Mark and featuring the Logos:

- 11 • *That's the Stuff*, featuring the Original Autograph Founders, released in
- 12 • 1985, and re-released in 2009; and
- 13 • *The Anthology*, a 2011 compilation comprising remastered 1980s studio
14 demos featuring the Original Autograph Founders and remastered tracks
15 originally released in 2003 featuring Original Autograph Founder Steve
16 Plunkett and several session players.

17 In the '455 Application, Simoni and Wieland declare under penalty of perjury that
18 "The specimen(s) shows the mark as used on or in connection with the
19 goods/services in the application and was used on or in connection with the
20 goods/services in the application as of the application filing date."

21 **COUNT 1**

22 **For Declaratory Judgment and Injunctive Relief**

23 **Asserted by Cross-Plaintiffs against all Cross-Defendants**

24 36. Cross-Plaintiffs repeat and reallege the allegations contained in all prior paragraphs
25 as if fully set forth herein.

26 37. Live music audiences crave authenticity. Promoters and performance venues offer
27 radically different pay scales for legacy acts (older acts featuring performers from the act's
28 period of highest public notoriety) and for tribute acts (an act playing the songs made

1 famous by another, more famous artist, but composed of musicians not associated with the
2 famous act's period of highest public notoriety). The former receive much higher rates
3 than do the latter. Original Autograph's high point of public notoriety was in the 1980s,
4 when it produced three hit albums selling millions of copies.

5 38. 2019 Autograph now contains none of the members of Original Autograph, nor any
6 performer associated with Original Autograph. 2019 Autograph is a tribute band.
7 However, Cross-Defendants consistently passing off 2019 Autograph – which presently
8 contains no Original Autograph Founders – as Original Autograph.

9 39. Bigg Time, 2019 Autograph's booking agent, deliberately conflates the two bands
10 by alleging that the band Bigg Time promotes – 2019 Autograph – is the same band which
11 produced three hit albums selling millions of copies in the 1980s, more than thirty years
12 before 2019 Autograph was formed, and more than twenty years before Simoni, Wieland
13 and Bell had any involvement at all with a band called "Autograph."

14 40. In the '455 Application, Simoni and Wieland assert that their use of the
15 AUTOGRAPH Mark dates from 2014, but fraudulently submit to the USPTO specimens
16 of use showing Original Autograph record albums

- 17 • released long before Simoni and Wieland's asserted first use of the
- 18 AUTOGRAPH Mark
- 19 • released long before Simoni and Wieland's involvement with any band
- 20 called "Autograph"
- 21 • with which Simoni and Wieland have had no involvement of any kind,
- 22 whether as performers, producers, manufacturers or distributors.

23 Simoni and Wieland have "reverse passed off" on the USPTO two Original Autograph
24 recordings as their own.

25 41. Cross-Defendants' promotion of 2019 Autograph performances and sound
26 recordings constitutes, at best, an attempt to mislead promoters, performance venues and
27 the public into the false belief that 2019 Autograph, containing no Original Autograph
28 Founders, is the same band which recorded three hit albums in the 1980s and toured with

1 major contemporary artists such as Van Halen, Mötley Crüe and Aerosmith. Simoni and
2 Wieland's '455 Application is an out-and-out fraud on the USPTO.

3 42. Cross-Defendants' misleading use of the AUTOGRAPH Mark and the Logos
4 causes inevitable confusion between the famous Original Autograph and 2019 Autograph,
5 and the Court should enjoin Cross-Defendants' use of the AUTOGRAPH Mark and the
6 Logos.

7 43. Simoni and Wieland's '455 Application is invalid, owing to Simoni and Wieland's
8 demonstrably false statements in support of the specimens submitted to the USPTO in
9 support thereof. The Court should declare the '455 Application invalid, and instruct the
10 USPTO to cancel the '455 Application.

11 **COUNT 2**

12 **For Damages and Injunctive Relief pursuant to CAL. CIV. CODE § 3344**

13 **Asserted by Lynch against all Cross-Defendants except Frontier**

14 44. Cross-Plaintiffs repeat and reallege the allegations contained in all prior paragraphs
15 as if fully set forth herein.

16 45. As set forth above, Wieland, Simoni, Bell, 2019 Autograph LLC and Bigg Time
17 have each used Lynch's likeness to promote performances by 2019 Autograph, with which
18 Lynch has no connection, and which use Lynch has not authorized.

19 46. Lynch has suffered harm including damages and irreparable injury to his
20 professional reputation, and is entitled to an award of damages – including punitive
21 damages – costs and attorneys' fees, as well as injunctive relief, as set forth in CAL. CIV.
22 CODE § 3344.

23 **COUNT 3**

24 **For Damages and Injunctive Relief pursuant to 15 U.S.C. 1125(a)**

25 **Asserted by Original Autograph against all Cross-Defendants**

26 47. Cross-Plaintiffs repeat and reallege the allegations contained in all prior paragraphs
27 as if fully set forth herein.

1 48. Original Autograph has used the AUTOGRAPH Mark and the Logos continuously
2 since 1984 in connection with records, performances and merchandise.

3 49. Cross-Defendants' use of the AUTOGRAPH Mark and the Logos to promote
4 recordings, performances and merchandise by 2019 Autograph constitutes unfair
5 competition likely to confuse promoters, retailers and the buying public under 15 U.S.C.
6 1125(a).

7 50. As a result of Cross-Defendants' misuse of the AUTOGRAPH Mark and the
8 Logos, Original Autograph has suffered damages and irreparable injury to its commercial
9 reputation.

10 51. Original Autograph is entitled to an award of damages as set forth in 15 U.S.C.
11 1117(a) including, without limitation, treble damages at the Court's discretion, and an
12 award to Original Autograph of its costs and attorneys' fees as set forth in 15 U.S.C. §§
13 1117(a).

14 **COUNT 4**

15 **For Damages and Injunctive Relief pursuant to 15 U.S.C. 1125(d)**

16 **Asserted by Original Autograph against Wieland, Simoni, Bell,**

17 **2019 Autograph LLC and Doe Defendants**

18 52. Cross-Plaintiffs repeat and reallege the allegations contained in all prior paragraphs
19 as if fully set forth herein.

20 53. Original Autograph has used the AUTOGRAPH Mark and the Logos continuously
21 since 1984 in connection with records, performances and merchandise. The
22 AUTOGRAPH Mark is famous and/or distinctive, as those terms are used in Title 15 of
23 the United States Code.

24 54. On information and belief, 2019 Autograph registered the URL autographband.net
25 in August 2022, two months after Original Autograph notified Cross-Defendants of the
26 termination of its license to use the AUTOGRAPH Mark. At that address, it hosts the
27 Website which promotes 2019 Autograph's performances, records and merchandise.
28

1 55. Such registration and use of the autographband.net URL after notice of termination
2 of Original Autograph's license of the AUTOGRAPH Mark, and in light of Simoni and
3 Wieland's manifest bad faith in applying fraudulently to register the AUTOGRAPH Mark
4 at the USPTO, constitutes "bad faith" as the term is used in 15 U.S.C. 1117(d).

5 56. Original Autograph has sustained harm to its in commercial reputation in
6 consequence of 2019 Autograph's bad faith registration and use of the autographband.net
7 URL.

8 57. As a result of Cross-Defendants' bad faith registration and use of the
9 autographband.net URL, Original Autograph is entitled to an award of either its damages
10 plus Cross-Defendants' profits – which award may be multiplied up to three times at the
11 Court's discretion – or, at Original Autograph's election, of statutory damages of between
12 \$1,000 and \$100,000, plus Original Autograph's costs and attorneys' fees, as set forth in
13 15 U.S.C. §§ 1117(a) & (d).

14 **COUNT 5**

15 **For Injunctive Relief pursuant to**

16 **CAL. BUS. & PROF. CODE §§ 17200 *et seq.***

17 **Asserted by Original Autograph against all Cross-Defendants**

18 58. Cross-Plaintiffs repeat and reallege the allegations contained in all prior paragraphs
19 as if fully set forth herein.

20 59. Original Autograph has used the AUTOGRAPH Mark and the Logos continuously
21 since 1984 in connection with records, performances and merchandise.

22 60. Cross-Defendants' use of the AUTOGRAPH Mark and the Logos to promote
23 recordings, performances and merchandise by 2019 Autograph constitutes unfair
24 competition likely to confuse promoters, retailers and the buying public under CAL. BUS. &
25 PROF. CODE §§ 17200 *et seq.*

26 61. As a result of Cross-Defendants' misuse of the AUTOGRAPH Mark and the
27 Logos, Original Autograph has suffered damages and irreparable injury to its commercial
28 reputation.

1 **COUNT 6**

2 **For Damages and Injunctive Relief against unfair competition**

3 **pursuant to Common Law**

4 **Asserted by Original Autograph against all Cross-Defendants**

5 62. Cross-Plaintiffs repeat and reallege the allegations contained in all prior paragraphs
6 as if fully set forth herein.

7 63. Original Autograph has used the AUTOGRAPH Mark and the Logos continuously
8 since 1984 in connection with records, performances and merchandise.

9 64. Cross-Defendants' use of the AUTOGRAPH Mark and the Logos to promote
10 recordings, performances and merchandise by 2019 Autograph constitutes unfair
11 competition likely to confuse promoters, retailers and the buying public under the common
12 law.

13 65. As a result of Cross-Defendants' misuse of the AUTOGRAPH Mark and the
14 Logos, Original Autograph has suffered damages and irreparable injury to its commercial
15 reputation.

16 66. Original Autograph is entitled to an award of damages and/or injunctive relief
17 under the common law.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Cross-Plaintiffs request that the Court:

- 20 1. Declare that Original Autograph is the sole owner of common law
21 trademark rights throughout the United States in the mark "AUTOGRAPH"
22 and of the Logos, as used by a musical act;
- 23 2. Declare that the '455 Application is invalid as a result of fraud, and instruct
24 the USPTO to cancel the '455 Application;
- 25 3. Permanently enjoin Cross-Defendants, and each of them, and any party
26 acting in concert with Cross-Defendants, from using the mark
27 "AUTOGRAPH" or the Logos, or any confusingly similar marks, in
28 connection with promoting a musical act, live performances or sound

1 recordings by a musical act, and from marketing merchandise associated
2 with a musical act, per industry custom;

- 3 4. Permanently enjoin Cross-Defendants, and each of them, from using
4 Lynch's name, voice, signature, photograph or likeness to promote any
5 musical performance or sound recording, or in marketing merchandise
6 associated with a musical act, per industry custom;
- 7 5. Award Original Autograph damages resulting from Cross-Defendants'
8 infringement of Original Autograph's exclusive rights in the
9 "AUTOGRAPH" mark and the Logos pursuant to the maximum extent
10 permitted by state and federal law, including without limitation Cross-
11 Defendants' profits, Original Autograph's damages, and the costs of the
12 present action, pursuant to 15 U.S.C. 1117(a) and, at Original Autograph's
13 option, statutory damages pursuant to 15 U.S.C. 1117(d);
- 14 6. Award Lynch damages resulting from the unauthorized use of his likeness
15 in promoting performances by 2019 Autograph pursuant to Cal. Civ. Code §
16 3344, including without limitation the greater of specified statutory
17 minimum damages or Cross-Defendants' profits derived from such
18 unauthorized use, and punitive damages;
- 19 7. Award all other damages sustained by Cross-Plaintiffs resulting from Cross-
20 Defendants' actions described herein;
- 21 8. Award Cross-Plaintiffs their costs and attorneys' fees incurred in pursuing
22 this action, including without limitation under Cal. Civ. Code § 3344 and 15
23 U.S.C. 1117; and
- 24 9. Such other and further relief as the Court shall deem proper.

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ROMANO LAW LLP

By: Joshua Graubart

Attorneys for Cross-Plaintiffs

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Cross-Complaint

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Exhibit 1

Cover of *Beyond* album
released by Frontier Records S.r.l.
November 2022

AUTOGRAPH

BEYOND



Cross-Complaint

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Case No. 22-ST-CV-21696

Exhibit 2

Screenshots of autographband.net website

AUTOGRAPH

[HOME](#)[BIO](#)[PHOTOS](#)[MUSIC](#)[TOUR](#)[CONTACT](#)[SHOP](#)

2022 TOUR DATES
CLICK HERE



AUTOGRAPH

Official Online-Store!



New album, "BEYOND" arriving on
November 18th via Frontiers Records!
Pre-Order [HERE](#)



Dedicated to our brother Randy Rand.



f facebook



Autograph
35,510 followers

Follow Page

Share

twitter

Tweets from @AutographBand

Autograph
@AutographBand · Nov 24

The pie is ready! Wishing all of you a very Happy Thanksgiving!

38

Autograph
@AutographBand · Nov 22



Instagram



Cross-Complaint

Simoni , et al. v. Lynch

Case No. 22-ST-CV-21696

Exhibit 3

Screenshots of Bigg Time Entertainment Inc.
website



[ARTISTS](#)

[ROCK
PACKAGES](#)

[ABOUT](#)

[TOUR
DATES](#)

[DEPOSIT
INFO](#)

[NEWS](#)

[SUBMIT
OFFER](#)

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CELEBRATING OVER 15 YEARS OF ENTERTAINMENT EXCELLENCE

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AUTOGRAPH

OVERVIEW

- Over 5 million albums sold worldwide
- Successfully touring with this new line up since 2014 hitting the four corners of the USA, Canada, & U.K.
- "Turn Up The Radio" a Worldwide Smash Rock Anthem & Billboard Hit
- "Turn Up The Radio Featured In: "Grand Theft Auto" video game; "Hot Tub Time Machine" movie; "Entertainment Weekly's" compilation of greatest rock tracks
- Hit song "She Never Looked That Good For Me" featured in the movie "Like Father Like Son" w/ Kirk Cameron & Dudley Moore
- Toured with Motley Crue, Dio, Van Halen & Aerosmith
- Released 3 hit albums: Sign In Please [1984], That's The Stuff [1985] & Loud and Clear [1987]
- Released 3 singles in 2015, hitting the top 10 downloads on iTunes & another featured in Classic Rock Magazine
- Released a new Album titled "Get Off Your Ass" on Megadeth's David Ellefson's EMP Label Group hitting #21 on the Billboard Classic Rock Sales Chart & had 2 singles on the Top 10 Hard Rock Media Radio Chart.

SONGS

- "Turn Up The Radio"
- "Blondes in Black Cars"
- "Loud & Clear"
- "Send Her To Me"
- "She Never Looked That Good For Me"
- "That's The Stuff"
- And More!!!



www.AutographBand.net

BIOGRAPHY

Autograph left an everlasting imprint on Rock 'N' Roll. The platinum-selling Southern California hard rock juggernauts gave the world the ubiquitous hit "TURN UP THE RADIO", seminal albums such as Sign In Please [1984], That's The Stuff [1985], and Loud and Clear [1987] as well as unforgettable sold out shows alongside everybody from Mötley Crüe and Ronnie James Dio to Van Halen and Aerosmith. Given those accolades, when they disbanded in 1989, they never left the hearts and minds of millions of fans around the globe. Simply put, a reunion was both inevitable.

In 2011, founders bassist Randy Rand and guitarist Steve Lynch decided to meet up at the NAMM show in Anaheim. They rekindled their friendship first. With the relationship rebuilt, they made a collective decision to play again. "We approached our original singer Steve Plunkett about a reunion," recalls Rand. "He didn't have the time to join the band again due to his busy schedule. He did give us his blessing to move forward though, and that was important. We missed our fans. This is for them." Fully embracing the future, the remaining members caught some videos of Singer/Guitarist/Songwriter Simon Daniels of Jailhouse, Flood, 1RKO on YouTube. Instantly, they sensed a connection and knew that he was meant for the open spot in the center stage. "He was perfect to front Autograph" smiles Rand. His hard-edged, bluesy voice and massive riffing sharpen our edge. He's given us a new energy, and he impressed us immediately." "We all had a euphoric feeling after the first rehearsal," Rand adds. With the lineup solidified, Autograph stand poised to shake Rock 'n' Roll up yet again. It's as if every element has been enhanced from the guitars to the bass and vocals as well as drums with the addition of hard hitter and dynamic Drummer Marc Wieland. Rand says that during his long-lived career he only loved playing with two drummers; one is the great late Randy Castillo, and then there is Marc Wieland. As the band puts it, "We're heavier than before. At the same time, the melodic vocals and catchy hooks are still an integral part of our sound." Successfully touring again since the beginning of 2014 Autograph has strived and shined at Arenas, Casinos, major Music Festivals as M3, Monsters of Rock Cruises, The Moondance Jam, 80's in the Park, Grand Rock Tember, Cat Club Festival at Irvine Meadows, Firefest UK, among others reaching the 4 corners of the USA along with Canada and Europe as well as releasing 2 new anthem singles with one of them "I Lost My Mind in America" making the TOP 10 ITUNES Charts and a crowd favorite "You Are Us, We Are You" receiving great reviews and airplay as well. In 2017 Autograph released a new full length Album on Megadeth's David Ellefson's EMP Label Group hitting # 21 on the Billboard Classic Rock Sales Chart as well as placing 2 new singles on the top 10 Hard Rock Media base Radio Chart. In 2019 Lynch decided to leave the group to pursue different musical styles and was replaced by international Monster Shredder Guitarist Jimi Bell formally from the band House of Lords from RCA Records, 1st runner for Ozzy Osbourne in 1986 and featured in the classic movie "Light of day" starring Joan Jett and Michael J Fox as Joan Jetts band guitarist in the movie and playing on the soundtrack. The band delivers an undeniably bombastic live performance and was featured on the USA TODAY news website. The Timeless iconic Classic Rock Anthem Top 40 HIT Single "Turn up the Radio" continues to receive constant and permanent Radio Airplay on all Major Rock Radio stations around the World as the line up is praised by the fans and the critics for their powerful live performances.

We tragically lost our brother, Randy Rand on April 26th 2022. His passing was untimely, as he had so much rockin' left to do. We dedicate our upcoming album "Beyond" to our bandmate and founding member of Autograph. His signature bass playing is a major part of the new record and his spirit is felt throughout.

The new Album also serves as a catalyst for bringing Autograph into a new era of rock with its heavy-hitting and powerful sound. In the spirit of Randy's love for music, his excitement on the new release and eternal brotherhood, this one's for you. Thank you Randy for keeping us connected, bringing people together from all walks of life and fueling the social bonds that music invites.
Rest easy brother, we love you

Steve Unger from Metal Church has taken over the bass duties for the band as the legacy of Autograph continues on with a new album dedicated to Randy Rand and a busy schedule of touring..



A proud member of:



Cross-Complaint

Simoni , et al. v. Lynch

Case No. 22-ST-CV-21696

Exhibit 4

Promotional materials for 2019 Autograph
performance on Sept. 17, 2022

Done

2 of 2



24IX.COM

→ MENU

→ SIGN IN



Leatherheads presents

AUTOGRAPH

Hollywood Gods & Monsters

Milf & Cookies

Saturday,
September 17, 2022
8:00PM MDT

**Leatherheads Sports Bar**

12147 State Street
Draper, UT 84020



Cross-Complaint

Simoni , et al. v. Lynch

Case No. 22-ST-CV-21696

Exhibit 5

Promotional materials for 2019 Autograph
performance on October 15, 2022



SATURDAY OCT 15TH
AUTOGRAPH 7-9 PM QUIET RIOT 9-11 PM

QUIET RIOT

AUTOGRAPH



FEATHER FALLS CASINO LODGE AND RESORT

Cross-Complaint

Simoni , et al. v. Lynch

Case No. 22-ST-CV-21696

Exhibit 6

USPTO Application no. 97425455
for AUTOGRAPH mark

Trademark/Service Mark Application, Principal Register

Serial Number: 97425455

Filing Date: 05/24/2022

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	97425455
MARK INFORMATION	
*MARK	AUTOGRAPH
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	AUTOGRAPH
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Daniel Simoni
*MAILING ADDRESS	15217 Morrison St
*CITY	Sherman Oaks
*STATE (Required for U.S. applicants)	California
*COUNTRY/REGION/JURISDICTION/U.S. TERRITORY	United States
*ZIP/POSTAL CODE (Required for U.S. and certain international addresses)	91403
*EMAIL ADDRESS	XXXX
LEGAL ENTITY INFORMATION	
TYPE	individual
COUNTRY/REGION/JURISDICTION/U.S. TERRITORY OF CITIZENSHIP	United States
APPLICANT INFORMATION	
*OWNER OF MARK	Marc Wieland
*MAILING ADDRESS	15217 Morrison St
*CITY	Sherman Oaks
*STATE (Required for U.S. applicants)	California
*COUNTRY/REGION/JURISDICTION/U.S. TERRITORY	United States
*ZIP/POSTAL CODE (Required for U.S. and certain international addresses)	91403
*EMAIL ADDRESS	XXXX

LEGAL ENTITY INFORMATION	
TYPE	individual
COUNTRY/REGION/JURISDICTION/U.S. TERRITORY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	041
*IDENTIFICATION	Entertainment services, namely, providing non-downloadable playback of music via global communications networks; Entertainment, namely, live music concerts; Entertainment, namely, live performances by a musical band; Providing information in the field of music and entertainment via a website
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/00/2014
FIRST USE IN COMMERCE DATE	At least as early as 01/00/2014
SPECIMEN FILE NAME(S)	
ORIGINAL PDF FILE	SPE0-2425333120-202205231 62652689023 . 556174122 0 41 S1.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT18\IMAGEOUT 18\974\254\97425455\xml1\ APP0003.JPG
	\\TICRS\EXPORT18\IMAGEOUT 18\974\254\97425455\xml1\ APP0004.JPG
ORIGINAL PDF FILE	SPE0-2425333120-202205231 62652689023 . 556174122 0 41 S2.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT18\IMAGEOUT 18\974\254\97425455\xml1\ APP0005.JPG
ORIGINAL PDF FILE	SPE0-2425333120-202205231 62652689023 . 556174122 0 41 S3.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT18\IMAGEOUT 18\974\254\97425455\xml1\ APP0006.JPG
ORIGINAL PDF FILE	SPE0-2425333120-202205231 62652689023 . 556174122 0 09 041 S1.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT18\IMAGEOUT 18\974\254\97425455\xml1\ APP0007.JPG
ORIGINAL PDF FILE	SPE0-2425333120-202205231 62652689023 . 556174122 0 09 041 S2.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT18\IMAGEOUT 18\974\254\97425455\xml1\ APP0008.JPG
SPECIMEN DESCRIPTION	screenshots of applicant's mark promoting the services claimed
WEBPAGE URL	https://www.bigtimeinc.com/autograph.html
WEBPAGE DATE OF ACCESS	05/03/2022
WEBPAGE URL	https://autographband.com/bio.htm
WEBPAGE DATE OF ACCESS	05/03/2022
	https://www.amazon.com/Thats-The-Stuff-

WEBPAGE URL	Autograph/dp/B002Q8YC1W/ref=ntt_mus_ep_dpi_2
WEBPAGE DATE OF ACCESS	05/03/2022
ATTORNEY INFORMATION	
NAME	Alec Ross
ATTORNEY DOCKET NUMBER	K556174122
ATTORNEY BAR MEMBERSHIP NUMBER	XXX
YEAR OF ADMISSION	XXXX
U.S. STATE/ COMMONWEALTH/ TERRITORY	XX
FIRM NAME	LegalZoom Legal Services
STREET	9900 Spectrum Drive
CITY	Austin
STATE	Texas
COUNTRY/REGION/JURISDICTION/U.S. TERRITORY	United States
ZIP/POSTAL CODE	78717
PHONE	818-230-7575
EMAIL ADDRESS	tm@lzlegalservices.com
OTHER APPOINTED ATTORNEY	all other LegalZoom Legal Services attorneys
CORRESPONDENCE INFORMATION	
NAME	Alec Ross
PRIMARY EMAIL ADDRESS FOR CORRESPONDENCE	tm@lzlegalservices.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES)	NOT PROVIDED
FEE INFORMATION	
APPLICATION FILING OPTION	TEAS Standard
NUMBER OF CLASSES	1
APPLICATION FOR REGISTRATION PER CLASS	350
*TOTAL FEES DUE	350
*TOTAL FEES PAID	350
SIGNATURE INFORMATION	
SIGNATURE	/Daniel Simoni/
SIGNATORY'S NAME	Daniel Simoni
SIGNATORY'S POSITION	Owner
SIGNATORY'S PHONE NUMBER	818-694-6632
DATE SIGNED	05/23/2022
SIGNATURE METHOD	Sent to third party for signature
SIGNATURE	/Marc Wieland/
SIGNATORY'S NAME	Marc Wieland
SIGNATORY'S POSITION	Owner

SIGNATORY'S PHONE NUMBER	323-632-3334
DATE SIGNED	05/23/2022
SIGNATURE METHOD	Sent to third party for signature

Trademark/Service Mark Application, Principal Register**Serial Number: 97425455****Filing Date: 05/24/2022****To the Commissioner for Trademarks:****MARK:** AUTOGRAPH (Standard Characters, see [mark](#))

The literal element of the mark consists of AUTOGRAPH. The mark consists of standard characters, without claim to any particular font style, size, or color.

The applicants, Daniel Simoni, a citizen of United States, having an address of

15217 Morrison St
Sherman Oaks, California 91403
United States
XXXX

Marc Wieland, a citizen of United States, having an address of

15217 Morrison St
Sherman Oaks, California 91403
United States
XXXX

request registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 041: Entertainment services, namely, providing non-downloadable playback of music via global communications networks; Entertainment, namely, live music concerts; Entertainment, namely, live performances by a musical band; Providing information in the field of music and entertainment via a website

In International Class 041, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 01/00/2014, and first used in commerce at least as early as 01/00/2014, and is now in use in such commerce. The applicants are submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods/services, consisting of a(n) screenshots of applicant's mark promoting the services claimed.

Original PDF file:[SPE0-2425333120-202205231 62652689023 . 556174122 0 41 S1.pdf](#)**Converted PDF file(s) (2 pages)**[Specimen File1](#)[Specimen File2](#)**Original PDF file:**[SPE0-2425333120-202205231 62652689023 . 556174122 0 41 S2.pdf](#)**Converted PDF file(s) (1 page)**[Specimen File1](#)**Original PDF file:**[SPE0-2425333120-202205231 62652689023 . 556174122 0 41 S3.pdf](#)**Converted PDF file(s) (1 page)**[Specimen File1](#)**Original PDF file:**[SPE0-2425333120-202205231 62652689023 . 556174122 0 09 041 S1.pdf](#)**Converted PDF file(s) (1 page)**[Specimen File1](#)**Original PDF file:**[SPE0-2425333120-202205231 62652689023 . 556174122 0 09 041 S2.pdf](#)**Converted PDF file(s) (1 page)**[Specimen File1](#)

Webpage URL: <https://www.biggttimeinc.com/autograph.html>

Webpage Date of Access: 05/03/2022

Webpage URL: <https://autographband.com/bio.htm>

Webpage Date of Access: 05/03/2022

Webpage URL: https://www.amazon.com/Thats-The-Stuff-Autograph/dp/B002Q8YC1W/ref=ntt_mus_ep_dpi_2

Webpage Date of Access: 05/03/2022

The owner's/holder's proposed attorney information: Alec Ross. Other appointed attorneys are all other LegalZoom Legal Services attorneys. Alec Ross of LegalZoom Legal Services, is a member of the XX bar, admitted to the bar in XXXX, bar membership no. XXX, and the attorney(s) is located at

9900 Spectrum Drive
Austin, Texas 78717
United States
818-230-7575(phone)
tm@lzlegalservices.com

The docket/reference number is K556174122.

Alec Ross submitted the following statement: The attorney of record is an active member in good standing of the bar of the highest court of a U.S. state, the District of Columbia, or any U.S. Commonwealth or territory.

The applicant's current Correspondence Information:

Alec Ross

PRIMARY EMAIL FOR CORRESPONDENCE: tm@lzlegalservices.com SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES): NOT PROVIDED

Requirement for Email and Electronic Filing: I understand that a valid email address must be maintained by the applicant owner/holder and the applicant owner's/holder's attorney, if appointed, and that all official trademark correspondence must be submitted via the Trademark Electronic Application System (TEAS).

A fee payment in the amount of \$350 has been submitted with the application, representing payment for 1 class(es).

Declaration

☒ **Basis:**

If the applicant is filing the application based on use in commerce under 15 U.S.C. § 1051(a):

- The signatory believes that the applicant is the owner of the trademark/service mark sought to be registered;
- The mark is in use in commerce and was in use in commerce as of the filing date of the application on or in connection with the goods/services in the application;
- The specimen(s) shows the mark as used on or in connection with the goods/services in the application and was used on or in connection with the goods/services in the application as of the application filing date; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

And/Or

If the applicant is filing the application based on an intent to use the mark in commerce under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e):

- The signatory believes that the applicant is entitled to use the mark in commerce;
- The applicant has a bona fide intention to use the mark in commerce and had a bona fide intention to use the mark in commerce as of the application filing date on or in connection with the goods/services in the application; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

☒ To the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive.

☒ To the best of the signatory's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.

☒ The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /Daniel Simoni/ Date: 05/23/2022
Signatory's Name: Daniel Simoni
Signatory's Position: Owner
Signatory's Phone Number: 818-694-6632
Signature method: Sent to third party for signature
Signature: /Marc Wieland/ Date: 05/23/2022
Signatory's Name: Marc Wieland
Signatory's Position: Owner
Signatory's Phone Number: 323-632-3334
Signature method: Sent to third party for signature
Payment Sale Number: 97425455
Payment Accounting Date: 05/24/2022

Serial Number: 97425455
Internet Transmission Date: Tue May 24 10:37:13 ET 2022
TEAS Stamp: USPTO/BAS-XX.XXX.XX.XXX-2022052410371371
0561-97425455-82010ee433cfa36bf9188e14c5
1ec619e899eb0a8fa88ffb91b585a2681ca1e5-D
A-37134659-20220523162652689023

Cross-Complaint

Simoni , et al. v. Lynch

Case No. 22-ST-CV-21696

Exhibit 7

amazon.com screenshots

submitted as specimens

in connection with

USPTO Application no. 97425455

The screenshot displays the Amazon Music product page for the album 'Autograph: That's the Stuff' by Import. The page layout includes a top navigation bar with the Amazon logo, search bar, and account links. Below the navigation bar, the product title and artist name are prominently displayed. The album cover art features a stylized figure in a dynamic pose. The pricing section shows the album is available for \$16.99, with a 10% discount applied. Various purchasing options are listed, including streaming, digital download, and physical formats like CD and vinyl. A 'Frequently bought together' section suggests related products, and a 'Customers who viewed this item also viewed' section is visible at the bottom. The right sidebar contains additional information, including delivery options and a list of other albums by the same artist.

amazon Deliver to: Wilson
Record Rock 78000

amazon music

Autograph: That's the Stuff
Import: Extra Tracks, Remastered
Autograph Various Artists CD
10% off **\$16.99**
with Prime. Add to list

Streaming **Digital** **Audio CD** **Vinyl** **Audio Cassette**
Download to your library Download to your library Download to your library Download to your library Download to your library

Autograph
Includes FREE MP3 download of the album (downloaded to your Amazon Music library). This includes the album's bonus tracks (downloaded to your Amazon Music library).
Available as a lower price than other offers (but may not offer the Prime discount).

Autograph
Autograph: That's the Stuff (CD) **\$16.99**
Download to your library

Frequently bought together

Customers who viewed this item also viewed

Other Sellers on Amazon

\$15.27
+ \$3.99 shipping
Only 10 left in stock - order soon.

\$17.99
+ \$3.99 shipping (can't ship together)
Only 10 left in stock - order soon.

\$15.11
+ \$3.99 shipping
Only 10 left in stock - order soon.

The Anthology
Various Artists
★★★★★
17th

View all 32 reviews and ratings

Streaming	MP3	Audio CD
Available	Available	\$17.99
View details	View details	View details

22 People who bought this item also bought:

Click image to see other recommended items

View more like this

Frequently bought together

Total price: \$39.97
[View details](#)

3 items of \$19.99 each. Buy more than 1 item, and save more.

- This item:** The Anthology by Various Artists CD \$17.99
- See CD: The Anthology 2 by Various Artists CD \$17.99**
- See CD: The Anthology 3 by Various Artists CD \$17.99**

Customers who viewed this item also viewed

The Anthology 2
Various Artists
★★★★★
\$6.99

View all 32 reviews and ratings

17th

View details

The Anthology 3
Various Artists
★★★★★
\$17.99

View all 32 reviews and ratings

17th

View details

The Anthology 4
Various Artists
★★★★★
\$17.99

View all 32 reviews and ratings

17th

View details

The Anthology 5
Various Artists
★★★★★
\$17.99

View all 32 reviews and ratings

17th

View details

The Anthology 6
Various Artists
★★★★★
\$17.99

View all 32 reviews and ratings

17th

View details

The Anthology 7
Various Artists
★★★★★
\$17.99

View all 32 reviews and ratings

17th

View details

The Anthology 8
Various Artists
★★★★★
\$17.99

View all 32 reviews and ratings

17th

View details

The Anthology 9
Various Artists
★★★★★
\$17.99

View all 32 reviews and ratings

17th

View details

The Anthology 10
Various Artists
★★★★★
\$17.99

View all 32 reviews and ratings

17th

View details

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 309,735 NAME: Joshua Graubart FIRM NAME: Romano Law LLP STREET ADDRESS: 2221 Camino del Rio South Suite 101 CITY: San Diego STATE: CA ZIP CODE: 92108 TELEPHONE NO.: 212-865-9848 FAX NO.: 646-661-4599 E-MAIL ADDRESS: joshua@romanolaw.com ATTORNEY FOR (name): Steven Lynch	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill St. MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, 90012 BRANCH NAME: Stanley Mosk Courthouse	
PLAINTIFF/PETITIONER: Daniel Simoni and Marc Wieland DEFENDANT/RESPONDENT: Steven Lynch	CASE NUMBER: 22-ST-CV-21696
PROOF OF ELECTRONIC SERVICE	JUDICIAL OFFICER: Jon R. Takasugi
	DEPARTMENT: 17

1. I am at least 18 years old.

- a. My residence or business address is (*specify*):
 Romano Law LLP | 2221 Camino del Rio South | Suite 101 | San Diego, CA 92108
- b. My electronic service address is (*specify*):
 joshua@romanolaw.com

2. I electronically served the following documents (*exact titles*):
 (1) Cross-Complaint and Accompanying Exhibits

☐ The documents served are listed in an attachment. (*Form POS-050(D)/EFS-050(D) may be used for this purpose.*)

3. I electronically served the documents listed in 2 as follows:

- a. Name of person served: Eric Bjorgum
 On behalf of (*name or names of parties represented, if person served is an attorney*):
 Daniel Simoni and Marc Wieland
- b. Electronic service address of person served :
 eric.bjorgum@kb-ip.com
- c. On (*date*): November 30, 2022

☐ The documents listed in item 2 were served electronically on the persons and in the manner described in an attachment.
 (*Form POS-050(P)/EFS-050(P) may be used for this purpose.*)

Date: November 30, 2022

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Joshua Graubart

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

Exhibit F

A. Eric Bjorgum (State Bar No. 198392)
Vincent Pollmeier (State Bar No. 210684)
KARISH & BJORGUM, PC
119 E. Union Street, Suite B
Pasadena, CA 91103
Telephone: (213) 785-8070
Facsimile: (213) 995-5010

Attorneys for Plaintiffs and Cross-Defendants
DANIEL SIMONI and MARC
WIELAND

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DANIEL SIMONI and MARC
WIELAND, individuals,

Plaintiffs,

vs.

STEVE LYNCH, an individual,

Defendant.

) Case No. 22STCV21696

) **ANSWER OF CROSS-DEFENDANTS**
) **DANIEL SIMONI AND MARC WIELAND**
) **TO CROSS-COMPLAINT OF STEVE**
) **LYNCH**

) Date: Hon. Judge Jon R. Takasugi

STEVE LYNCH, an individual

Cross-Complainant,

vs.

DANIEL SIMONI and MARC
WIELAND,

Cross-Defendants.

ANSWER OF CROSS-DEFENDANTS

1 CROSS-DEFENDANTS AND DANIEL SIMONI AND MARC WIELAND hereby
2 answer the Cross-Complaint of Defendant and Cross-Complainant Steve Lynch as
3 follows:

4 Under the provisions of § 431.30 of the California Code of Civil Procedure, these
5 answering -Cross-Defendants deny each and every allegation and cause of action in the
6 Cross-Complaint, and further deny that has Cross-Complainant has been or will be
7 damaged in the sum or sums alleged or in any sum whatsoever.

8 These answering Cross-Defendants further deny that Cross-Complainant's
9 alleged damages resulted from or were in any way connected with any act, omission,
10 fault, conduct or liability or on the part of these answering Cross-Defendants, whether
11 negligent, careless, unlawful, or of any nature alleged or otherwise.

12 **FIRST AFFIRMATIVE DEFENSE**

13 **(Failure to State Cause of Action)**

14 1. Cross-Defendants are informed and believe and upon such information and belief
15 allege that Cross-Complainant's Complaint and each and every cause of action alleged
16 therein fails to state facts sufficient to constitute a good meritorious cause of action
17 against these answering Cross-Defendants.

18 **SECOND AFFIRMATIVE DEFENSE**

19 **(Failure to Mitigate Damages)**

20 2. Cross-Defendants are informed and believe and upon such information and belief
21 allege that if Cross-Complainant sustained any injuries or damages as a result of the
22 incident complained in this action, then Cross-Complainant proximately caused,
23 aggravated and failed to take proper action to reduce and/or mitigate said injuries or
24 damages.

25 3. Cross-Defendants are informed and believe, and upon such information and belief
26 allege, that with due diligence, Cross-Complainant could have mitigated the damages
27 asserted in Cross-Complainant's Complaint, but failed to do so.

28

ANSWER OF CROSS-DEFENDANTS

1 **THIRD AFFIRMATIVE DEFENSE**

2 **(Waiver, Acquiescence, and Estoppel)**

3 4. Each of the purported claims set forth in the Complaint is barred by the doctrines
4 of waiver, acquiescence, and estoppel.

5 **FOURTH AFFIRMATIVE DEFENSE**

6 **(Unclean Hands)**

7 5. Cross-Defendants are informed and believe and upon such information and belief
8 allege that Cross-Complainant's claim is barred because Cross-Complainant cannot bring
9 this claim because of the equitable doctrine of unclean hands.

10 **SIXTH AFFIRMATIVE DEFENSE**

11 **(Laches)**

12 6. Cross-Defendants are informed and believe and upon such information and belief
13 allege that Cross-Complainant is barred from recovery due to the doctrine of laches.

14 **SEVENTH AFFIRMATIVE DEFENSE**

15 **(Lack of Standing)**

16 7. Cross-Defendants are informed and believe and upon such information and belief
17 allege that Cross-Complainant does not own the trade secret and is not an exclusive
18 licensee of the trade secret with standing to bring this case.

19 **EIGHTH AFFIRMATIVE DEFENSE**

20 **(Additional Defenses)**

21 8. Cross-Defendants presently have insufficient knowledge or information upon
22 which they can form a belief as to whether they may have additional, as yet unstated,
23 affirmative defenses. Cross-Defendants reserve the right to amend their answer to assert
24 such additional affirmative defenses in the event that discovery indicates that additional
25 affirmative defenses are appropriate.

26
27 WHEREFORE, these answering Cross-Defendants pray for judgment as follows:

28 1. That Cross-Complainant take nothing by reason of the Cross-Complaint;

ANSWER OF CROSS-DEFENDANTS

- 1 2. That the Court enters judgment in favor of these answering Cross-Defendants.
2 3. That these answering Cross-Defendants have judgment for their costs incurred
3 herein, including, but not limited to attorneys' fees as applicable; and
4 4. For other and further relief the Court deems just and proper.
5

6 Dated: December 28, 2022

KARSH & BJORGUM, PC

7
8 /s/ A. Eric Bjorgum
9 A. Eric Bjorgum
10 Attorneys for Plaintiffs and Cross-Defendants
11 Daniel Simoni and Marc Wieland
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Exhibit G

Trademark/Service Mark Application, Principal Register

Serial Number: 97833499

Filing Date: 03/10/2023

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	97833499
MARK INFORMATION	
*MARK	AUTOGRAPH
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	AUTOGRAPH
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Steven L. Lynch
*MAILING ADDRESS	11813 Trevally Loop, #301
*CITY	Trinity
*STATE (Required for U.S. applicants)	Florida
*COUNTRY/REGION/JURISDICTION/U.S. TERRITORY	United States
*ZIP/POSTAL CODE (Required for U.S. and certain international addresses)	34655
*EMAIL ADDRESS	XXXX
LEGAL ENTITY INFORMATION	
TYPE	individual
COUNTRY/REGION/JURISDICTION/U.S. TERRITORY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	009
*IDENTIFICATION	Audio and video recordings featuring music and artistic performance; downloadable music files
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/25/1984
FIRST USE IN COMMERCE DATE	At least as early as 01/25/1984
SPECIMEN FILE NAME(S)	
	\\TICRS\EXPORT18\IMAGEOUT

JPG FILE(S)	18\978\334\97833499\xml1 \ APP0007.JPG
ORIGINAL PDF FILE	SPE0-98160190161-20230310 124827835879 . AUTOGRAPH - Download.pdf
CONVERTED PDF FILE(S) (4 pages)	\\TICRS\EXPORT18\IMAGEOUT 18\978\334\97833499\xml1\ APP0003.JPG
	\\TICRS\EXPORT18\IMAGEOUT 18\978\334\97833499\xml1\ APP0004.JPG
	\\TICRS\EXPORT18\IMAGEOUT 18\978\334\97833499\xml1\ APP0005.JPG
	\\TICRS\EXPORT18\IMAGEOUT 18\978\334\97833499\xml1\ APP0006.JPG
SPECIMEN DESCRIPTION	snapshots of webpage bearing the mark and offering the goods for sale and photographs of album
WEBPAGE URL	https://www.discogs.com/master/289134-Autograph-Loud-And-Clear
WEBPAGE DATE OF ACCESS	03/10/2023
INTERNATIONAL CLASS	041
*IDENTIFICATION	Performances by a vocal and instrumental group; entertainment, namely, live music concerts; entertainment, namely, live performances by a musical band; providing information in the field of music and entertainment via a website
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/25/1984
FIRST USE IN COMMERCE DATE	At least as early as 01/25/1984
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT18\IMAGEOUT 18\978\334\97833499\xml1 \ APP0008.JPG
	\\TICRS\EXPORT18\IMAGEOUT 18\978\334\97833499\xml1 \ APP0009.JPG
SPECIMEN DESCRIPTION	photographs bearing the mark and advertising the services
WEBPAGE URL	None Provided
WEBPAGE DATE OF ACCESS	None Provided
ATTORNEY INFORMATION	
NAME	Eric N. Kohli
ATTORNEY DOCKET NUMBER	310361-00002
ATTORNEY BAR MEMBERSHIP NUMBER	XXX
YEAR OF ADMISSION	XXXX
U.S. STATE/ COMMONWEALTH/ TERRITORY	XX
FIRM NAME	Lewis Roca Rothgerber Christie LLP
STREET	3993 Howard Hughes Parkway, Suite 600
CITY	Las Vegas
STATE	Nevada

COUNTRY/REGION/JURISDICTION/U.S. TERRITORY	United States
ZIP/POSTAL CODE	89169
PHONE	702-949-8200
FAX	702-949-8736
EMAIL ADDRESS	pto@lewisroca.com
CORRESPONDENCE INFORMATION	
NAME	Eric N. Kohli
PRIMARY EMAIL ADDRESS FOR CORRESPONDENCE	pto@lewisroca.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES)	ekohli@lewisroca.com
FEE INFORMATION	
APPLICATION FILING OPTION	TEAS Standard
NUMBER OF CLASSES	2
APPLICATION FOR REGISTRATION PER CLASS	350
*TOTAL FEES DUE	700
*TOTAL FEES PAID	700
SIGNATURE INFORMATION	
SIGNATURE	/Steven L Lynch/
SIGNATORY'S NAME	Steven L. Lynch
SIGNATORY'S POSITION	Owner
SIGNATORY'S PHONE NUMBER	702-949-8200
DATE SIGNED	03/10/2023
SIGNATURE METHOD	Sent to third party for signature

Trademark/Service Mark Application, Principal Register

Serial Number: 97833499

Filing Date: 03/10/2023

To the Commissioner for Trademarks:

MARK: AUTOGRAPH (Standard Characters, see [mark](#))

The literal element of the mark consists of AUTOGRAPH. The mark consists of standard characters, without claim to any particular font style, size, or color.

The applicant, Steven L. Lynch, a citizen of United States, having an address of

11813 Trevally Loop, #301

Trinity, Florida 34655

United States

XXXX

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 009: Audio and video recordings featuring music and artistic performance; downloadable music files

In International Class 009, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 01/25/1984, and first used in commerce at least as early as 01/25/1984, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods/services, consisting of a(n) snapshots of webpage bearing the mark and offering the goods for sale and photographs of album.

JPG file(s):

[Specimen File1](#)

Original PDF file:

[SPE0-98160190161-20230310 124827835879 . AUTOGRAPH - Download.pdf](#)

Converted PDF file(s) (4 pages)

[Specimen File1](#)

[Specimen File2](#)

[Specimen File3](#)

[Specimen File4](#)

Webpage URL: <https://www.discogs.com/master/289134-Autograph-Loud-And-Clear>

Webpage Date of Access: 03/10/2023

International Class 041: Performances by a vocal and instrumental group; entertainment, namely, live music concerts; entertainment, namely, live performances by a musical band; providing information in the field of music and entertainment via a website

In International Class 041, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 01/25/1984, and first used in commerce at least as early as 01/25/1984, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods/services, consisting of a(n) photographs bearing the mark and advertising the services.

[Specimen File1](#)

[Specimen File2](#)

Webpage URL: None Provided

Webpage Date of Access: None Provided

The owner's/holder's proposed attorney information: Eric N. Kohli. Eric N. Kohli of Lewis Roca Rothgerber Christie LLP, is a member of the XX bar, admitted to the bar in XXXX, bar membership no. XXX, is located at

3993 Howard Hughes Parkway, Suite 600

Las Vegas, Nevada 89169

United States

702-949-8200(phone)

702-949-8736(fax)

pto@lewisroca.com

The docket/reference number is 310361-00002.

Eric N. Kohli submitted the following statement: The attorney of record is an active member in good standing of the bar of the highest court of a U.S. state, the District of Columbia, or any U.S. Commonwealth or territory.

The applicant's current Correspondence Information:

Eric N. Kohli

PRIMARY EMAIL FOR CORRESPONDENCE: pto@lewisroca.com

SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES): ekohli@lewisroca.com

Requirement for Email and Electronic Filing: I understand that a valid email address must be maintained by the applicant owner/holder and the applicant owner's/holder's attorney, if appointed, and that all official trademark correspondence must be submitted via the Trademark Electronic Application System (TEAS).

A fee payment in the amount of \$700 has been submitted with the application, representing payment for 2 class(es).

Declaration

☒ **Basis:**

If the applicant is filing the application based on use in commerce under 15 U.S.C. § 1051(a):

- The signatory believes that the applicant is the owner of the trademark/service mark sought to be registered;
- The mark is in use in commerce and was in use in commerce as of the filing date of the application on or in connection with the goods/services in the application;
- The specimen(s) shows the mark as used on or in connection with the goods/services in the application and was used on or in connection with the goods/services in the application as of the application filing date; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

And/Or

If the applicant is filing the application based on an intent to use the mark in commerce under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e):

- The signatory believes that the applicant is entitled to use the mark in commerce;
- The applicant has a bona fide intention to use the mark in commerce and had a bona fide intention to use the mark in commerce as of the application filing date on or in connection with the goods/services in the application; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

☒ To the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive.

☒ To the best of the signatory's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.

☒ The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /Steven L Lynch/ Date: 03/10/2023

Signatory's Name: Steven L. Lynch

Signatory's Position: Owner

Signatory's Phone Number: 702-949-8200

Signature method: Sent to third party for signature

Payment Sale Number: 97833499

Payment Accounting Date: 03/10/2023

Serial Number: 97833499

Internet Transmission Date: Fri Mar 10 16:15:55 ET 2023

TEAS Stamp: USPTO/BAS-XX.XXX.XXX.XXX-202303101615560

35959-97833499-860b31f8b83ff7a705b29768a
7a53dbc1469f5ccbb85b36d154da9e24ec485be8
c-DA-15557010-20230310124827835879

AUTOGRAPH



Autograph (2) – Loud And Clear

Genre: Rock
Style: Hard Rock, Pop Rock
Year: 1987

Tracklist

Loud And Clear	3:40
Dance All Night	3:34
She Never Looked That Good For Me	4:10
Bad Boy	4:30
Everytime I Dream	4:52
She's A Tease	3:38
Just Got Back From Heaven	4:22
Down 'N Dirty	3:16
More Than A Million Times	6:00
When The Sun Goes Down	4:20

Credits (32)

Ria Lewerke
Art Direction

Stabin Studios
Artwork [Airbrush]

Randy Rand (2)
Bass

Diversified Management And Associates*
Booking [Agency]

Andy Figueroa*
Crew [Lighting Director]

George Harris (6)
Crew [Security]

Show more credits...

Versions

Filter by

Format

Labels & Companies

Country

Year

Find a format

Find a label or company

Find a country

Find a year

Search barcodes and other identifiers

Q

24 versions

Add to Wantlist

Title, Format	Label – Catalog Number	Country	Year	
Loud And Clear LP, Album	RCA Victor – MILS-4763	Mexico	1987	
Loud And Clear LP, Album	RCA Victor – 5796-1-R	US	1987	

Master Release

Edit Master Release

New Submission

Share

Marketplace

133 For Sale from \$1.99

Buy a copy

Sell a copy

Statistics

Have: 2724

Want: 477

Avg Rating: 3.96 / 5

Ratings: 193



Autograph (2) – Loud And Clear

Genre: Rock
Style: Hard Rock, Pop Rock
Year: 1987

More images

Tracklist

Loud And Clear	3:40
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She Never Looked That Good For Me	4:10
Bad Boy	4:30
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Ria Lewerke
Art Direction

Stabin Studios
Artwork [Airbrush]

Randy Rand (2)
Bass

Diversified Management And Associates*
Booking [Agency]

Andy Figueroa*
Crew [Lighting Director]

George Harris (6)
Crew [Security]

Show more credits...

Versions

Filter by

Format

Labels & Companies

Country

Year

Find a format

Find a label or company

Find a country

Find a year

Search barcodes and other identifiers

Q

24 versions

Add to Wantlist

Title, Format	Label – Catalog Number	Country	Year	
Loud And Clear LP, Album	RCA Victor – MILS-4763	Mexico	1987	
Loud And Clear LP, Album	RCA Victor – 5796-1-R	US	1987	

Master Release

Edit Master Release

New Submission

Share

Marketplace

133 For Sale from \$1.99

Buy a copy

Sell a copy















Statistics




Have: 2724

Want: 477

Avg Rating: 3.96 / 5

Ratings: 193

	Loud And Clear LP, Album	RCA Victor – 5796-1-R	US	1987	▼
	Loud And Clear LP, Album	RCA Victor – RCLP 20412	Greece	1987	▼
	Loud And Clear LP, Album	RCA – PL 85796	Germany	1987	▼
	Loud And Clear LP, Album	RCA – NL90430	Europe	1987	▼
	Loud And Clear Cassette, Album	RCA Victor – 5796-4-R	US	1987	▼
	Loud And Clear LP, Album, Promo	RCA – RPL-8374	Japan	1987	▼
	Loud And Clear LP, Album	RCA Victor – 5796-1-R	Canada	1987	▼
	Loud And Clear = ラウド・アンド・クリアー CD, Album	RCA – R32P-1108, RCA – 5796-2-R	Japan	1987	▼
	Loud And Clear Cassette, Album	RCA Victor – TC RCLP 20412	Greece	1987	▼
	Loud And Clear Cassette, Album, Dolby	RCA – 5796-4-R	Canada	1987	▼
	Loud And Clear CD, Album	BMG Music – ND 90430	Germany	1987	▼
	Loud And Clear CD, Album	RCA – 5796-2-R	US	1987	▼
	Loud And Clear CD, Album	RCA – ND90430	Germany	1987	▼
	Loud And Clear LP, Album	RCA – RPL-8374	Japan	1987	▼






Lists Add to List

*** OneWayTicket *** glam metal • sleaze metal/rock • hard rock • hair metal by noimm
 La Goulothèque 1987 by ZazPanzer
 Top 25 albums of 1987 by davek_nd
 Top 200 albums of the 1980's by davek_nd
 Sony Music List by nealon1

[View More Lists —](#)

Discover music, collecting, & more on Discogs Digs





Loud And Clear
CD, Album, Unofficial Release

RCA (2) – 5796-2-R

Russia

Recommendations



Whitesnake
Whitesnake



That's The Stuff
Autograph (2)



Sign In Please
Autograph (2)



The Blitz
Krokus



Metal Health
Quiet Riot



Reviews

Add Review



justinsgaines Feb 12, 2020



referencing Loud And Clear (CD, Album, Remastered, Reissue) CANDY015

Originally release in 1987, Loud and Clear was the third album from Los Angeles-based rockers Autograph. The band released a string of impressive melodic rock albums in the mid '80s, but for some reason never seemed to fit into the hair metal scene that came to dominate L.A. in the second half of the decade.

Loud and Clear is very similar to Autograph's previous albums (1984's Sign In Please and 1985's That's The Stuff). It's an upbeat, feel-good party rock album with odes to hot girls, loud parties, and rocking all night. Catchy hooks, great melodies and just enough keyboards are all abundant on Loud & Clear, and Steve Plunkett does another knockout job on vocals. There really isn't a "Turn Up the Radio" style hit on this album, but "Dance All Night" and "Just Got Back From Heaven" should have been solid radio hits at the time, and "More Than a Million Times" should have been huge. It's a brilliant, "soundtrack ready" melodic rocker.

As good as it is, Loud and Clear was Autograph's least successful '80s album, and ended up being their last work as a band. Plunkett would launch a new version of Autograph with 2003's Buzz, but it wasn't quite the same. If you're a fan of the mid '80s melodic rock sound, Loud & Clear is a "can't miss" album from one of the era's more unfairly overlooked bands. Check it out, especially now that it has been remastered.

Reissue Notes: Loud and Clear was reissued by UK label Rock Candy in 2006. For this reissue, Rock Candy included detailed liner notes and gave the album a brilliant digital remastering. You've never truly heard this album until you've heard this reissue.

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Exhibit H

Trademark/Service Mark Application, Principal Register

Serial Number: 97833507

Filing Date: 03/10/2023

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	97833507
MARK INFORMATION	
*MARK	\\TICRS\EXPORT18\IMAGEOUT18\978\335\97833507\xml1 \ APP0002.JPG
SPECIAL FORM	YES
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	AUTOGRAPH
COLOR MARK	NO
*DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of the word AUTOGRAPH in stylized letters arranged in a half dome shape. Two bolts of lightning are featured under AUTO and RAPH.
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	630 x 285
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Steven L. Lynch
*MAILING ADDRESS	11813 Trevally Loop, #301
*CITY	Trinity
*STATE (Required for U.S. applicants)	Florida
*COUNTRY/REGION/JURISDICTION/U.S. TERRITORY	United States
*ZIP/POSTAL CODE (Required for U.S. and certain international addresses)	34655
*EMAIL ADDRESS	XXXX
LEGAL ENTITY INFORMATION	
TYPE	individual
COUNTRY/REGION/JURISDICTION/U.S. TERRITORY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	009
*IDENTIFICATION	Audio and video recordings featuring music and artistic performance; downloadable music files

FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/25/1984
FIRST USE IN COMMERCE DATE	At least as early as 01/25/1984
SPECIMEN FILE NAME(S)	
JPG FILE(S)	\\TICRS\EXPORT18\IMAGEOUT18\978\335\97833507\xml1 \ APP0007.JPG
ORIGINAL PDF FILE	SPE0-98160190161-20230310123514524466 . AUTOGRAPH - Download.pdf
CONVERTED PDF FILE(S) (4 pages)	\\TICRS\EXPORT18\IMAGEOUT18\978\335\97833507\xml1\ APP0003.JPG
	\\TICRS\EXPORT18\IMAGEOUT18\978\335\97833507\xml1\ APP0004.JPG
	\\TICRS\EXPORT18\IMAGEOUT18\978\335\97833507\xml1\ APP0005.JPG
	\\TICRS\EXPORT18\IMAGEOUT18\978\335\97833507\xml1\ APP0006.JPG
SPECIMEN DESCRIPTION	snapshots of webpage bearing the mark and offering the goods for sale and photograph of album
WEBPAGE URL	https://www.discogs.com/master/289134-Autograph-Loud-And-Clear
WEBPAGE DATE OF ACCESS	03/10/2023
INTERNATIONAL CLASS	041
*IDENTIFICATION	Performances by a vocal and instrumental group; entertainment, namely, live music concerts; entertainment, namely, live performances by a musical band; providing information in the field of music and entertainment via a website
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/25/1984
FIRST USE IN COMMERCE DATE	At least as early as 01/25/1984
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT18\IMAGEOUT18\978\335\97833507\xml1 \ APP0008.JPG
SPECIMEN DESCRIPTION	photograph bearing the mark and advertising the services
WEBPAGE URL	None Provided
WEBPAGE DATE OF ACCESS	None Provided
ATTORNEY INFORMATION	
NAME	Eric N. Kohli
ATTORNEY DOCKET NUMBER	310361-00003
ATTORNEY BAR MEMBERSHIP NUMBER	XXX
YEAR OF ADMISSION	XXXX
U.S. STATE/ COMMONWEALTH/ TERRITORY	XX
FIRM NAME	Lewis Roca Rothgerber Christie LLP

STREET	3993 Howard Hughes Parkway, Suite 600
CITY	Las Vegas
STATE	Nevada
COUNTRY/REGION/JURISDICTION/U.S. TERRITORY	United States
ZIP/POSTAL CODE	89169
PHONE	702-949-8200
FAX	702-949-8736
EMAIL ADDRESS	pto@lewisroca.com
CORRESPONDENCE INFORMATION	
NAME	Eric N. Kohli
PRIMARY EMAIL ADDRESS FOR CORRESPONDENCE	pto@lewisroca.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES)	ekohli@lewisroca.com
FEE INFORMATION	
APPLICATION FILING OPTION	TEAS Standard
NUMBER OF CLASSES	2
APPLICATION FOR REGISTRATION PER CLASS	350
*TOTAL FEES DUE	700
*TOTAL FEES PAID	700
SIGNATURE INFORMATION	
SIGNATURE	/Steven L Lynch/
SIGNATORY'S NAME	Steven L. Lynch
SIGNATORY'S POSITION	Owner
SIGNATORY'S PHONE NUMBER	702-949-8200
DATE SIGNED	03/10/2023
SIGNATURE METHOD	Sent to third party for signature

Trademark/Service Mark Application, Principal Register

Serial Number: 97833507

Filing Date: 03/10/2023

To the Commissioner for Trademarks:

MARK: AUTOGRAPH (stylized and/or with design, see [mark](#))

The literal element of the mark consists of AUTOGRAPH. The mark consists of the word AUTOGRAPH in stylized letters arranged in a half dome shape. Two bolts of lightning are featured under AUTO and RAPH.

The applicant, Steven L. Lynch, a citizen of United States, having an address of

11813 Trevally Loop, #301

Trinity, Florida 34655

United States

XXXX

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 009: Audio and video recordings featuring music and artistic performance; downloadable music files

In International Class 009, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 01/25/1984, and first used in commerce at least as early as 01/25/1984, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods/services, consisting of a(n) snapshots of webpage bearing the mark and offering the goods for sale and photograph of album.

JPG file(s):

[Specimen File1](#)

Original PDF file:

[SPE0-98160190161-20230310 123514524466 . AUTOGRAPH - Download.pdf](#)

Converted PDF file(s) (4 pages)

[Specimen File1](#)

[Specimen File2](#)

[Specimen File3](#)

[Specimen File4](#)

Webpage URL: <https://www.discogs.com/master/289134-Autograph-Loud-And-Clear>

Webpage Date of Access: 03/10/2023

International Class 041: Performances by a vocal and instrumental group; entertainment, namely, live music concerts; entertainment, namely, live performances by a musical band; providing information in the field of music and entertainment via a website

In International Class 041, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 01/25/1984, and first used in commerce at least as early as 01/25/1984, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods/services, consisting of a(n) photograph bearing the mark and advertising the services.

[Specimen File1](#)

Webpage URL: None Provided

Webpage Date of Access: None Provided

The owner's/holder's proposed attorney information: Eric N. Kohli. Eric N. Kohli of Lewis Roca Rothgerber Christie LLP, is a member of the XX bar, admitted to the bar in XXXX, bar membership no. XXX, is located at

3993 Howard Hughes Parkway, Suite 600

Las Vegas, Nevada 89169

United States

702-949-8200(phone)

702-949-8736(fax)

pto@lewisroca.com

The docket/reference number is 310361-00003.

Eric N. Kohli submitted the following statement: The attorney of record is an active member in good standing of the bar of the highest court of a U.S. state, the District of Columbia, or any U.S. Commonwealth or territory.

The applicant's current Correspondence Information:

Eric N. Kohli

PRIMARY EMAIL FOR CORRESPONDENCE: pto@lewisroca.com

SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES): ekohli@lewisroca.com

Requirement for Email and Electronic Filing: I understand that a valid email address must be maintained by the applicant owner/holder and the applicant owner's/holder's attorney, if appointed, and that all official trademark correspondence must be submitted via the Trademark Electronic Application System (TEAS).

A fee payment in the amount of \$700 has been submitted with the application, representing payment for 2 class(es).

Declaration

☒ **Basis:**

If the applicant is filing the application based on use in commerce under 15 U.S.C. § 1051(a):

- The signatory believes that the applicant is the owner of the trademark/service mark sought to be registered;
- The mark is in use in commerce and was in use in commerce as of the filing date of the application on or in connection with the goods/services in the application;
- The specimen(s) shows the mark as used on or in connection with the goods/services in the application and was used on or in connection with the goods/services in the application as of the application filing date; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

And/Or

If the applicant is filing the application based on an intent to use the mark in commerce under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e):

- The signatory believes that the applicant is entitled to use the mark in commerce;
- The applicant has a bona fide intention to use the mark in commerce and had a bona fide intention to use the mark in commerce as of the application filing date on or in connection with the goods/services in the application; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

☒ To the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive.

☒ To the best of the signatory's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.

☒ The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /Steven L Lynch/ Date: 03/10/2023

Signatory's Name: Steven L. Lynch

Signatory's Position: Owner

Signatory's Phone Number: 702-949-8200

Signature method: Sent to third party for signature

Payment Sale Number: 97833507

Payment Accounting Date: 03/10/2023

Serial Number: 97833507

Internet Transmission Date: Fri Mar 10 16:17:59 ET 2023

TEAS Stamp: USPTO/BAS-XX.XXX.XXX.XXX-202303101617597
94038-97833507-8606f5958d5b1c8d904631af4
a7395c5e9906878abf15130ffe5bf3d8868913cc
5-DA-17597037-20230310131447307963

AUTAGRAPH



Genre: Rock
Style: Hard Rock, Pop Rock
Year: 1987



Autograph (2) – Loud And Clear

Genre: Rock
Style: Hard Rock, Pop Rock
Year: 1987

More images

Tracklist

Loud And Clear	3:40
Dance All Night	3:34
She Never Looked That Good For Me	4:10
Bad Boy	4:30
Everytime I Dream	4:52
She's A Tease	3:38
Just Got Back From Heaven	4:22
Down 'N Dirty	3:16
More Than A Million Times	6:00
When The Sun Goes Down	4:20

Credits (32)

Ria Lewerke
Art Direction

Stabin Studios
Artwork [Airbrush]

Randy Rand (2)
Bass

Diversified Management And Associates*
Booking [Agency]

Andy Figueroa*
Crew [Lighting Director]

George Harris (6)
Crew [Security]

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24 versions

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Title, Format	Label – Catalog Number	Country	Year	
Loud And Clear LP, Album	RCA Victor – MILS-4763	Mexico	1987	
Loud And Clear LP, Album	RCA Victor – 5796-1-R	US	1987	

Master Release

Edit Master Release

New Submission

Share

Marketplace

133 For Sale from \$1.99

Buy a copy

Sell a copy















Statistics




Have: 2724

Want: 477

Avg Rating: 3.96 / 5

Ratings: 193

	Loud And Clear LP, Album	RCA Victor – 5796-1-R	US	1987	▼
	Loud And Clear LP, Album	RCA Victor – RCLP 20412	Greece	1987	▼
	Loud And Clear LP, Album	RCA – PL 85796	Germany	1987	▼
	Loud And Clear LP, Album	RCA – NL90430	Europe	1987	▼
	Loud And Clear Cassette, Album	RCA Victor – 5796-4-R	US	1987	▼
	Loud And Clear LP, Album, Promo	RCA – RPL-8374	Japan	1987	▼
	Loud And Clear LP, Album	RCA Victor – 5796-1-R	Canada	1987	▼
	Loud And Clear = ラウド・アンド・クリアー CD, Album	RCA – R32P-1108, RCA – 5796-2-R	Japan	1987	▼
	Loud And Clear Cassette, Album	RCA Victor – TC RCLP 20412	Greece	1987	▼
	Loud And Clear Cassette, Album, Dolby	RCA – 5796-4-R	Canada	1987	▼
	Loud And Clear CD, Album	BMG Music – ND 90430	Germany	1987	▼
	Loud And Clear CD, Album	RCA – 5796-2-R	US	1987	▼
	Loud And Clear CD, Album	RCA – ND90430	Germany	1987	▼
	Loud And Clear LP, Album	RCA – RPL-8374	Japan	1987	▼






Lists Add to List

*** OneWayTicket *** glam metal • sleaze metal/rock • hard rock • hair metal by noimm
 La Goulothèque 1987 by ZazPanzer
 Top 25 albums of 1987 by davek_nd
 Top 200 albums of the 1980's by davek_nd
 Sony Music List by nealon1

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Loud And Clear
CD, Album, Unofficial Release

RCA (2) – 5796-2-R

Russia

Recommendations



Whitesnake
Whitesnake



That's The Stuff
Autograph (2)



Sign In Please
Autograph (2)



The Blitz
Krokus



Metal Health
Quiet Riot



Reviews

Add Review



justinsgaines Feb 12, 2020

referencing Loud And Clear (CD, Album, Remastered, Reissue) CANDY015

Originally release in 1987, Loud and Clear was the third album from Los Angeles-based rockers Autograph. The band released a string of impressive melodic rock albums in the mid '80s, but for some reason never seemed to fit into the hair metal scene that came to dominate L.A. in the second half of the decade.

Loud and Clear is very similar to Autograph's previous albums (1984's Sign In Please and 1985's That's The Stuff). It's an upbeat, feel-good party rock album with odes to hot girls, loud parties, and rocking all night. Catchy hooks, great melodies and just enough keyboards are all abundant on Loud & Clear, and Steve Plunkett does another knockout job on vocals. There really isn't a "Turn Up the Radio" style hit on this album, but "Dance All Night" and "Just Got Back From Heaven" should have been solid radio hits at the time, and "More Than a Million Times" should have been huge. It's a brilliant, "soundtrack ready" melodic rocker.

As good as it is, Loud and Clear was Autograph's least successful '80s album, and ended up being their last work as a band. Plunkett would launch a new version of Autograph with 2003's Buzz, but it wasn't quite the same. If you're a fan of the mid '80s melodic rock sound, Loud & Clear is a "can't miss" album from one of the era's more unfairly overlooked bands. Check it out, especially now that it has been remastered.

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AUTAGRAPH

LOUD AND CLEAR





Exhibit I



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v2.4.0

Opposition

Number: 91285059

Status: Terminated

General Contact Number: 571-272-8500

Interlocutory Attorney: KATIE BURRINSKY

Paralegal Name: AMY L. HATELSO

Filing Date: 05/17/2023

Status Date: 08/14/2023

Defendant

Name: Daniel Simon & Marc Wieland

Correspondence: DANIEL SIMON & MARC WIELAND

13217 MORRISON ST

SHERMAN OAKS, CA 91403

UNITED STATES

dsimon1@earthlink.net

Serial #: 92425455

Application File

Assignment

Application Status: ABANDONED - AFTER INTER-PARTES DECISION

Mark: AUTOGRAPH

Plaintiff

Name: Steven L. Lynch

Correspondence: RACHEL NICHOLAS

LEWIS ROCA ROTHGERBER CHRISTIE LLP

3993 HOWARD HUGHES PARKWAY, SUITE 600

LAS VEGAS, NV 89169

UNITED STATES

pto@lewisroca.com, exhs@lewisroca.com, nicholas@lewisroca.com,

rlaxton@lewisroca.com

Phone: 702-949-8200

Prosecution History

#	Date	History Text	Due Date
9	08/14/2023	TERMINATED	
8	08/14/2023	BO DECISION: OPP SUSTAINED	
7	07/05/2023	RESPONSE DUE 30 DAYS (DUE DATE)	08/04/2023
6	05/25/2023	RESPONSE DUE 30 DAYS (DUE DATE)	06/24/2023
5	05/24/2023	D REQ TO W/DRAW AS ATTORNEY	
4	05/24/2023	D REQ TO W/DRAW AS ATTORNEY	
3	05/17/2023	INSTITUTED	
2	05/17/2023	NOTICE AND TRIAL DATES SENT: ANSWER DUE:	06/26/2023
1	05/17/2023	FILED AND FEE	

Results as of 08/01/2023 07:33 PM

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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500
General Email: TTABInfo@uspto.gov

am

August 14, 2023

Opposition No. 91285059

Steven L. Lynch

Daniel Simoni & Marc Wieland

By the Trademark Trial and Appeal Board:

On July 5, 2023, the Board issued an order to show cause in view of Applicant's apparent loss of interest in this proceeding.

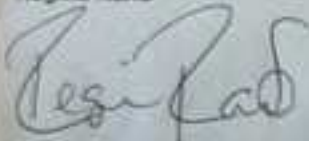
Inasmuch as no response to the Board's order has been filed, judgment is hereby entered against Applicant. The opposition is accordingly sustained and registration to Applicant is refused.

<https://ttabvue.uspto.gov/ttabvue/v?dno=91285059&pty=OPP&eno=8>

To music event mgr:

On Sept 22 you have a band playing with Cheap Trick that claim to be Autograph! There is not one single person in this band that wrote the songs in the 80s! nobody in this band founded Autograph or own the name. I know this because I am the wife of Randy Rand the bass player for Autograph who passed away 1 year ago. Also Steve Lynch is the original lead guitarist of Autograph and he is the owner of the Name Autograph. This band you have playing was denied the name on Aug 14, 2023. Please click the above link for the legal document.

Regina Rand



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

In the Matter of Trademark Application No. 97/425,455

Filed on May 24, 2022

For the mark AUTOGRAPH

Published in the Official Gazette on April 18, 2023

)	
)	
)	Opposition No. 91285059
Steven L. Lynch)	
)	
Opposer,)	
)	
v.)	
)	
Daniel Simoni & Marc Wieland)	
)	
Applicants.)	
<hr style="width:30%; margin-left:0"/>)	

DECLARATION OF MARC WIELAND IN SUPPORT OF MOTION TO SET ASIDE

DEFAULT JUDGMENT

I, MARC WIELAND, declare as follows:

I am a member of the musical group “Autograph,” and I reside in Los Angeles County, California. All facts contained herein are within my personal knowledge and, if called as a witness, I could and would competently testify thereto.

2. As I understand it, following years of in activity, in 2012, original Autograph bassist Randy Rand, looking to start performing as Autograph again, sought out new band members in California and made them part of the band, and I accepted it.

3. Around that time, Daniel Simoni, Steve Lynch, Randy Rand and I entered into an oral joint venture agreement to begin performing as a band using the band name “Autograph.”

According to the agreement, when a member left the band, they would have no right to compensation for use of the name “Autograph” or right to compensation from the performances of the remaining members of the band.

4. In 2017 the band released a new album that was written by Daniel Simoni and produced by me. The songs and recordings were given to Autograph with the understanding that we were part of the band. We were always paid as members of the band bearing the profits and losses of the band.

5. In 2019 guitarist Steve Lynch quit the band publicly announcing that he was quitting the band and would not come back.

6. We were never told that our membership was contingent upon any other agreements or upon the decisions of the original band members. Original bass player Randy Rand died in 2022 which was very tragic and unexpected. As one half of the rhythm section, I took this very hard. I enjoyed playing with Randy, and he was a pleasure to be around.

7. Soon thereafter Steve Lynch (the guitarist who had left the band) reappeared demanding that we could not play as Autograph any further. This is the first we ever heard that we were not free to do what we wanted as Autograph.

8. I never would have joined this band and stopped working nearly full time as a recording engineer if I knew I was not gaining an ownership interest in the name.

9. We filed for a trademark registration in May 2022. There has never been registration that issued for the Autograph mark. Applications have been filed for different times but they were abandoned or not fully pursued by the filer.

10. On May 24, 2022, Marc Wieland and I filed U.S. Trademark App. No. 97425455 for the trademark AUTOGRAPH in Class 41. It was filed by Alec Ross of Legalzoom Legal Services.

11. On June 2, 2022, we received a cease and desist letter on behalf “Autograph Band LLC and the general partnership of surviving original Autograph band members, Steve Lynch and Steve Plunkett.” We had never heard that Plunkett (the original singer) had any interest in the band.

11. On July 5, 2022, we filed a lawsuit in Los Angeles County seeking declaratory relief of ownership over the AUTOGRAPH trademark for live performances by a musical group.

12. The case is in the Superior Court of the State of Los Angeles and styled as DANIEL SIMONI and MARC WIELAND v. STEVE LYNCH, LASC Case No. 22STCV21696.

13. On November 25, 2022, Opposer Steve Lynch filed a counterclaim and added as counterclaimant “Original Autograph”, a “California general partnership of which [Opposer] is a partner and which was formed n 1984 by the original members of the rock band “Autograph”.

14. The counterclaim made claims for declaratory relief of ownership, trademark infringement, false advertising, unfair competition and misuse of likeness. The Counterclaim expanded the case extensively, stating claims against our independent contractor guitarist Jimi Bell, our booking agent, Randy Rand’s limited liability company, and our Italian record company.

15. On March 10, 2023, Opposer Lynch filed a trademark application seeking **sole ownership** of the name, (Ser. No. 97833499) claiming sole ownership of AUTOGRAPH for audiovisual recordings and live performances. The application is filed by his new attorney, Eric Kohli.

16. Around that time he filed a similar application for the logo.

17. Our application was published on April 18, 2023. Opposer filed an Opposition on May 17, 2023. Our attorney withdrew on May 24. We did not know what this meant. We were already in litigation over ownership of the mark. Steve Lynch's attorneys knew this because they were the same attorneys representing him and also filing the new application on his behalf.

18. Our belief that application is fraudulent because he was already in litigation, I knew that we had made a claim to the ownership of the mark. He knew that we had almost ten years of use with no interference, and three years of use after he left the band.

19. We did not obtain a new attorney. We did not understand that we needed to obtain a new attorney because we are in litigation regarding ownership of the trademark, and we assume that things would be worked out in the litigation.

20. We have been surprised after the default judgment on the application only – not in the lawsuit – that Lynch has been claiming victory and ownership over the trademark and we did not understand that that is what was at stake in this application process.

21. Our litigation lawyer has now agreed to represent us in the application process if that is necessary. Although we believe all the applications including should be stayed pending the outcome of the litigation.

22. The litigation is in depositions is very expensive for us. This has been a confusing situation for us, and we're doing the best we can. We would not like to have our rights be affected by the proceedings in Trademark Office. We think that the most important thing is the proceedings in the trial court, where the parties are in the midst of discovery.

23. We relied upon Lynch's non-use and silence regarding the mark for years. We also relied upon the representations of Randy Rand, who loved the band and assured us we should

carry on. It's been a very difficult time for us having lost a key band member and a friend and now having to be embroiled in litigation constant threats constant online harassment by anonymous individuals.

24. We would humbly request that this tribunal lift the default judgment and allow this matter to proceed or be stayed. We will immediately file an answer if needed.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed at Los Angeles, California on September 14, 2023.

By: _____

Marc Wieland

Opposition of USSN 97/425,455
September 14, 2023

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Executed at Los Angeles, California on September 14, 2023.

By: _____

Marc Wieland

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

In the Matter of Trademark Application No. 97/425,455

Filed on May 24, 2022

For the mark AUTOGRAPH

Published in the Official Gazette on April 18, 2023

Steven L. Lynch)	
)	
)	Opposition No. 91285059
)	
Opposer,)	
)	
v.)	
)	
Daniel Simoni & Marc Wieland)	
)	
Applicants.)	
)	

DECLARATION OF DANIEL SIMONI IN SUPPORT OF MOTION TO SET ASIDE

DEFAULT JUDGMENT

I, DANIEL SIMONI, declare as follows:

I am a member of the musical group “Autograph,” and I reside in Los Angeles County, California. All facts contained herein are within my personal knowledge and, if called as a witness, I could and would competently testify thereto.

2. Autograph is an American rock band formed in 1984 in Pasadena, California. It was most popular in the mid-1980s and disbanded and stopped performing in 1989.

3. Between the years 1989 and 2013, there were no performances using the band name “Autograph,” there was no merchandising using the name “Autograph,” and there was no active marketing towards consumers using the name “Autograph” for live performances.

4. In 2012, original bassist Randy Rand, looking to start performing as Autograph again, sought out new band members in California and made them part of the band.

5. In November 2013, I was offered a position as guitarist and singer without audition based on my extensive experience as a guitarist, singer and songwriter. I agreed to join Autograph with two original Autograph members, guitarist Steve Lynch and bassist Randy Rand, and I brought Marc Wieland into Autograph to play drums.

6. In 2013, Marc Wieland, Steve Lynch, Randy Rand and I entered into an oral joint venture agreement to begin performing as a band using the band name "Autograph." According to the agreement, when a member left the band, they would have no right to compensation for use of the name "Autograph" or right to compensation from the performances of the remaining members of the band.

7. In 2017 the band released a new album ("Get Off Your Ass") that was written by me and produced by Marc Wieland. The songs and recordings were given to Autograph with the understanding that we were part of the band. We were always paid as members of the band bearing the profits and losses of the band.

8. In 2019 guitarist Steve lynch quit the band publicly announcing that he was quitting the band and would not come back.

9. We were never told that our membership was contingent upon any other agreements or upon the decisions of the original band members. Original bass player Randy Rand died in 2022 which was very tragic and unexpected. Soon thereafter Steve Lynch (the guitarist who had left the band) reappeared demanding that we could not play as Autograph any further. This is the first we ever heard that we were not free to do what we wanted as Autograph.

10. On May 24, 2022, Marc Wieland and I filed U.S. Trademark App. No. 97425455 for the trademark AUTOGRAPH in Class 41. It was filed by Alec Ross of Legalzoom Legal Services. He also conducted searches and recommend that we file the Application.

11. On June 2, 2022, we received a cease and desist on behalf “Autograph Band LLC and the general partnership of surviving original Autograph band members, Steve Lynch and Steve Plunkett.” We had never heard that Plunkett (the original singer) had any interest in the band. We understood that our booking agent called Plunkett, who had no idea about the cease and desist letter.

12. On July 5, 2022, we filed a lawsuit in Los Angeles County seeking declaratory relief of ownership over the AUTOGRAPH trademark for live performances by a musical group. The case is in the Superior Court of the State of Los Angeles and styled as DANIEL SIMONI and MARC WIELAND v. STEVE LYNCH, LASC Case No. 22STCV21696.

13. On November 25, 2022, Opposer Steve Lynch filed a counterclaim and added as counterclaimant “Original Autograph”, a “California general partnership of which [Opposer] is a partner and which was formed n 1984 by the original members of the rock band “Autograph”.

14. The counterclaim made claims for declaratory relief of ownership, trademark infringement, false advertising, unfair competition, and misuse of likeness. The Counterclaim expanded the case extensively, stating claims against our independent contractor guitarist Jimi Bell, our booking agent, Randy Rand’s limited liability company, and our Italian record company.

15. On March 10, 2023, Opposer Lynch filed a trademark application seeking **sole ownership** of the name, (Ser. No. 97833499) claiming sole ownership of AUTOGRAPH for

audiovisual recordings and live performances. The application is filed by his new attorney, Eric Kohli.

16. Our application was published on April 18, 2023. Steve Lynch's new attorney filed an Opposition on May 17, 2023. Our attorney withdrew on May 24. We did not know what any of this meant. At the time we were already in litigation over ownership of the mark. Steve Lynch's attorneys knew this because they were the same attorneys representing him and also filing the new application on his behalf.

17. Our belief that application is fraudulent because he was already in litigation, I knew that we had made a claim to the ownership of the mark. He knew that we had almost ten years of use with no interference, and three years of use. We never heard of any confusion.

18. We would never have traded in our other pursuits for this band if we had known we could not continue to play the music that we wrote and performed for nearly a decade.

19. We did not obtain a new attorney. We did not understand that we needed to obtain a new attorney because we were in litigation, and we assumed that things would be worked out in the litigation. We have been surprised after the default judgment on the application only – not in the lawsuit – that Lynch has been claiming an important legal victory.

20. Our litigation lawyer has now agreed to represent us in the application process if that is necessary, although we believe all the applications should be stayed pending the outcome of the litigation.

21. The litigation is in depositions is very expensive for us. It is difficult for us to maintain fighting on multiple fronts. This has been a very confusing situation for us, and we're

doing the best we can. We would not like to have our rights be affected by the proceedings in Trademark Office as we understand that the most important thing is the proceedings in the trial court, where the parties are in the midst of discovery and are developing a full record that may be of use later if needed.

22. We relied upon Lynch's non-use and silence regarding the mark for approximately three years. We also relied upon the representations of Randy Rand, who assured us that we were members of the band, and that this was his favorite version of the band and that we should carry on. It's been a very difficult time for us having lost a key band member and a friend and now having to be embroiled in litigation constant threats constant online harassment by anonymous individuals.

23. We would humbly request that this tribunal lift the default judgment and allow this matter to proceed or be stayed. We will immediately file an answer if needed.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed at Van Nuys, California on September 13, 2023.

— 
Daniel Simoni

By:

09/13/2023