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23 DONNA CORBELLO

24 UNITED STATES DISTRICT COURT
25 DISTRICT OF NEVADA

26 DONNA CORBELLO, an individual,
27
28 PLAINTIFF,
vs.
THOMAS GAETANO DEVITO, an individual; FRANKIE VALLI, an individual, ROBERT J. GAUDIO, an individual; MARSHALL BRICKMAN, an individual; ERIC S. ELICE a/k/a RICK ELICE, an individual; DES McANUFF, an individual; DSHT, INC. (formerly, "DODGER STAGE HOLDING THEATRICALS, INC.), a Delaware corporation; DODGER THEATRICALS, LTD., a New York corporation; and, JB VIVA VEGAS, LP, a New York limited partnership,
DEFENDANTS.

CASE NO. 2:08-cv-00867-RCJ-PAL
PLAINTIFF'S SECOND AMENDED COMPLAINT FOR DECLARATORY JUDGMENT; ACCOUNTING; BREACH OF CONTRACT; UNJUST ENRICHMENT; BREACH OF IMPLIED COVENANT OF GOOD FAITH; CONSTRUCTIVE FRAUD; FRAUD; FRAUDULENT CONCEALMENT; CONVERSION; COPYRIGHT INFRINGEMENT, CONTRIBUTORY COPYRIGHT INFRINGEMENT AND FOREIGN COPYRIGHT INFRINGEMENT, SEEKING DECLARATORY, MONETARY AND INJUNCTIVE RELIEF, INCLUDING CONSTRUCTIVE TRUSTS

JURY DEMAND

1 Plaintiff, Donna Corbello, by her attorneys, and pursuant to, *inter alia*, FED. R. CIV. P.
2 15(a)(2), 8(d)(2)-(3), 19(a)(1) and/or 20(a)(2), and 17 U.S.C. § 501(b), hereby alleges the following
3 for her *Second Amended Complaint* against the above-named Defendants:

4 **BASIS FOR FEDERAL JURISDICTION**

5 **[Local Rule 8-1]**

6 1. This Court has subject matter jurisdiction over this action, under 28 U.S.C. § 1338(a)
7 [actions arising under Acts of Congress relating to copyrights]; 28 U.S.C. § 1331 [actions arising
8 under the Constitution, laws or treaties of the U.S.], and 28 U.S.C. § 1367(a) [supplemental
9 jurisdiction over related claims, including claims involving joinder of parties and foreign copyright
10 infringement claims]. This Court also has subject matter jurisdiction under 28 U.S.C. § 1332(a)(1),
11 in that the parties are citizens of different States; the amount in controversy exceeds \$75,000.00 as
12 to each Defendant, exclusive of interest and costs, and the exercise of supplemental jurisdiction
13 under 28 U.S.C. § 1367(a) is consistent with the jurisdictional requirements of 28 U.S.C. § 1332,
14 in accordance with 28 U.S.C. § 1367(b).

15 **THE PARTIES**

16 2. Plaintiff, Donna Corbello, an individual, domiciled in Austin, Texas, is the widow
17 and heir of Rex Conrad Woodard, who authored an unpublished, biographical work regarding
18 Defendant DeVito and the pop group, the Four Seasons (the “Work”) in Beaumont, Texas, which
19 was completed shortly before his death in 1991. Plaintiff inherited Mr. Woodard’s rights in the
20 Work and is his successor in an agreement with Defendant DeVito regarding same.

21 3. Defendant, Thomas Gaetano DeVito (“DeVito”), an individual, domiciled in Las
22 Vegas, Nevada, was an original member of the Four Seasons, serving, *inter alia*, as lead guitarist and
23 baritone vocalist, and formed the Variety Trio, Varietones, and Four Lovers, its predecessor groups.
24 Defendant DeVito participated with Mr. Woodard in the creation and revision of the Work; entered
25 into an agreement with Mr. Woodard regarding the Work; transacted business with Mr. Woodard
26 and his heirs concerning the Work; and, years following Mr. Woodard’s death, issued an “exclusive
27 license” encompassing the Work to Defendants Frankie Valli and Robert J. Gaudio, who
28 subsequently sublicensed and/or transferred said rights, or portions thereof, to the remaining

1 Defendants herein (ultimately assigning same to Defendants, DSHT, Inc. and/or Dodger Theatricals,
2 Ltd.), leading to the Work's use and adaptation for the musical production, *Jersey Boys*, as
3 Defendant DeVito actively concealed these facts from Plaintiff.

4 4. Defendant, Frankie Valli ("Valli"), an individual, domiciled in Calabasas, California,
5 was an original member of the Four Seasons, serving as lead vocalist therefor; was a member of the
6 Varietones and Four Lovers, its predecessor groups; and, continues to perform with a modern version
7 of the Four Seasons. Defendant Valli is a party to an agreement with Defendant DeVito which
8 purports to transfer certain exclusive rights in the Work to Defendants Valli and Robert J. Gaudio,
9 and Defendant Valli, with Gaudio, further licensed and/or transferred these rights, or portions
10 thereof, to the remaining Defendants herein (ultimately assigning same to Defendants DSHT, Inc.
11 and/or Dodger Theatricals, Ltd.), resulting in the use and adaptation of the Work for *Jersey Boys*,
12 and in the distribution of copies thereof. Upon information and belief, Defendants Valli and Gaudio
13 are involved in a longstanding, informal partnership and/or joint venture, occasionally doing business
14 as "The Four Seasons Partnership," which operates from an office in Santa Monica, California.

15 5. Defendant, Robert J. Gaudio ("Gaudio"), an individual, domiciled in Nashville,
16 Tennessee, was also an original member of the Four Seasons, serving as a vocalist, principal
17 composer and keyboard player, and frequently, as arranger and producer for the group, and was a
18 member of the Four Lovers, its predecessor group. Defendant Gaudio is named, with Defendant
19 Valli, as an exclusive licensee of certain rights in the Work under an agreement with Defendant
20 DeVito, and Defendant Gaudio, with Valli, further licensed and/or assigned these rights, or portions
21 thereof, to the remaining Defendants herein (ultimately assigning same to Defendants DSHT, Inc.
22 and/or Dodger Theatricals, Ltd.), resulting in the use and adaptation of the Work for *Jersey Boys*,
23 and in the distribution of copies thereof. Upon information and belief, Defendant Gaudio is involved
24 in a longstanding, informal partnership and/or joint venture with Defendant Valli, occasionally doing
25 business as "The Four Seasons Partnership," which operates from an office in Santa Monica,
26 California. Defendants Gaudio and Valli are sometimes referred to collectively hereinafter as "the
27 Four Seasons Partnership."

28 6. Defendant, Marshall Brickman ("Brickman"), an individual, domiciled in New York,

1 New York, is a musician, writer, and screenwriter, who co-authored the *libretto* for *Jersey Boys* with
2 Defendant Eric S. Elice, and used and adapted the Work therefor, in concert with Defendant Des
3 McAnuff, by authorization of Defendants Gaudio and Valli, pursuant to the “exclusive license”
4 issued by Defendant DeVito thereto; by authorization of Defendant DSHT, Inc., under a secondary
5 “exclusive license” and/or assignment from the Four Seasons Partnership; and/or by authorization
6 of Defendant Dodger Theatricals, Ltd., under a further sublicense, lease, and/or assignment from
7 Defendant DSHT, Inc. and/or Defendants Valli and Gaudio.

8 7. Defendant, Eric S. Elice, a/k/a Rick Elice (“Elice”), an individual, upon information
9 and belief domiciled in New York, New York, is a writer, director, producer, performer, and a
10 creative consultant for Walt Disney Studios, who co-authored the *libretto* for *Jersey Boys* with
11 Defendant Brickman, using and adapting the Work in connection therewith, in concert with
12 Defendant, Des McAnuff, by authorization of Defendants Gaudio and Valli, under the “exclusive
13 license” issued by Defendant DeVito thereto; by authorization of Defendant DSHT, Inc., under a
14 secondary “exclusive license” and/or assignment from the Four Seasons Partnership; and/or by
15 authorization of Defendant, Dodger Theatricals, Ltd., under a further license, lease, and/or
16 assignment from Defendant DSHT, Inc.. and/or Defendants Valli and Gaudio.

17 8. Defendant, Des McAnuff, an individual, domiciled in New York, New York, is a
18 founder member of Defendant Dodger Theatricals Ltd., and an award-winning director of Broadway
19 musical productions, who staged and directed *Jersey Boys*, and used, referenced, and adapted the
20 Work in connection therewith, along with Defendants Brickman and Elice, by authorization of
21 Defendants Gaudio and Valli, under the “exclusive license” issued by Defendant DeVito thereto; by
22 authorization of Defendant DSHT, Inc., under a secondary “exclusive license” and/or assignment
23 from the Four Seasons Partnership; and/or by authorization of Defendant Dodger Theatricals, Ltd.,
24 under a further sublicense, lease, and/or assignment from Defendant DSHT, Inc. and/or Defendants
25 Valli and Gaudio.

26 9. Defendant, DSHT, Inc., formerly Dodger Stage Holding Theatricals, Inc. (“DSHT”),
27 a Delaware corporation, with a principal office in New York, New York, is a producer of Broadway
28 and off-Broadway musicals, and is identified as “Producer” of *Jersey Boys* in an agreement with the

1 Four Seasons Partnership, through which the exclusive rights in the Work which Defendant DeVito
2 purportedly transferred to Defendants Valli and Gaudio, were in turn transferred to DSHT, along
3 with the right to issue further licenses to, *inter alia*, other production companies controlled by DSHT
4 principals. Upon information and belief, Defendant DSHT originated as a producing partnership
5 between principals of Defendant Dodger Theatricals, Ltd. and Stage Holding, a business organized
6 and operating in the Netherlands, but was reorganized in or around 2005, and is now controlled
7 primarily by foreign principals. Upon information and belief, Defendants DSHT, Dodger
8 Theatricals, Ltd., and their lessees, licensees, or transferees, are responsible for productions and
9 performances of *Jersey Boys* throughout the world, including the permanent production produced
10 in this District and unofficial Division by Defendant, JB Viva Vegas, LP, and serve, *inter alia*, as
11 clearinghouses for revenues generated by the musical, and the distribution and/or allocation of
12 royalties therefor.

13 10. Defendant, Dodger Theatricals, Ltd. (“Dodger Theatricals”), a corporation, organized
14 under the laws of New York, is a producer of Broadway and off-Broadway musicals, including
15 *Jersey Boys*, and is signatory to the agreement between Defendants Valli, Gaudio, and DSHT,
16 through which the exclusive rights in the Work which Defendant DeVito purportedly transferred to
17 Defendants Valli and Gaudio were further licensed exclusively and/or assigned to Dodger
18 Theatricals and/or Defendant DSHT, for use and adaptation in connection with *Jersey Boys*. Upon
19 information and belief, Defendants Dodger Theatricals, DSHT, and their lessees, licensees, or
20 transferees, are responsible for productions and performances of *Jersey Boys* throughout the world,
21 including the permanent production produced in this District and unofficial Division by Defendant,
22 JB Viva Vegas, LP, and serve, *inter alia*, as clearinghouses for revenues generated by the musical,
23 and the distribution and/or allocation of royalties therefor.

24 11. Upon information and belief, Defendant, JB Viva Vegas, LP (“JB Viva Vegas”) is
25 a limited partnership, organized under the laws of New York; a lessee, licensee, and/or purported
26 transferee of a portion of the exclusive rights in the Work ostensibly obtained by Defendant DSHT
27 and/or Dodger Theatricals from Defendants Valli and Gaudio, following the initial transfer of such
28 rights from Defendant DeVito thereto; is producer of a permanent production of *Jersey Boys* in this

1 District and unofficial Division; and, serves, *inter alia*, as a clearinghouse for revenues generated
2 by the musical in Las Vegas, Nevada.

3 NATURE OF THIS ACTION

4 12. This is an action against Defendant DeVito for declaratory relief under the *Federal*
5 *Declaratory Judgment Act* [28 U.S.C. § 2201] and Sections 101 and 201 of the Copyright Act of
6 1976, as amended [17 U.S.C. §§ 101 and 201], seeking declarations: (a) that the Work is a “joint
7 work” within the meaning of 17 U.S.C. § 101; (b) that Mr. Woodard was, at minimum, a co-author
8 of the Work, and co-owner with Defendant DeVito thereof, under 17 U.S.C. § 201(a); (c) that
9 Plaintiff is an “author’s widow” with respect to the Work, as defined by 17 U.S.C. § 101, and is, at
10 minimum, a co-owner of the Work, under 17 U.S.C. §§ 201(a) and (d)(1); (d) that Plaintiff has the
11 right to publish and exploit the Work, and to enjoy, exercise, and enforce all other rights, benefits,
12 and causes of action accorded to copyright owners with respect thereto, under, *inter alia*, 17 U.S.C.
13 §§ 106, 501(b), 502, 503, 504, and 505; (e) that U.S. Copyright Reg. No. TXu 454 118 for the Work,
14 which was obtained by Defendant DeVito in his name only, was secured, and has been held, in
15 constructive trust for Mr. Woodard and Plaintiff, and should be amended to reflect Mr. Woodard’s
16 authorship and ownership interest, in accordance with 17 U.S.C. § 201(a), and his status as an
17 original copyright “claimant,” under 37 C.F.R. § 202.3(a)(3), so that Plaintiff may record her status
18 as heir and successor to this interest under 17 U.S.C. § 205; (f) that Defendant DeVito lacked the
19 authority and requisite copyright ownership interest, under 17 U.S.C. §§ 201(a) and (d)(2), to issue
20 the “exclusive,” “irrevocable,” and “perpetual” license encompassing the Work which he purportedly
21 granted to Defendants Valli and Gaudio, in the absence of Plaintiff’s express consent, and that said
22 exclusive license was void *ab initio*, insofar as it covered the Work; or, (g) that Defendant DeVito’s
23 said “exclusive license” to Defendants Valli and Gaudio amounted to only a nonexclusive license,
24 which said Defendants could not further sublicense, assign, or otherwise transfer, under 17 U.S.C.
25 § 201(d)(2), in the absence of Plaintiff’s express consent; or, (h) that said “exclusive license”
26 constituted an assignment to Defendants Valli and Gaudio of Defendant DeVito’s entire share in the
27 exclusive right to prepare derivative works based upon the Work, in the fields of, *inter alia*, theater,
28 film, and television, resulting in an indivisible co-ownership of such right by Plaintiff (50%) and

1 Defendants Valli and Gaudio (50%), under 17 U.S.C. §§ 201(a) and (d)(2). This action for
2 declaratory judgment is brought to resolve an actual controversy between the parties, as Defendant
3 DeVito now disputes Mr. Woodard's co-authorship of the Work; has registered the copyrights
4 therein in his own name and refuses to amend or supplement the registration; has issued "exclusive
5 licenses" and/or assigned rights in the Work to others (namely, Defendants Valli and Gaudio),
6 without Plaintiff's consent; and, has refused to account to Plaintiff for profits derived from, *inter*
7 *alia*, the use and adaptation of the Work for *Jersey Boys*, and the "exclusive license" granted to
8 Defendants Valli and Gaudio purportedly authorizing same.

9 13. This is also an action in equity for an accounting from Defendant DeVito of profits
10 obtained from the use and benefit of the Work, and/or works adapted or derived therefrom,
11 including, but not limited to, profits obtained from the "exclusive license" granted to Defendants
12 Valli and Gaudio, authorizing the use and adaptation of the Work for *Jersey Boys*, and/or profits
13 obtained from the assignment of Defendant DeVito's entire share of certain exclusive rights in the
14 Work to said Defendants. Further, this is an action for breach of contract against Defendant DeVito,
15 arising from his failure to credit Mr. Woodard as co-author of the Work; his failure to account for
16 and share equally with Plaintiff in profits arising directly or indirectly therefrom; and, his
17 assignment, or attempted transfer, of exclusive rights in the Work, in violation of an agreement
18 between Defendant DeVito and Mr. Woodard, dated December 1, 1988.

19 14. This is further an action against Defendant DeVito for unjust enrichment; breach of
20 the implied covenant of good faith and fair dealing in the performance of contractual obligations in
21 the context of a special and confidential relationship; constructive fraud, fraud, and fraudulent
22 concealment, arising from, *inter alia*, Defendant DeVito's failure to disclose to Plaintiff his licensing
23 and/or assignment of exclusive rights in the Work, or his receipt of profits therefrom,
24 notwithstanding the existence of a special and confidential relationship; and, fraudulent conversion
25 of profits and/or royalties received, which rightfully belong to Plaintiff. Finally, this is an action for
26 copyright infringement against Defendant DeVito, under the laws of the United Kingdom, Canada,
27 and Australia, arising from Defendant DeVito's unilateral grant of rights to Defendants Valli and
28 Gaudio to use, adapt, and further license or transfer rights in the Work, as necessary for productions

1 and performances of *Jersey Boys* in these countries, without Plaintiff's express prior consent.

2 15. This is also an action for declaratory relief against Defendants Valli, Gaudio, DSHT
3 and Dodger Theatricals, under the *Federal Declaratory Judgment Act* [28 U.S.C. § 2201] and
4 Section 201 of the Copyright Act of 1976, as amended [17 U.S.C. § 201], seeking declarations: (a)
5 that the "exclusive," "irrevocable," and "perpetual" license encompassing the Work which
6 Defendant DeVito granted to Defendants Valli and Gaudio, was void *ab initio*, under 17 U.S.C. §§
7 201(a) and (d)(2); or, (b) that Defendant DeVito's said "exclusive license" to Defendants Valli and
8 Gaudio amounted to only a nonexclusive license, which said Defendants could not further
9 sublicense, assign, or otherwise transfer, under 17 U.S.C. § 201(d)(2), in the absence of Plaintiff's
10 express consent; or, (c) that said transfer of exclusive rights constituted an assignment to Defendants
11 Valli and Gaudio of Defendant DeVito's entire share in the exclusive right to prepare derivative
12 works based upon the Work, in the fields of, *inter alia*, theater, film, and television, resulting in an
13 indivisible co-ownership of these rights by Plaintiff (50%) and Defendants Valli and Gaudio (50%),
14 under 17 U.S.C. §§ 201(a) and (d)(2); and, (d) that as transferees of less than Defendant DeVito's
15 entire share in the exclusive rights comprising the copyright in the Work, Defendants Valli and
16 Gaudio could not further license or assign the rights so obtained, under 17 U.S.C. § 201(d)(2), in the
17 absence of Plaintiff's express consent, rendering all subsequent non-exclusive licenses, exclusive
18 licenses, assignments, leases, and/or other transfers of said rights by said Defendants void and
19 invalid, including, but not limited to, the licenses and/or assignments granted by Defendants Valli
20 and Gaudio to Defendants Brickman, Elice, McAnuff, DSHT, and/or Dodger Theatricals; (e) that
21 Defendants DSHT and Dodger Theatricals have no rights to use, adapt, or perform adaptations of
22 the Work, or to authorize others to do so, by virtue of any such grant, in the United States, or abroad;
23 or, (f) that Defendants Valli's and Gaudio's transfer of the exclusive rights in the Work obtained
24 from Defendant DeVito, to Defendants DSHT and Dodger Theatricals, was effective, and constituted
25 an assignment of Valli's and Gaudio's entire share in the exclusive right to prepare derivative works
26 based upon the Work, in the fields of, *inter alia*, theater, film, and television, resulting in an
27 indivisible co-ownership of these rights by Plaintiff (50%) and Defendants DSHT and/or Dodger
28 Theatricals (50%), under 17 U.S.C. §§ 201(a) and (d). This action for declaratory judgment is

1 brought to resolve an actual controversy between the parties, as Defendants Valli, Gaudio, DSHT,
2 and Dodger Theatricals are aware, and have been advised, of Plaintiff's ownership claims concerning
3 the Work, but refuse to enter licensing negotiations with Plaintiff, or to desist and refrain from
4 performing, publishing, or authorizing the performance and/or publication of, unlicensed adaptations
5 of the Work in the United States and abroad.

6 16. This is also an action in equity for an accounting from Defendants Valli, Gaudio,
7 DSHT, and Dodger Theatricals, of profits obtained from the use and benefit of the Work and/or
8 works adapted or derived therefrom, including *Jersey Boys*, pled in the alternative, under FED. R.
9 CIV. P. 8(d)(2)-(3), seeking payment to Plaintiff of her fifty (50%) *pro rata* share of such profits,
10 once determined, from each such Defendant, during the period in which it co-owned exclusive rights
11 in the Work with Plaintiff, in the event that Defendant DeVito's purported transfer of exclusive
12 rights to Defendants Valli and Gaudio is found to constitute an assignment of his entire share in the
13 subject rights in the Work, under 17 U.S.C. § 201(d), as set forth in Paragraph 12(h) hereof, and in
14 the event that the subsequent transfer of such exclusive rights by Defendants Valli and Gaudio to
15 Defendants DSHT and/or Dodger Theatricals, is found to constitute an assignment of their entire
16 share in the subject rights in the Work thereto, under 17 U.S.C. § 201(d)(2), as set forth in Paragraph
17 15(c) hereof.

18 17. This is further an action against Defendants Valli, Gaudio, Brickman, Elice,
19 McAnuff, DSHT, Dodger Theatricals, and JB Viva Vegas, for copyright infringement, under Section
20 501(a) of the Copyright Act of 1976, as amended [17 U.S.C. § 501(a)], based on their unlicensed and
21 unlawful exercise of exclusive rights in the Work which are reserved to authors and copyright
22 owners, under 17 U.S.C. § 106, and are held, indivisibly, by Plaintiff and Defendant DeVito, as co-
23 owners of the joint Work, including: (a) the authorization of others to prepare derivative works based
24 upon the Work by Defendants Valli, Gaudio, DSHT, and Dodger Theatricals; (b) the authorization
25 of others to reproduce and distribute copies of the Work, by Defendants Valli, Gaudio, DSHT, and
26 Dodger Theatricals; (c) the preparation of derivative works based upon the Work by Defendants
27 Brickman, Elice, McAnuff, DSHT, and Dodger Theatricals; (d) the performance and distribution of
28 derivative works based upon the Work by Defendants DSHT, Dodger Theatricals, JB Viva Vegas,

1 and their purported lessees and/or “sublicensees;” (e) the reproduction of the Work by Defendants
2 Brickman, Elice, and McAnuff; and, (e) the distribution of copies of the Work by, *inter alia*,
3 Defendants Brickman, Elice, and McAnuff. Additionally, this is an action for vicarious copyright
4 infringement against Defendants Valli, Gaudio, McAnuff, DSHT, and Dodger Theatricals, who had
5 the right and ability to supervise and control the infringing acts, and received direct financial benefits
6 from the infringements. This is also an action for contributory copyright infringement against
7 Defendants Valli, Gaudio, Brickman, Elice, and McAnuff, who knew, should have known, and/or
8 had reason to know of the infringing activity, and induced, caused and/or materially contributed to
9 the infringing conduct of other Defendants herein.

10 18. Finally, this is an action against Defendants Valli, Gaudio, Brickman, Elice,
11 McAnuff, DSHT, and Dodger Theatricals, for copyright infringement under the laws of the United
12 Kingdom, Canada, and Australia, arising from their dealings in respect of the Work in said countries,
13 and their authorization of infringing acts therein, from within, and outside, the United States; their
14 exercise of exclusive rights in the Work in such countries, which are reserved to copyright owners
15 therein, including, but not limited to, the authorization of performances of adaptations of the Work
16 therein, and acts of adapting the Work for such performances; their production and oversight of such
17 performances, and collection and sharing of revenues therefrom; and, participation in agreements
18 licensing, transferring, and/or otherwise disposing of exclusive and/or nonexclusive rights in the
19 Work, all in the absence of Plaintiff’s consent, notwithstanding her status as a co-owner of the Work.

20 **PERSONAL JURISDICTION AND VENUE**

21 19. This Court has personal jurisdiction over Defendant DeVito, as he is a resident of this
22 State, and the Court in which this action was initially filed held that personal jurisdiction is proper
23 over Defendant DeVito herein. This Court has personal jurisdiction over Defendants Valli, Gaudio,
24 Brickman, Elice, McAnuff, DSHT, Dodger Theatricals, and JB Viva Vegas, LP, as they regularly
25 transact business within this State, and/or with citizens hereof; derive royalties and other
26 compensation from the performance and sale of derivative works based upon the Work within this
27 State; have committed acts of copyright infringement, vicarious copyright infringement, and/or
28 contributory copyright infringement in this State, giving rise to the injuries complained of herein;

1 and/or have established long-term agreements and obligations with citizens of this State, forming
2 the subject of Plaintiff's requests for declaratory relief.

3 20. Venue is proper in this District and unofficial Division, under 28 U.S.C. §§ 1400(a)
4 and 1391(b)(2) and (c), in that Defendant DeVito resides in this District and unofficial Division, and
5 the Court which transferred this action hereto held that venue is proper as to Defendant DeVito
6 herein; the remaining individual, corporate, and limited partnership Defendants or their agents "may
7 be found" herein, and a substantial part of the events or omissions giving rise to Plaintiff's claims
8 occurred in this judicial district. Alternatively, venue is proper under 28 U.S.C. § 1391(a)(2) and
9 (c), in that a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in
10 this judicial district.

11 STATEMENT OF FACTS

12 21. Plaintiff's husband, Rex Conrad Woodard, was a well-respected member of the
13 Beaumont, Texas legal establishment between 1975 and 1991, and a distinguished journalist with
14 a national reputation in the field of classic rock and roll music. Born in Dallas, Texas on April 10,
15 1950, Mr. Woodard moved to Beaumont in 1975, after obtaining his law degree from the Baylor
16 University School of Law and passing the Texas Bar Exam. He began his legal career as an
17 associate with Sanders & Sanders, and in 1977, founded Woodard and Lindsay, where he practiced
18 law through October 1984. He established a successful solo trial practice thereafter, and was
19 certified in civil trial law by the Texas Board of Legal Specialization in 1987. Mr. Woodard met
20 Plaintiff in 1981, and the two were married on May 17, 1986.

21 22. Mr. Woodard had been enamored of writing and music from an early age, and his
22 skill with the written word, knack for compelling story-telling, and knowledge of popular music
23 developed into an avocation he hoped ultimately would form a career. As a child of only four or five
24 years old, he "dictated" elaborate stories of wartime to his mother, who would type them for the
25 entire family to ponder and enjoy. As he grew older, he wrote stories about baseball to share with
26 friends, and articles concerning coins, and his coin collection. While in high school, he served on
27 the editorial staff of the yearbook and was a member of the Journalism Club. During law school,
28 he was Editor of the Student Bar Association's newspaper, and later, while maintaining his full-time

1 law practice, he pursued a secondary career as a freelance writer, publishing articles about 1960's
2 popular music – the subject with which he was most engaged. An avid record collector throughout
3 his life, and a rock trivia buff since the early-1960's, when he would listen to AM radio until dawn
4 with his sister, and compete in music trivia contests on radio, and on “Sumpin’ Else,” a Dallas
5 television show, he began writing for *Goldmine Magazine* in the late-1970's, authoring articles about
6 Terry Cashman, lead singer of the Chevrons; Dave Dee, Dozy, Beaky, Mick & Tich, a 1960's
7 German pop group with hit singles in the United States and Europe, and others.

8 23. Rex Woodard’s best work, however, was reserved for the Four Seasons, who, with
9 lead singer Frankie Valli, writer and keyboard player, Bob Gaudio, lead guitarist, Tommy DeVito,
10 bassists Nick Massi and (later) Joe Long, and writer/producer Bob Crewe, were his favorite musical
11 artists. Mr. Woodard had, *inter alia*, tracked every public development in the Four Seasons’ history
12 since purchasing the 45 RPM single, “Candy Girl,” at age 13; collected the band’s records and
13 maintained a comprehensive discography of its recordings, including rare bootleg recordings and
14 limited edition fan club releases; compiled an extensive collection of rare photographs and
15 newspaper clippings concerning the group, and contributed to a Four Seasons “fanzine” published
16 in the U.K. Moreover, the Four Seasons were aware of his interest and writings, as evidenced by the
17 true copy of a memo sent to Mr. Woodard by Defendant Gaudio’s office on October 17, 1980,
18 attached hereto as *Exhibit 1*. Accordingly, Mr. Woodard was both enthusiastic and well-prepared
19 when the opportunity arose to write a feature article about the group for *Goldmine Magazine* in 1981.
20 A true copy of this article, entitled, *THE FOUR SEASONS A Lesson in Survival*, as published in
21 August 1981 is attached hereto as *Exhibit 2*. The article was well-received by fans and rock
22 historians alike, and to date, remains the definitive published history of the Four Seasons’ “lost
23 years” – between 1970, when the group slipped from public consciousness, and 1975, when a
24 reconstituted Four Seasons line-up returned to chart-topping status with the singles, “Who Loves
25 You” and “December 1963 (Oh What a Night).”

26 24. Upon information and belief, Mr. Woodard’s 1981 *Goldmine* article garnered respect
27 from Defendants Valli, Gaudio, and DeVito, as well as former group members Nick Massi and Joe
28 Long, and whetted Mr. Woodard’s own curiosities concerning the earliest history of the Four

1 Seasons group. Accordingly, shortly following publication of his August 1981 *Goldmine* article, Mr.
2 Woodard conducted extensive research and interviews with early members of the group, in
3 preparation for a second article that would focus on the formation of the Four Seasons, and, in
4 particular, its direct predecessor, the Four Lovers, which Defendant DeVito led. On December 9,
5 1981, in connection with this article, Mr. Woodard interviewed Defendant DeVito for the first time,
6 covering a wide range of topics. A true copy of a representative excerpt of Mr. Woodard's
7 handwritten notes from this interview is attached hereto as *Exhibit 3*. On December 23, 1981, Mr.
8 Woodard interviewed Defendant DeVito's brother, Nick DeVito, who was an early member of the
9 Four Lovers, and its predecessors, the Varietones and Variety Trio, and Defendant DeVito was also
10 present, occasionally interjecting his own perspectives. A true copy of a sample page from Mr.
11 Woodard's notes concerning his December 1981 interview with Nick DeVito is attached hereto as
12 *Exhibit 4*, and true copies of representative notes from his interview with Defendant DeVito on that
13 date are attached hereto as *Exhibit 5*. On January 8, 1982, Mr. Woodard also interviewed Nick
14 Massi – a revolving member of the Four Lovers, Varietones, and Variety Trio, and a founder
15 member of the Four Seasons, who rarely granted interviews. True copies of representative notes
16 from this interview are attached hereto as *Exhibit 6*. The resulting article, published in the June 1982
17 issue of *Goldmine Magazine*, and entitled, *THE FOUR LOVERS Forerunners to the Fabulous Four*
18 *Seasons*, was, like Mr. Woodard's first, a definitive piece, providing information regarding the
19 group's origins that had not previously been made public, and which is still referenced by rock
20 historians and fans. A true and correct copy of this article, as published, is attached hereto as *Exhibit*
21 *7*.

22 25. Mr. Woodard would later observe, with respect to the interviews leading to his 1982
23 *Goldmine* article, that as an attorney who had taken numerous depositions, he suspected he was not
24 getting "the whole story" from Nick Massi and the DeVito brothers. Of particular interest to Mr.
25 Woodard were the "gaps" between the real ages of the Four Seasons' members and their "published"
26 ages, which appeared in promotional press releases – a gap of eight years for Defendant DeVito and
27 Nick Massi, and several years for Defendant Valli and early-member Nick DeVito. Whereas, such
28 discrepancies were not unusual in the entertainment industry, what was intriguing was each

1 member's inability (or unwillingness) to account for his activities during those "missing years."
2 These gaps would be filled five or six years later, when Defendant DeVito would present Mr.
3 Woodard with the scoop of his music journalism career. Meanwhile, Mr. Woodard continued his
4 independent research, fan-related writing, collecting, and news-clipping activities, while keeping in
5 contact with individuals close to the band, as well as the band itself. As shown in the true copy of
6 a June 10, 1983 letter from Defendant Valli to Mr. Woodard, attached hereto as *Exhibit 8*, Mr.
7 Woodard sent items from his personal Four Seasons collection to Defendant Valli that year, for
8 inclusion in a souvenir tour book then under consideration, and both Plaintiff and Mr. Woodard were
9 Defendant Valli's guests at a Four Seasons concert in Houston, Texas on September 24, 1983. Mr.
10 Woodard also kept in touch with Defendant DeVito, as shown in the true copies of exemplary notes
11 and cards he received from Defendant DeVito between 1982 and 1986, attached hereto as *Exhibit*
12 *9*.

13 26. Upon information and belief, Mr. Woodard's writings appeared in a tour program for
14 a Four Seasons line-up performing in the 1980's, along with photographs from Mr. Woodard's
15 personal collection. Sometime thereafter, Mr. Woodard received an unexpected telephone call from
16 Defendant DeVito, who, while no longer a member of the Four Seasons, had obtained a copy of the
17 program, and marveled at the photographs, some of which he had never seen. A dialogue ensued,
18 and Defendant DeVito informed Mr. Woodard that he had a sensational story to tell, but was not a
19 writer, and wanted Mr. Woodard to write it. According to Defendant DeVito, Mr. Woodard was
20 selected for the task not only because he was an established writer who was familiar with the Four
21 Seasons (and Defendant's family), but also because he had legal knowledge, and certain aspects of
22 Defendant's story were sensitive.

23 27. Shortly following this conversation, in November 1988, Mr. Woodard flew to Las
24 Vegas, with Plaintiff and their youngest daughter, and began a series of intensive interviews with
25 Defendant DeVito, during which Defendant DeVito shared, for the first time with any journalist, the
26 true story of his unaccounted-for years. According to Defendant DeVito, most of those years, for
27 himself and the other band members – excluding Defendants Valli and Gaudio – were devoted to
28 various criminal enterprises and long stretches in prison. Moreover, according to Defendant DeVito,

1 these experiences led to underworld contacts, some of which continued throughout the Four Seasons’
2 popular era. These accounts differed radically from the public’s perception of the Four Seasons as
3 clean-cut “kids” singing in tuxedos on the *Ed Sullivan Show*, and Mr. Woodard was intrigued. Mr.
4 Woodard was also excited by the nature of the opportunity offered – not a mere “scoop” for a
5 magazine article, but the opportunity to write Defendant DeVito’s authorized biography, and tell the
6 “true” story of the Four Seasons to the world. Defendant DeVito wished to share his experiences
7 to the full extent the law would allow, but DeVito – who had achieved only an eighth grade
8 education – could not write the Work, and asked Mr. Woodard to do so, with full credit for his
9 efforts, and an equal share in any resulting profits. The Work was to be based on the Las Vegas
10 interviews, which Mr. Woodard recorded, and any other information or material Mr. Woodard might
11 deem beneficial, subject to Defendant DeVito’s approval of the final text. Mr. Woodard agreed to
12 undertake the project, and returned to Beaumont, Texas to begin the process of creating the Work.

13 28. Two weeks later, on December 1, 1988, Mr. Woodard sent a letter agreement to
14 Defendant DeVito, at Defendant DeVito’s request, memorializing the parties’ understandings
15 regarding the Work, and Defendant DeVito signed this document, under the heading,
16 “APPROVED,” and returned it to Mr. Woodard by mail. A true copy of the executed letter
17 agreement is attached hereto as *Exhibit 10*. The key understandings therein were as follows: (a) Mr.
18 Woodard would write Defendant DeVito’s authorized biography, based on the interviews Defendant
19 DeVito had given, “plus any other relevant information that would benefit the book;” (b) Mr.
20 Woodard would “do all of the actual writing;” (c) Defendant DeVito would have control over the
21 final text of the Work; (d) Mr. Woodard and Defendant DeVito would “be shown as co-authors [of
22 the Work] with [Defendant DeVito] receiving first billing;” (e) Mr. Woodard and Defendant DeVito
23 would “share equally in any profits arising from [the Work], whether they be in the form of royalties,
24 advances, adaptations fees, or whatever;” and, (f) the agreement would be binding upon the parties
25 without limitation of term, and upon their heirs, both as to obligations and benefits, if Mr. Woodard,
26 Defendant DeVito, or both, should die. *Exhibit 10* at p. 2 (emphasis added). In sum, the parties
27 intended that they be considered co-authors, and that the Work be treated as a “joint work.”

28 29. Mr. Woodard labored over the Work for the next two years, drawing on every shred

1 of knowledge and research he had compiled regarding the Four Seasons over a lifetime in the
2 process, including, *inter alia*, his previous articles for *Goldmine Magazine*; his interviews with Nick
3 Massi and Nick DeVito; his two interviews with Defendant DeVito in 1981, and the series of
4 interviews conducted with Defendant DeVito in 1988; his extensive collection of newspaper
5 clippings, record albums, fanzines, and photographs; and the various discographies he had compiled.
6 Mr. Woodard also employed tools available to him as an attorney, including the filing of requests
7 under the *Freedom of Information Act* with local law enforcement agencies and the Federal Bureau
8 of Investigation, to obtain Defendant DeVito's complete criminal records and confirm alleged U.S.
9 government efforts to link Defendant DeVito and/or the Four Seasons to organized crime. Upon
10 information and belief, Mr. Woodard also created a series of questionnaires for Defendant DeVito,
11 covering all aspects and phases of his life, including such minutiae as favorite foods, the layout of
12 his childhood home, his first sexual experience, his first wife's hair color, and hundreds of additional
13 factual details, which Defendant DeVito provided. Upon information and belief, an additional
14 questionnaire was prepared, and further interviews conducted, following the Four Seasons' induction
15 into the Rock and Roll Hall of Fame in 1990, an event described in the Work. From this material,
16 Mr. Woodard constructed a comprehensive outline of Defendant DeVito's life; selected, organized,
17 placed, and rephrased the anecdotes, recollections, and minutiae he found most compelling, and
18 drafted the entire text of the Work, based on his perceptions of life through Defendant DeVito's eyes,
19 presented in a "first-person," narrative style appropriate to said Defendant, and the other characters
20 therein, but utterly original to Mr. Woodard. Mr. Woodard worked night and day on the Work,
21 retreating to his music room at home in the evenings to make notes that would guide his dictation
22 the following day, and dictating the Work during the day at his office, for transcription by his
23 secretary, Myrtle Locke. Mr. Woodard's law practice suffered as a result of his devotion to the
24 Work, but the Work was more important to him.

25 30. Mr. Woodard remained in close contact with Defendant DeVito throughout the
26 drafting of the Work, by telephone, by mail, and through personal meetings at Defendant DeVito's
27 Las Vegas home, Mr. Woodard's office, and Plaintiff's and Mr. Woodard's home in Beaumont,
28 Texas, which Defendant DeVito visited with his wife. As Mr. Woodard completed each chapter of

1 the Work, he also sent a copy to Defendant DeVito by mail, and Defendant DeVito would contact
2 Mr. Woodard to discuss any desired changes, sometimes marking changes to the text in pen, and
3 other times simply requesting that particular facts be added or removed. Mr. Woodard would then
4 revise the subject text and send replacement pages to Defendant DeVito, for retention in a notebook
5 containing the latest version of each page of the Work. True copies of correspondence between Mr.
6 Woodard and Defendant DeVito reflecting this process, and Defendant DeVito's cooperation with
7 Mr. Woodard's *Freedom of Information Act* requests, are attached hereto as *Exhibit 11*.

8 31. As the Work neared completion in late-1990, Mr. Woodard began to seek a publisher,
9 keeping Defendant DeVito apprized of his efforts. True copies of representative correspondence
10 reflecting these efforts are attached hereto as *Exhibit 12*, and an exemplary report to Defendant
11 DeVito is included in *Exhibit 11*, at pp. 20-21. In connection therewith, Mr. Woodard prepared a
12 condensed, chapter-by-chapter outline of the Work for presentation to prospective publishers, a
13 redacted true copy of which is included in *Exhibit 12*, at pp. 4-5. Defendant DeVito also participated
14 in efforts to find a publisher, discussing at least one possible publishing deal with Mr. Woodard in
15 mid-1989, as shown in *Exhibit 11*, at p. 4. The parties also provided a copy of Mr. Woodard's
16 outline to actor, Joe Pesci, for the purpose of adapting the manuscript for a screenplay, as represented
17 in the letter shown in *Exhibit 12*, at p. 3. At all times during these efforts, it was understood and
18 agreed that, whatever use might be made of the Work, both Mr. Woodard and Defendant DeVito
19 would share equally in the resulting profits.

20 32. By December 7, 1990, Mr. Woodard was days away from completing the Work, and
21 on December 11, 1990, he wrote Sandy Choron, of March Tenth, Inc. in New York, to solicit her
22 services as his agent in dealings with publishers. A true copy of this letter is attached hereto as
23 *Exhibit 13*. Therein, Mr. Woodard summarized the history of his involvement with the Work and
24 his role in creating it; described the explosive revelations contained therein, identifying key "scenes"
25 in the Work; discussed the likely impact of these revelations on public perceptions of the Four
26 Seasons; and, confirmed that he had been approached "about doing a screenplay on the project."
27 *Exhibit 13*, at pp. 2-3. Ultimately, Ms. Choron declined. However, as represented in the letter
28 shown in *Exhibit 13*, Mr. Woodard completed the Work shortly thereafter, subject only to line

1 editing for publication, and Defendant DeVito approved the text. Upon information and belief,
2 anticipating that copies of the Work might be disseminated to prospective publishers the following
3 month, Mr. Woodard placed a copyright notice on the title page, in the following form: “© January,
4 1991 Tommy Devito, Rex Woodard,” with Defendant DeVito receiving top billing, as agreed. A
5 true copy of the cover page of Mr. Woodard’s final version of the Work, together with the first page
6 of text, is attached hereto as *Exhibit 14*.

7 33. The Work, as completed by Mr. Woodard, and approved by Defendant DeVito, was
8 not strictly a factual work, as dictated by the style and manner in which it was written. Although it
9 purports to be a biographical account of both Defendant DeVito and the Four Seasons musical group,
10 the Work is presented as a first-person narrative, with Defendant DeVito speaking in the present
11 tense as the action evolves, and much of that action is portrayed through dialogue among the
12 “characters,” including dialogue from events at which Defendant DeVito was not present. The Work
13 also purports to divulge what characters are thinking and feeling at various points in the story, and
14 Mr. Woodard and Defendant DeVito were not privy to those thoughts or feelings. Thus, in certain
15 respects, the Work is fiction, speculation, and informed opinion, depicting what Mr. Woodard and/or
16 Defendant DeVito envisioned may have occurred, or what may have been said by others, in view of
17 certain events believed by Defendant DeVito to be true. The Work reads like a play or screenplay,
18 rather than a biography, with Defendant DeVito’s first-person narration directed to the
19 reader/audience, interspersed with action scenes and dialogue.

20 34. Unfortunately, Mr. Woodard’s initial efforts to secure an agent or publisher were
21 unsuccessful, and, in late-1990, just weeks following his letter to Ms. Choron, his health began to
22 deteriorate. Although never a smoker, Mr. Woodard had been diagnosed with lung cancer in 1989,
23 and in late-Fall 1990, the cancer spread to his bones. By December 27, 1990, Mr. Woodard was
24 visibly ill, having lost significant amounts of weight, and by February or March 1991, he was
25 bedridden. Defendant DeVito, aware of Mr. Woodard’s terminal illness, purchased a Mass Card for
26 Plaintiff in January 1991, entitling her to five-years of Catholic Masses. Plaintiff, a Baptist, did not
27 use the card, but retained it, and a true copy is attached hereto as *Exhibit 15*.

28 35. Rex Woodard died on May 25, 1991, at forty-one years of age, leaving Plaintiff and

1 three children behind. He penned his own obituary, and a true copy, as published in the May 27,
2 1991 *Beaumont Enterprise*, is attached hereto as *Exhibit 16*. Whereas, numerous achievements are
3 highlighted therein, including his “distinguished reputation nationwide as a journalist of classic rock
4 and roll music,” the accomplishment of which Mr. Woodard was most proud is summarized as
5 follows: “In early-1991, he finished work on his most ambitious project, a full-length book co-
6 authored with Tommy DeVito, a member of the Rock and Roll Hall of Fame.” *Exhibit 16*, at p. 2.

7 36. Mr. Woodard’s dying wish was that Plaintiff and his sister would ensure that the
8 Work was published after his death. Mr. Woodard also hoped that income generated by the Work,
9 and/or adaptations thereof, would support his wife and children when he would no longer be there
10 to support them. In addition to Mr. Woodard’s letter agreement with Defendant DeVito, through
11 which Plaintiff was the successor and beneficiary of Mr. Woodard’s rights and interests in the Work,
12 Mr. Woodard bequeathed to Plaintiff all of his intangible property, “of whatsoever kind and
13 character,” as shown in the redacted copy of his *Last Will and Testament*, attached hereto as *Exhibit*
14 *17*.

15 37. In accordance with Mr. Woodard’s last wishes, both Plaintiff and Mr. Woodard’s
16 sister, Cindy Woodard Ceen, continued to press for publication of the Work in the years following
17 his death. Exemplary form letters, which were customized, and sent to prospective publishers by
18 Plaintiff and Mrs. Ceen in 1992, are attached hereto as *Exhibit 18*, along with a listing of publishers
19 to whom Plaintiff sent a copy of Mr. Woodard’s outline of the Work. Plaintiff also engaged a
20 literary agent in the hopes of publishing the Work, as reflected in the true copy of correspondence
21 received therefrom in May 1997, attached hereto as *Exhibit 19*. Unfortunately, public interest in the
22 Four Seasons had waned by this time, and was perceived by publishers to be minimal. Accordingly,
23 the Work remained unpublished. Nonetheless, both Plaintiff and Mrs. Ceen continued to seek a
24 publisher independently of Defendant DeVito, and were continuing to do so as of September 2005,
25 when Mrs. Ceen decided to contact Defendant DeVito directly, for collaborative assistance.

26 38. Specifically, as shown in the true copies of electronic mail messages, correspondence
27 and handwritten notes attached hereto as *Exhibit 20*, in September 2005, Mrs. Ceen informed Charles
28 Alexander, a prominent and active member of two leading Four Seasons fan groups, that she was

1 trying to reach Defendant DeVito to discuss publication of the Work. On September 22, 2005, Mr.
2 Alexander responded with the following message:

3 Yesterday I was able to meet with Tommy DeVito. During the course
4 of our conversation, I told him of your desire to publish Rex's book
5 and that you were trying to reach him. He said he loved Rex and
6 would [help] in any way he could. Here is his cell phone number:
7 [redacted].

8 *Exhibit 20*, at p. 2. Mrs. Ceen telephoned Defendant DeVito that day, and discussed Plaintiff's
9 ongoing desire to publish the Work. During this conversation, Defendant DeVito was friendly and
10 spoke kindly of Mr. Woodard; did not deny Mr. Woodard's authorship of the Work; did not deny
11 that Plaintiff had a right to publish the Work; did not dispute Plaintiff's ownership interest in the
12 Work; and, did not report that any use had been made of the Work, or that rights therein had been
13 licensed or assigned to others. Rather, Defendant DeVito indicated that he wished to update the
14 Work, to include post-1990 developments, and "restore" some of the obscene language he felt Mr.
15 Woodard had omitted, notwithstanding the profusion of profanities already contained within the
16 Work. Finally, Defendant DeVito claimed he had "lost" his copy of the Work, and asked that Mrs.
17 Ceen send a replacement copy. Mrs. Ceen left the conversation excited about Defendant DeVito's
18 statements because she believed he intended to cooperate and further collaborate with her and
19 Plaintiff, and she wrote Defendant DeVito the next day, summarizing their conversation, and
20 providing the requested copy of the Work, as shown in the true copy of her letter included in *Exhibit*
21 *20*, at p. 3. Mrs. Ceen's letter also informed Defendant DeVito that Plaintiff was considering self-
22 publishing the Work, if a traditional publisher could not be found. *Id.*

23 39. Neither Plaintiff nor Mrs. Ceen heard from Defendant DeVito again following the
24 foregoing September 22, 2005 conversation. However, on November 2, 2005, Mrs. Ceen received
25 a phone-mail message from Jay Julien, who identified himself as Defendant DeVito's attorney, and
26 she returned this call on November 3, 2005. During the ensuing conversation, Mr. Julien advised
27 that he had spoken with Defendant DeVito regarding the Work, and concluded that the Work was
28 "not saleable." Mrs. Ceen was surprised by this comment, because *Jersey Boys* was scheduled to
open on Broadway a few days later, and she suggested that renewed appreciation for the Four
Seasons engendered by the play would likely generate an interest in Defendant DeVito's story. Mr.

1 Julien appeared unmoved. Nonetheless, he was complimentary of Mr. Woodard, and at no time
2 disputed Mr. Woodard's authorship of the Work, Plaintiff's co-ownership thereof, or Plaintiff's right
3 to exploit the Work independently of Defendant DeVito, whether "saleable" or not. Nor did Mr.
4 Julien disclose that any use of the Work had been made, or that rights in the Work had been licensed
5 or assigned to others. Mrs. Ceen sent a letter to Mr. Julien later that day, summarizing their
6 conversation, and asking that Defendant reconsider his position – in view of *Jersey Boys*, Plaintiff
7 believed the optimal time for publication had arrived, and both Plaintiff and Mrs. Ceen felt
8 Defendant DeVito's cooperation and endorsement would be beneficial, if not crucial. True copies
9 of Mrs. Ceen's notes from her conversation with Mr. Julien, and her follow-up letter of November
10 3, 2005, are included in *Exhibit 20*, at pp. 5-6. Meanwhile, Plaintiff concluded that it remained her
11 burden to publish the Work, and continued to hope for a publishing deal.

12 40. By the end of 2006, *Jersey Boys* had become a smash hit, recouped its initial
13 investment, and garnered four Tony Awards. Although Plaintiff had not seen the show, and was
14 unaware of its specific content, she surmised that the production's success would give rise to demand
15 for the Work, and decided to engage counsel to: (a) confirm that the copyrights in the unpublished
16 Work had been registered before her husband's death on behalf of the coauthors/joint owners; (b)
17 register the copyrights on behalf of the coauthors/joint owners, if no application for such registration
18 had been filed; and, (c) contact Mr. Julien to determine whether Defendant DeVito had changed his
19 mind regarding the marketability of the Work in view of *Jersey Boys*' success, and if so, whether he
20 might again be interested in cooperating and collaborating with Plaintiff.

21 41. A search of the online database records of the United States Copyright Office
22 conducted by Plaintiff's counsel on or about January 3, 2007, failed to reveal any copyright
23 registration issued to Mr. Woodard for the Work. However, a search under the keyword, "Tommy
24 DeVito," showed that on January 11, 1991 – a date by which Mr. Woodard's health was in steep
25 decline – Defendant DeVito filed an application, and obtained a copyright registration, for a literary
26 work entitled, *Tommy DeVito – Then and Now*, under Reg. No. Txu 454 118.

27 42. Whereas, the online database records of the Copyright Office provide little
28 information beyond the title, author, and classification of a work, and Defendant DeVito holds a

1 number of copyright registrations, Plaintiff could not determine whether the work registered by
2 Defendant DeVito under Txu 454 118 was “the Work” at issue herein. Accordingly, in pursuit of
3 additional information, Plaintiff’s counsel ordered a copy of the registration certificate from the
4 Copyright Office, which arrived on or about February 23, 2007. A true and correct copy of Reg. No.
5 Txu 454 118, as received from the Copyright Office, is attached hereto as *Exhibit 21*. As shown
6 therein, only Defendant DeVito is listed as an “author” of the registered work, and only Defendant
7 DeVito is listed as a copyright claimant. *Exhibit 21*, at p. 2. The registration also claims that
8 Defendant DeVito wrote the “entire text” of the work; identifies the work as “unpublished,” and
9 represents that the work was completed in 1990 – the year Mr. Woodard completed the Work.
10 *Exhibit 21*, at pp. 2-3.

11 43. While the information contained in Registration No. Txu 454 118 was potentially
12 alarming, the certificate did not include a copy of the material deposited with Defendant DeVito’s
13 application, so Plaintiff was still unable to determine whether the work registered by Defendant
14 DeVito was “the Work,” or some other literary work. Moreover, the Regulations and Policies of the
15 Copyright Office do not permit anyone other than the listed copyright claimant to obtain a copy of
16 a deposited work, unless a *Copyright Litigation Statement* (Form LS) is ordered, filed with the
17 Copyright Office, and approved. After careful consideration, and in view of the additional emerging
18 facts discussed hereinbelow, Plaintiff decided to proceed with the ordering and filing of Form LS,
19 to review the work covered by Registration No. Txu 454 118 and ascertain whether it was the Work.
20 The Form LS was received from the Copyright Office on May 4, 2007, and filed by Plaintiff’s
21 counsel on May 6, 2007.

22 44. Plaintiff’s Form LS was approved by the Copyright Office and, on or about June 8,
23 2007 Plaintiff finally received a copy of the work deposited with the application leading to Reg. No.
24 Txu 454 118. The deposited work was identical to the Work written by Mr. Woodard as described
25 hereinabove, with two exceptions: (a) Mr. Woodard’s original title page, encaptioned, “UNTITLED
26 TOMMY DEVITO/FOUR SEASONS BIOGRAPHY, and bearing the January 1991 copyright notice
27 in Defendant DeVito’s and Mr. Woodard’s names, had been removed, and replaced with a title page
28 reading, “Tommy DeVito – Then and Now By Tommy DeVito;” and, (b) page 264 of the Work,

1 comprising the first page of Chapter 41, was missing. A true copy of the title page and first textual
2 page of the work covered by Reg. No. Txu 454 118, as received from the Copyright Office, is
3 attached hereto as *Exhibit 22*. A comparison of this material with that included in *Exhibit 14* shows
4 that the *Prologue* of Mr. Woodard's and Defendant DeVito's Work is identical to the *Prologue* in
5 the manuscript covered by Reg. No. Txu 454 118. All remaining pages of text are also identical.
6 In fact, with the exception of the title page, and missing page 264, the work deposited in support of
7 Reg. No. Txu 454 118 is a photocopy of the manuscript typed by Mr. Woodard's secretary, Myrtle
8 Locke. The replacement title page, on the other hand, is in a non-matching font, and appears to have
9 been generated by a computer, rather than a typewriter or primitive word processor. *Exhibit 22*, at
10 p. 2.

11 45. In view of Mr. Woodard's primary authorship of the Work; the 1988 letter agreement
12 between Mr. Woodard and Defendant DeVito; Defendant DeVito's awareness of Mr. Woodard's
13 (and his heirs') independent attempts to publish the Work; and, the tone and content of Defendant
14 DeVito's and Mr. Julien's conversations with Mrs. Ceen, Plaintiff was shocked to learn that
15 Defendant DeVito had registered the Work in his name without disclosure to Mr. Woodard or
16 Plaintiff, and in violation of the parties' agreement. More shocking was the fact that Defendant
17 DeVito had filed the underlying application at a time when Mr. Woodard was gravely ill, and not
18 likely focused upon registering the Work, which, after all, had not been published, making such
19 registration optional when Defendant DeVito obtained Reg. No. Txu 454 118.

20 46. Unfortunately, this revelation was coupled with near-contemporaneous discoveries
21 that the writers of *Jersey Boys* had obtained access to the Work; that the Work had inspired the form,
22 structure, and content of the musical; that the perspective of the "Tommy DeVito" character therein
23 was derived largely from the Work; that several scenes in *Jersey Boys* were adapted from the Work;
24 that actors portraying Defendant DeVito in the play were provided with copies of the Work; and, that
25 Defendant DeVito was financially connected to the musical, and had received royalties and/or profits
26 therefrom.

27 47. Specifically, as shown in the true copies of published articles attached hereto as
28 *Exhibit 23*, a July 8, 2006 *Reuters* report in *Backstage Magazine* quoted Defendant McAnuff,

1 director of *Jersey Boys*, as stating that, in creating the *libretto*, Defendants Brickman and Elice relied
2 on interviews with Bob Gaudio and Frankie Valli, and “an unpublished autobiography by DeVito,”
3 *Exhibit 23*, at p. 3 (emphasis added), for the perspectives of their characters in the show, while
4 relying upon others for Nick Massi’s side of the story, given his death in December 2000. *Id.* The
5 main *Wikipedia* article concerning Defendant DeVito also reported that: “DeVito has written a
6 lengthy but as-yet-unpublished autobiography (with the help of the late Rex Woodard) about his days
7 with the group, which served, along with other accounts, as background material for the musical.”
8 *Exhibit 23*, at p. 4 (emphasis added). An association between *Jersey Boys* and the Work was also
9 noted in the following “Question and Answer” exchange accompanying a December 23, 2005 *Jersey*
10 *Boys* “Podcast:”

11 Q.: Does anyone have any more information about ‘THE BOOK’
12 that the *Jersey Boys* Broadway production is based on written by
13 Marshall Brickman and Rick Elice?

14 A: *Book* is a term that refers to the script, so when they say book by
15 Brickman and Elice they are referring to the script. The writers did
16 reference an unpublished Tommy DeVito autobiography that was
17 provided by Tommy himself. This autobiography was to be, and may
18 still be, published.

19 *Exhibit 23*, at p. 5 (emphasis added). And, a published interview with Christian Hoff, who first
20 portrayed Defendant DeVito in the musical, winning a Tony Award for his performance, reported
21 further associations. According to Mr. Hoff, when casting for *Jersey Boys* began, the script for
22 *Jersey Boys* had not yet been written, and he was provided with a one and one-half (1½) page
23 distillation of the Work from which to audition, *Exhibit 23*, at p. 9, while the entire Work was made
24 available as background research. *Id.* Devon May, who portrayed Defendant DeVito in a national
25 touring company of *Jersey Boys*, reported similar access to the Work, in an interview for the June
26 2007 edition of *Backstage Magazine*:

27 I’ve also had the good fortune to read Tommy DeVito’s unpublished
28 autobiography. Hopefully, it will come out sometime soon. For me,
it was really a great educational tool, to get to know who Tommy
was.

Exhibit 23, at p. 16. Finally, other publications reported that Defendant DeVito was financially
connected to *Jersey Boys*, and had received profits or royalties from Defendants Valli and Gaudio,

1 as shown in the true and correct copies of such reports attached hereto as *Exhibit 24*. Indeed,
2 Defendant DeVito's Web site, at <www.tommydevito.com>, referred to Jersey Boys as "his SMASH
3 HIT Broadway play." *Exhibit 24*, at p. 7 (emphasis added).

4 48. Promptly following these discoveries, and within five days of receiving the material
5 deposited in support of U.S. Copyright Reg. No. Txu 454 118, Plaintiff's counsel wrote to Mr.
6 Julien, Defendant DeVito's attorney, demanding, *inter alia*, that Defendant DeVito execute an
7 application for *Supplementary Registration* under Copyright Form CA to add Mr. Woodard as
8 coauthor and co-claimant of the Work; and provide an accounting of profits derived directly or
9 indirectly from the Work, in accordance with the parties' agreement, and their status as joint owners
10 thereof. A copy of this demand, as dispatched to Defendant DeVito's counsel on June 13, 2007, by
11 electronic mail and overnight courier, is attached hereto as *Exhibit 25*.

12 49. Neither Defendant DeVito nor his counsel responded in writing to Plaintiff's June
13 13, 2007 demand, but counsel for the parties spoke several times by telephone, and exchanged
14 electronic mail messages between June and October 2007, in an attempt to reach an amicable
15 resolution. Over the course of these communications, Defendant DeVito's counsel advanced
16 numerous inconsistent factual assertions – initially claiming that Defendant DeVito had not shown
17 the Work to anyone, but later admitting that Defendant DeVito had provided a copy to *Jersey Boys*;
18 initially expressing interest in the possibility of pursuing a joint action for copyright infringement
19 against *Jersey Boys*, and later stating that Plaintiff's only recourse would be an action against
20 Defendant DeVito, as he had authorized the use of the Work; and, initially claiming that Defendant
21 DeVito was "considering" executing the Copyright Form CA provided by Plaintiff, which would
22 supplement Registration Txu 454 118 to include Mr. Woodard's authorship and ownership claims,
23 and finally stating that Defendant DeVito would not sign the document, because Defendant DeVito,
24 rather than Mr. Woodard, was the sole author of the Work. When questioned about the latter claim,
25 Mr. Julien stated that Mr. Woodard was merely Defendant DeVito's "scribe," and that Defendant
26 DeVito was the author. However, Mr. Julien could not explain, among other things, how Defendant
27 DeVito could have authored those portions of the Work which were based on Mr. Woodard's
28 independent research, his interviews with third parties, and material he obtained through *Freedom*

1 *of Information Act* requests. Nor could Mr. Julien explain how Defendant DeVito, with only an
2 eighth-grade education, who admittedly was “not a writer,” would be capable of “dictating” the
3 Work to Mr. Woodard (who could not type), replete with the dense factual references, invented third-
4 party dialogue, literary techniques, and vocabulary appearing therein.

5 50. On July 2, 2007, following the initial talks with Defendant DeVito’s counsel, Plaintiff
6 filed an application for *Supplementary Registration* with the United States Copyright Office, under
7 Copyright Form CA, seeking to supplement Reg. No. Txu 454 118 to include Mr. Woodard’s
8 authorship and ownership claims. A true copy of this application as filed, including the application
9 form, check, and evidence of filing by overnight courier, is attached hereto as *Exhibit 26*. The
10 application was finally refused by the Copyright Office on June 16, 2008, as shown in the true copy
11 of the refusal to register appearing in *Exhibit 26*, at pp. 7-9, on grounds that it was not signed by
12 Defendant DeVito, who filed the basic application Plaintiff seeks to supplement. Plaintiff appealed
13 this refusal before the Copyright Review Board on June 21, 2008, but even if her appeal is
14 successful, the resulting *Supplementary Registration* will not be cross-indexed with Reg. No. Txu
15 454 118, so as to provide clear notice of Mr. Woodard’s and Plaintiff’s rights, because the
16 underlying application was not signed by Defendant DeVito, under 37 C.F.R. § 201.5(b)(1), n. 1.
17 Thus, as a result of Defendant DeVito’s actions, and failures to act, Plaintiff cannot secure or readily
18 establish clear title in or to her indivisible ownership interest in the Work, or enjoy the rights and
19 benefits of Reg. No. Txu 454 118, which Defendant DeVito, by law, holds in constructive trust for
20 her.

21 51. As negotiations with Defendant DeVito’s counsel concluded unproductively in
22 October 2007, additional facts emerged concerning the connection between the Work and *Jersey*
23 *Boys*. First, as shown in *Exhibit 23*, at p. 22, a September 30, 2007 article in the *Chicago Tribune*
24 included the following account of the writing of the musical:

25 Drafts passed back and forth. Faced with the conflicting recollection
26 of the surviving Seasons, Elice and Brickman hit on the politically
27 savvy idea of using all three of them as narrators, each telling their
28 version of the group’s history at different points in the show. *As it happened, DeVito already was writing a memoir, which provided a lot of material, especially on how the Seasons tap-danced around the Outfit members who controlled many of the venues in which they*

1 played, and whose loans underwrote DeVito's lifestyle.

2 *Id.* (emphasis added). Then, in late-October 2007, Broadway Books, a division of Random House,
3 released an "official" publication authored by David Cote, and entitled, *Jersey Boys The Story of*
4 *Frankie Valli and the Four Seasons* (the "*Jersey Boys* book"), which provided further details. True
5 copies of representative pages from this publication are attached hereto as *Exhibit 27*. Among the
6 one hundred seventy-seven pages thereof were first-hand accounts from Defendants McAnuff,
7 Brickman, and Elice, concerning the evolution of the *Jersey Boys* libretto. As recounted therein, the
8 initial treatment by Defendants Brickman and Elice was largely fictional, and did not appeal to
9 Defendant McAnuff when he was first approached to direct the play by Michael David, a principal
10 of Defendants DSHT and Dodger Theatricals:

11 DES McANUFF: Michael [David] approached me [about *Jersey*
12 *Boys*] and he was very excited but thought it needed work. And,
13 quite frankly – and I mean this in no way as an insult to Marshall
14 [Brickman] and Rick [Elice], who've done a spectacular job of
15 writing this thing – the initial treatment wasn't of any interest to me.
16 It was fictionalized. There was some biographical information there,
17 but it was largely invention, a traditional musical structure, with
18 people on the street bursting into song, and a bunch of girls as a
19 Greek chorus of Jersey Girls. It didn't grab me. I felt that Nick and
20 Tommy were indistinguishable; the story focused too much on Bob
21 and Frankie and, quite frankly, it sentimentalized them. It didn't
22 appeal to me I met with them and heard what they had to say,
23 and then I basically told them that it wasn't for me. Finished lunch,
24 shook hands, thought that would be the end of it.

19 *Exhibit 27* at p. 3 (emphasis added). However, the tide turned for Defendant McAnuff, according
20 to the *Jersey Boys* book, when he read the Work and two interviews with Defendants Valli and
21 Gaudio, and was struck with the concept of a biographically-inspired production that would be
22 narrated by the members of the Four Seasons, with each providing his personal perspectives on the
23 group:

24 DES McANUFF: [T]he really important documents were two long
25 interviews with Frankie and Bob, which were meant to be deep
26 background for a TV movie. There was also an unpublished
27 autobiography by Tommy DeVito that is beyond description. It was
28 just so delicious. Rick and Marshall had a couple of sequences in
their treatment that were clearly inspired by this autobiography.

27 MARSHALL BRICKMAN: We hadn't at that point realized that we
28 wanted to do a biography. We just didn't want to do a kind of
retrofitting of songs to a preconceived plot, like *Mamma Mia!*

1 *Exhibit 27*, at p. 4. Upon information and belief, the “sequences” referenced in Defendant
2 McAnuff’s foregoing statement, which were “clearly inspired” by Mr. Woodard’s “really important”
3 and “delicious,” unpublished Work, were contained in the initial treatment for *Jersey Boys* written
4 by Defendants Brickman and Elice, which drew from, and/or referenced, an earlier treatment by
5 previously-commissioned authors, as well as the Work. After reading the Work, Defendant
6 McAnuff “re-outlined” the play, with the assistance of Defendants Brickman and Elice, adapting
7 more material from the Work, and approached Defendants Valli and Gaudio for permission to do
8 so, in view of the controversial, subject matter thereof. Upon information and belief, this permission
9 was granted, Defendant McAnuff agreed to direct the play, and the transformation of *Jersey Boys*
10 progressed, with the Work serving as a ready desk-side reference and blueprint, large portions of
11 which were underlined, bracketed, highlighted, and/or otherwise marked, to designate material for
12 adaptation into the play..

13 52. The *Jersey Boys* which survived this transformation was extensively adapted from
14 the Work, and is a “derivative work” thereof, under 17 U.S.C. § 101. Defendant DeVito’s character,
15 “Tommy DeVito,” the primary focus of the Work, emerged as the opening narrator, mobbed-up
16 “villain,” and, in the eyes of many, the star of the show, or at least the most entertaining dramatic
17 element thereof. As reported in an early article from the *Star-Ledger*, a true copy of which is
18 attached hereto as *Exhibit 28*, “it is Hoff [the actor playing “Tommy DeVito”], his hair dyed black
19 and slicked back, who struts through the opening scenes, recounting how he plucked Valli from
20 semi-obscure and shaped an early version of the Four Seasons between stints at what is dubbed ‘the
21 Rahway Academy of the Arts.’” *Exhibit 28*, at p. 3. The opening segment of the transformed *Jersey*
22 *Boys* resembles the opening of the Work, and *Jersey Boys* follows the flow and structure thereof,
23 beginning with flashback narration from Defendant DeVito’s character, and continuing through the
24 Four Seasons’ induction into the Rock and Roll Hall of Fame, with brief postscripts on the members
25 thereafter. Defendant DeVito’s quarter of the show (“Spring”), and other segments, were drawn and
26 adapted from the Work, and include staging elements (from Defendant McAnuff) plucked directly
27 therefrom, at the point where corresponding material appears in the play. The portrayal of Defendant
28 Valli’s primary romantic relationship in *Jersey Boys*, with a fictionalized, composite character called

1 “Mary Delgado,” draws heavily from the Work’s treatments and characterizations of “Mary
2 Mandell/Mandela” and “Mary Ann Brantley,” two of Defendant Valli’s ex-wives. The *Jersey Boys*
3 portrayal of a faked murder in the front seat of an automobile in which Defendant Valli was a
4 passenger, was adapted and condensed from a passage presented largely through fictitious dialogue
5 in pages 154-158 of the Work. The Work’s account, in Chapter 20, of a “Roman orgy” convened
6 in Detroit for the band, by the Vee Jay record label, replete with gifts, liquor, fruit baskets, and naked
7 women, was adapted for *Jersey Boys* as a Christmas party thrown by the record label in Chicago,
8 with the same characteristics, at which Defendant Gaudio lost his virginity. The Work’s portrayal
9 of the band’s arrest in Columbus, Ohio (under a warrant issued in Springfield), for “defrauding an
10 innkeeper,” after an appearance on the Mike Douglas Show, was adapted for *Jersey Boys* in a scene
11 in which the band members are arrested in Cleveland, following a performance at the Ohio State
12 Fair. The climactic, but entirely fictional scene in *Jersey Boys* in which the band breaks up over
13 Defendant DeVito’s gambling and tax debts, during a mob “sit-down,” mediated by infamous
14 mobster, Gyp DeCarlo, was adapted from the Work’s account of an identically-staged “sit-down,”
15 held years earlier by the same parties, and also mediated by DeCarlo, in which a mob family claimed
16 a financial interest in the Four Seasons as a result of the band’s discharge of an early manager
17 connected thereto. The penultimate scene in *Jersey Boys*, depicting the band’s 1990 induction into
18 the Rock and Roll Hall of Fame, adapts the Work’s account of Defendant Valli’s failure to appear
19 at an after-party hosted by Defendant DeVito and Nick Massi – an event which, upon information
20 and belief, Defendants Valli and Gaudio contend never occurred. And, the *libretto* of the transformed
21 *Jersey Boys* reveals literal copying of invented dialogue from the Work. The dialogue in the *Jersey*
22 *Boys* account of the band’s first rehearsal of the song, “Walk Like a Man,” was copied, almost
23 *verbatim*, from page 124 of the Work, and other dialogue from that page, attributed to Defendant
24 Gaudio in the Work, was appropriated as a punch line for the Bob Crewe character in *Jersey Boys*,
25 which draws great laughter from the audience. In sum, the most-discussed scenes in *Jersey Boys* are
26 derived from the Work, as are the play’s framework and most surprising revelations – revelations
27 the Work was supposed to first bring to light. Upon information and belief, Mr. Woodard’s
28 December 11, 1990 summary of the Work, appearing in the letter shown in *Exhibit 13* at pp. 2-3,

1 would be recognized as a summary of *Jersey Boys* by any ordinary observer of the play, despite the
2 fact that it was written fifteen years before the show's Broadway debut. And, words first fixed in
3 a tangible medium of expression by Mr. Woodard between 1988 and 1990, appear in *Jersey Boys*,
4 *verbatim*.

5 53. Upon information and belief, following Plaintiff's June 2007 demands to Defendant
6 DeVito, and the unsuccessful June through October 2007 negotiations between counsel, Defendant
7 DeVito, through Jay Julien, his attorney, took additional steps to perpetuate the "cover-up" they had
8 begun in 2005, to minimize the likelihood that Defendant DeVito would be held accountable to
9 Plaintiff for profits derived from the use, exploitation, and adaptation of the Work for *Jersey Boys*.
10 First, as recounted in the electronic mail message attached hereto as *Exhibit 29*, written by Charles
11 Alexander, who authored the *Forward* to the *Jersey Boys* book, Defendant DeVito withdrew almost
12 all of his quotes therefrom, well after the deadline for publication, to "save them for his forthcoming
13 autobiography," causing a great deal of difficulty for the publisher. *Exhibit 29*, at p. 2. Whereas,
14 the use of direct quotations from the Work in the *Jersey Boys* book obviously would have required
15 Defendant DeVito to account to Plaintiff for profits, upon information and belief, the subject
16 material was actually removed in an attempt to conceal the relationship between the Work and the
17 play, and to deprive Plaintiff of royalties and/or an accounting, even though such an accounting was
18 already required, due to the inclusion of the *Jersey Boys libretto* in the *Jersey Boys* book. Second,
19 in an October 2007 interview for www.JerseyBoysPodcast.com, released in December 2007,
20 Defendant DeVito asserted, falsely, that he had not shown the Work to anyone – when asked about
21 the role of the Work in the musical, Defendant DeVito claimed he had only told stories to
22 Defendants Brickman, Elice, and McAnuff, notwithstanding the contrary evidence in *Exhibit 23* and
23 *Exhibit 27* hereof. Third, during the same week in October 2007, Defendant DeVito dismantled his
24 Web site, at www.tommydevito.com, hoping that the reference to "his SMASH HIT *Jersey Boys*"
25 thereon, would not be noticed by Plaintiff. Finally, in a secondary strategy to deprive Plaintiff of
26 profits due, Defendant DeVito stated publicly, in a December 2007 interview with *Goldmine*
27 *Magazine* – the publication in which Rex Woodard's original pieces concerning the Four Seasons
28 and Four Lovers had appeared – that he had "dictated the book to a lawyer who worked for *Rolling*

1 *Stone*,” and that, “[i]t’s not gonna come out yet.” A true copy of the relevant portion of this
2 interview, as published, is attached hereto as *Exhibit 30*. Upon learning of these actions, and
3 Defendant DeVito’s plain and express repudiation of Mr. Woodard’s authorship, Plaintiff lodged the
4 instant suit against Defendant DeVito, while still unaware, due to his deceptions and concealments,
5 of the precise nature of his license to the other Defendants herein, if any, to use and adapt the Work
6 for *Jersey Boys*, or the nature, extent, and origin of his financial interest in the production.

7 54. These questions were answered in July 2008, following Plaintiff’s review of certain
8 documents made public in Defendant Valli’s divorce proceedings against his third wife in Los
9 Angeles, California, true copies of which are attached hereto as *Exhibit 31*, redacted only to obscure
10 personal addresses. As shown in *Exhibit 31*, at pp. 38-41, on or about August 13, 1999, Defendant
11 DeVito entered an agreement with Defendants Valli and Gaudio, through which he issued an
12 exclusive, irrevocable, perpetual, worldwide, assignable license thereto, to use, adapt, change,
13 fictionalize, and otherwise modify, as they saw fit, certain “Materials,” including principally his
14 “biographies,” for the purpose of creating a musical stage play based on the “life and music” of the
15 Four Seasons. This transfer not only encompassed the exclusive right to use and adapt the Work for
16 “theatrical productions” but also included exclusive rights in “all ancillary and subsidiary
17 exploitations thereof including, without limitation, cast albums, motion picture and televised
18 versions, merchandise, and/or other works,” “in all media now existing or later devised.” *Id.*, at pp.
19 39-40. The agreement included a waiver by Defendant DeVito of any and all claims that the use
20 and/or adaptation of such “Materials” would violate any copyrights therein, and further specified that
21 Defendant DeVito would have no right to inspect or approve the resulting derivative works, or the
22 manner in which the “Materials” (including the Work) were used. *Id.*, at p. 39. In consideration for
23 this “exclusive license,” the agreement provided that Defendant DeVito would be paid four-fifths
24 (80%) of twenty-five (25%) percent of the royalties accorded Defendants Valli and Gaudio for the
25 “underlying rights” and certain “subsidiary rights” in the prospective play, with the remaining one-
26 fifth (20%) of this twenty-five (25%) share to be paid to Nick Massi. The agreement does not
27 mention Plaintiff’s rights in the Work, or otherwise limit the exclusive and final nature of the
28 purported transfer. Nor does it reserve any rights for Defendant DeVito in the “Materials”

1 transferred, particularly once the “underlying rights” have “merged” with the play, a contingency
2 which has since occurred.

3 55. Plaintiff is not fully informed or aware, at present, of the manner(s) in which
4 Defendants Valli and Gaudio exercised their “rights” under the foregoing “exclusive license,”
5 between 1999, when it was executed, and May 1, 2004, when a further transfer purportedly occurred.
6 However, upon information and belief, Defendants Valli and Gaudio issued licenses and/or
7 sublicenses thereunder in 2000 and/or thereafter, to, *inter alia*, one or more authors commissioned
8 to prepare an early treatment for the play. Upon information and belief, this preliminary treatment
9 was rejected, and the first author(s) fired, leading to the engagement (and licensing) of Defendants
10 Brickman and Elice, who prepared the treatment described in Paragraph 51 hereof. Clearly, no
11 further licenses issued from Defendant DeVito, as his 1999 grant to Defendants Valli and Gaudio
12 was express and “exclusive,” and the agreement left no residual derivative rights for Defendant
13 DeVito to license or transfer to others. Whereas, neither Plaintiff nor Mr. Woodard authorized
14 anyone to use or adapt the Work, the only possible source of such authorization to adapt the Work
15 for a play, film, or other audiovisual medium between 1999, when the DeVito “transfer” was
16 executed, and May 1, 2004, was the Four Seasons Partnership, who provided such authorization to
17 Defendants Brickman and Elice.

18 56. On or about May 1, 2004, Defendant DeVito’s “exclusive license” to Defendants
19 Valli and Gaudio was appended as “Exhibit A” to the foundational production agreement for *Jersey*
20 *Boys*, entered into by Defendants Valli, Gaudio, Brickman, Elice, DSHT, and Dodger Theatricals,
21 as shown in *Exhibit 31*, at pp. 2-41. This May 2004 agreement, *inter alia*, approved Defendants
22 Brickman and Elice as “Bookwriters” for the play, and appointed Defendant McAnuff as director
23 thereof, *id.*, at pp. 14-15; identified Defendant DSHT as “Producer” of the musical, *id.*, at p. 2,
24 although Defendant Dodger Theatricals, rather than Defendant DSHT, was the sole “Dodger”
25 signatory, *id.*, at p. 25; provided for an exclusive merger in favor of Defendant DSHT of all live
26 stage musical rights in the life stories of Defendants Valli, Gaudio, DeVito, and Nick Massi in the
27 United States, its territories and possessions, and Canada, upon a run of six months or more for the
28 play, in a Broadway or West End theater, *id.*, at p. 5; accorded exclusive options to Defendant DSHT

1 to produce and present the show elsewhere abroad, including Japan, the Far East, German-speaking
2 countries, Scandinavia, Benelux, Spain, Portugal, Italy, Andorra, Israel, South Africa, Latin America,
3 and Eastern Europe, in exchange for various lump-sum payments and royalties, *id.*, at pp. 6-8;
4 permitted DSHT to lease and sublicense the rights obtained to other producers, in the U.S. and
5 abroad, *id.*, at pp. 6, 8, 16; detailed the advances, royalties, and other compensation payable to all
6 parties, apportioning “underlying rights,” “compositional rights,” “subsidiary rights,” and other rights
7 separately, *passim*; authorized royalties for Defendant McAnuff, who was not a signatory to the
8 agreement, *id.*, at p. 12; and, in connection with all of the foregoing, assigned all “Third Party” rights
9 acquired by Defendants Valli and Gaudio – including the “exclusive rights” obtained from Defendant
10 DeVito in the Work – to Defendant DSHT. *Id.*, at pp. 4-5, 37-41. The agreement required that
11 Defendants Valli and Gaudio indemnify Defendant DSHT against claims brought by any of the
12 “Third Parties” (namely, Defendant DeVito and Nick Massi”) as a result of any failure to obtain the
13 necessary “Third Party” rights, *Exhibit 31*, at pp. 4-5, and included general representations,
14 warranties, and indemnifications from Defendants Valli and Gaudio concerning elements contributed
15 thereby which might infringe the rights of other third parties. *Id.*, at pp. 18-19. The agreement
16 included similar representations, warranties, and indemnifications by Defendants Brickman and Elice
17 concerning the *libretto*, in favor of Defendant DSHT, *id.*, at pp. 19-20, but also provided that
18 Defendants Valli, Gaudio, Brickman, and Elice, would be named as additional insureds in Defendant
19 DSHT’s general liability and errors and omission insurance policies for the production of the play.
20 *Exhibit 31*, at pp. 18, 20. One manifest intention of this May 1, 2004 agreement, made effective
21 before the first performance of *Jersey Boys* in La Jolla, California, but after the *libretto* was written,
22 was to assign the exclusive right to prepare and produce derivative works based upon or adapted
23 from the Work, in the medium of live stage musicals, from Defendants Valli and Gaudio to
24 Defendant DSHT as of that date. *Id.*, at p. 5.

25 57. Upon information and belief, the “Producer” status attributed to Defendant DSHT in
26 the foregoing May 1, 2004 agreement, and many of the rights and obligations of “Producer”
27 thereunder, have been assigned, further sublicensed, or leased to Defendant Dodger Theatricals,
28 billed as the primary producer of *Jersey Boys* on Broadway, and in touring productions throughout

1 the United States, although Defendant DSHT is also sometimes credited as producer, particularly
2 in foreign productions, such as the ongoing production of *Jersey Boys* in London's West End. Upon
3 information and belief, Defendants DSHT and Dodger Theatricals have further sublicensed and/or
4 leased these rights to others, including Defendant JB Viva Vegas, other limited partnerships in which
5 Dodger Theatricals or its principals holds ownership interests, and additional persons and/or entities
6 whose identities are not known to Plaintiff at present. Nonetheless, upon information and belief,
7 Defendants DSHT and Dodger Theatricals, in consultation with Defendants Valli and Gaudio, are
8 responsible for the dissemination and performance of *Jersey Boys* throughout the World, and, in
9 consultation with Defendants Valli, Gaudio, Brickman, Elice, and McAnuff, for customization
10 and/or translation of the *libretto*, and staging of the production, for local and foreign venues.

11 58. In this Circuit, the co-author/co-owner of a "joint work" may not issue an exclusive
12 license under a copyright, as he or she does not hold exclusive rights in a work, but shares them,
13 indivisibly, and non-exclusively with the other co-owner(s). A co-owner may assign his or her
14 ownership share in any of the exclusive rights in a copyrighted work, but if less than all of his or her
15 rights in the Work are so assigned, the transferee is entitled only to the "protections and remedies"
16 accorded by the Copyright Act, as opposed to "rights and benefits" thereof, and may not further
17 license, sublicense, or assign those rights to others, in the absence of his or her co-owner's consent,
18 under 17 U.S.C. § 201(d)(2). Thus, Defendant DeVito's August 13, 1999 grant of an "exclusive
19 license" to Defendants Valli and Gaudio either: (a) was void insofar as it purported to cover the
20 Work, and conferred no rights upon Defendants Valli and Gaudio to use, reference, or adapt the
21 Work for *Jersey Boys*, or to authorize others to do so; (b) effected a complete assignment of
22 Defendant DeVito's share in the subject exclusive rights to Defendants Valli and Gaudio, rendering
23 them accountable to Plaintiff as co-owners thereof, but prohibiting them from sublicensing, leasing,
24 or assigning said rights to Defendants Brickman, Elice, McAnuff, DSHT, Dodger Theatricals, or any
25 other person, under 17 U.S.C. § 201(d)(2), in the absence of Plaintiff's express consent, because the
26 transfer did not encompass Defendant DeVito's entire interest in all exclusive rights in the Work;
27 or, (c) must be construed as a non-exclusive license, which Defendants Valli and Gaudio could not
28 further license, sublicense, assign, or otherwise transfer, in the absence of Plaintiff's express consent.

1 Under any of these constructions, *Jersey Boys* remains an unlicensed, unauthorized, unlawful
2 derivative work, based upon the Work, and the *libretto*, staging, performance, and distribution of
3 *Jersey Boys*, as well as the various sublicenses, authorizations, and assignments pertaining thereto,
4 granted by and among Defendants Valli, Gaudio, DSHT and Dodger Theatricals, comprise
5 infringements of Plaintiff's copyrights in and to the Work.

6 59. In the alternative, under Fed. R. Civ. P. 8(d)(2)-(3), pursuant to the reasoning of other
7 Circuits, and certain copyright commentators, Defendant DeVito's August 13, 1999 grant of
8 exclusive rights to Defendants Valli and Gaudio effected a complete assignment of his share in the
9 subject rights thereto, rendering Defendants Valli and Gaudio accountable to Plaintiff as co-owners
10 of said rights in the Work thereafter, and permitting said Defendants to assign the rights so acquired,
11 or portions thereof to Defendants DSHT and/or Dodger Theatricals, making Defendants DSHT
12 and/or Dodger Theatricals co-owners of such rights with Plaintiff, and accountable to Plaintiff for
13 her fifty (50%) percent *pro rata* share of profits obtained by the said Defendants from the use and
14 benefit of the Work, from the date of such assignment (May 1, 2004) to the present.

15 60. Upon information and belief, Defendants Valli and Gaudio knew, or should have
16 known, in 1999, and at all relevant times thereafter, that Defendant DeVito could not have written,
17 and did not write the Work; was not the sole (or even primary) author thereof; and, lacked authority
18 to issue an "exclusive license" thereto. Moreover, any continuing use and/or licensing of the Work
19 by said Defendants constitutes willful copyright infringement, as Peter C. Bennett, attorney-in-fact
20 for Defendants Valli and Gaudio, has long been aware of Plaintiff's claims, and has reviewed papers
21 filed in this proceeding, but has nonetheless declined to negotiate with Plaintiff for a license, or to
22 halt the infringing production. Alternatively, pursuant to the reasoning set forth in Paragraph 59
23 hereof, any such use and/or licensing of the Work in the United States by said Defendants gives rise
24 to additional accounting obligations to Plaintiff, and obligations to pay to Plaintiff, her fifty (50%)
25 percent *pro rata* share, of profits obtained from such use, licensing, and/or other exploitation or
26 adaptation of the Work, during all periods in which Plaintiff and Defendants Valli and Gaudio were,
27 or are, co-owners of such rights..

28 61. Upon information and belief, Defendants Brickman, Elice, and McAnuff, knew, or

1 should have known, at all relevant times, from the date(s) they first received and read the Work, that
2 Defendant DeVito did not write it, and were further aware, or should have been aware, of Mr.
3 Woodard's co-authorship thereof, when the *Jersey Boys libretto* was written, and/or when *Jersey*
4 *Boys* was staged, directed, and produced.

5 62. Upon information and belief, Defendants DSHT and Dodger Theatricals, through
6 their principals, Michael David and Edward Strong, and through Defendant McAnuff, a founder
7 member of Defendant Dodger Theatricals, knew, or should have known, at all relevant times, that
8 Defendant DeVito did not write the Work; were aware of Mr. Woodard's co-authorship thereof when
9 the initial treatment for *Jersey Boys* was transformed and adapted from the Work and/or when *Jersey*
10 *Boys* was staged, directed, and produced; and, knew that the May 1, 2004 "assignment" from
11 Defendants Valli and Gaudio did not convey sufficient rights to permit the use or adaptation of the
12 Work for *Jersey Boys*; the distribution of copies thereof to performers in the play; or, the
13 sublicensing, leasing, or further assignment of any rights therein, but said Defendants, nonetheless,
14 have refused to negotiate with Plaintiff for a license, or to halt their infringing productions, rendering
15 their aforesaid actions willful copyright infringement. Alternatively, in the event that the transfer
16 of rights in the Work from Defendants Valli and Gaudio to Defendants DSHT and/or Dodger
17 Theatricals is deemed valid, under the reasoning set forth in Paragraph 59, such use and/or licensing
18 of the Work in the United States by said Defendants gives rise to additional accounting obligations
19 to Plaintiff, and obligations to pay to Plaintiff, her fifty (50%) percent *pro rata* share, of profits
20 obtained from such use, licensing, and/or other exploitation of or benefit from the Work, during all
21 periods in which Plaintiff and Defendants DSHT and/or Dodger Theatricals were, or are, co-owners
22 of such rights..

23 63. Upon information and belief, Defendant JB Viva Vegas, through principals which
24 it shares with Defendant Dodger Theatricals, knew, or should have known, at all relevant times, of
25 both this litigation and Plaintiff's claims of co-ownership of the Work, when said Defendant began
26 producing, and debuted, the permanent production of *Jersey Boys* in this District and Division,
27 rendering their conduct willful, reckless, or, in utter disregard for Plaintiff's rights.

28 64. Even if Defendant DeVito's August 13, 1999 exclusive license or assignment of

1 certain of his rights to Defendants Valli and Gaudio were deemed sufficient to authorize one or more
2 of the complained of activities in the United States, such license or assignment could not validate
3 the export of *Jersey Boys* to the United Kingdom, Canada, or Australia, by Defendants, Valli,
4 Gaudio, Brickman, Elice, McAnuff, DSHT and/or Dodger Theatricals, or excuse Defendant
5 DeVito's authorization of same, as the laws of these countries require the consent of all co-owners
6 of a work before even a non-exclusive license may be issued to a third party, and Plaintiff has not
7 provided such consent to any of the Defendants herein.

8 65. Upon information and belief, as reported in the true copies of recent news articles
9 from the *Cincinnati Enquirer* and *Cleveland Plain Dealer* attached hereto as *Exhibit 32*, *Jersey Boys*
10 is now garnering gross revenues of approximately three hundred million (\$300,000,000.00) dollars
11 per year, with profits exceeding one hundred fifty million (\$150,000,000.00) dollars per year, and
12 a present life expectancy of at least ten years, *Exhibit 32*, at pp. 3-4, making anticipated lifetime
13 profits from performances of the show alone in excess of 1.5 billion dollars. The Broadway *Jersey*
14 *Boys* production rakes in profits of approximately thirty-three million (\$33,000,000.00) dollars
15 annually, and there are currently five additional productions, performing the show throughout the
16 United States, and in the U.K., Canada, and soon, Australia. In July 2008, *Jersey Boys* set a world's
17 box office record in Cleveland, Ohio, with nearly 1.9 million dollars in ticket sales for one week's
18 worth of performances at the State Theater in Playhouse Square. *Exhibit 32*, at p. 6. The
19 "permanent" production of *Jersey Boys* in this District and unofficial Division debuted in April 2008
20 – the result of a multi-million dollar deal – and upon information and belief, additional U.S. and
21 foreign tours are planned. Upon information and belief, the *Jersey Boys Cast Recording*, which
22 contains excerpts from the *libretto*, pursuant to the "authorization(s)" of Defendants Valli, Gaudio,
23 Brickman, Elice, and DSHT, was the "No. 1" Broadway cast recording in July 2006 and February
24 2007, and is consistently an Amazon.com's best-seller, as is the *Jersey Boys* book, which is
25 distributed nationwide. As reported in the true copy of a November 2007 article from the *New York*
26 *Post*, attached hereto as *Exhibit 33*, a motion picture version of *Jersey Boys* is also on the agenda,
27 and a "historic" price is expected for the rights. *Exhibit 33*, at pp. 2-3. Upon information and belief,
28 Defendant DeVito's profits from the production up to this point have reached seven figures, and

1 continue to increase as new touring companies and media outlets are added, and the present value
2 of Defendant DeVito's anticipated long-term profits from *Jersey Boys* likely exceeds thirteen million
3 (\$13,000,000.00) dollars, while Defendants Valli, Gaudio, Brickman, Elice, DSHT and Dodger
4 Theatricals, receive profits vastly exceeding this amount. Meanwhile, Mr. Woodard, whose writings
5 inspired, transformed, and were adapted for the show, and whose words appear therein, was never
6 paid a penny for his efforts, and Plaintiff continues to suffer financially from his early death.
7 Defendant DeVito has a duty to account to Plaintiff, and to pay Plaintiff her full share of profits
8 attributable directly or indirectly to, *inter alia*, the use and/or adaptation of the Work for *Jersey Boys*,
9 whether by license or by assignment, and upon information and belief, that share exceeds, or will
10 exceed, six million five hundred thousand (\$6,500,000.00) dollars. Defendant DeVito also must
11 account to Plaintiff for profits attributable to other derivative works based upon the Work, as
12 published reports indicate that Defendant has been working with a New York writer to update the
13 Work, or prepare a new work based thereon. *E.g., Exhibit 24*, at p. 6. Finally, Defendant DeVito
14 must compensate Plaintiff for his breaches of contract, unjust enrichment, breaches of the implied
15 covenant of good faith and fair dealing, acts of fraudulent concealment, conversion of Plaintiff's
16 royalty share, and acts of foreign copyright infringement. Meanwhile, the remaining Defendants are
17 accountable to Plaintiff for copyright infringement, vicarious copyright infringement, and
18 contributory copyright infringement, as a result of their unauthorized uses, adaptations,
19 performances, and distribution of copies of the Work; their acts of foreign copyright infringement,
20 and, in the alternative, as to Defendants Valli, Gaudio, DSHT, and Dodger Theatricals, for fifty
21 (50%) percent of all profits obtained from the use and benefit of the Work.

22 66. Defendants, unless enjoined, will continue their unlawful and infringing conduct, and
23 Plaintiff has no adequate remedy at law.

24 COUNT I

25 [Declarations of Joint Work, Copyright Ownership, and 26 Invalidity of Exclusive License by Co-Owner]

27 (Against Defendant DeVito)

28 67. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 66

1 hereinabove, as if fully set forth in this Paragraph 67.

2 68. Although Mr. Woodard was the primary author of the Work, Mr. Woodard and
3 Defendant DeVito collaborated on the Work between 1988 and 1990, and contributed independently
4 copyrightable content thereto, with the intention that their respective contributions be merged into
5 inseparable or interdependent parts of a unitary whole.

6 69. Both Mr. Woodard and Defendant DeVito knew and understood that the Work was
7 a “joint work,” before and during its creation, and intended that they be considered “co-authors”
8 thereof, as evidenced, *inter alia*, by their December 1, 1988 letter agreement and subsequent
9 correspondence.

10 70. The Work is a “joint work” within the meaning of Section 101 of the Copyright Act
11 [17 U.S.C. § 101].

12 71. Whereas, copyright ownership vests, initially, in the authors of a work, and the
13 authors of a joint work are co-owners thereof, under Section 201(a) of the Copyright Act [17 U.S.C.
14 § 201(a)], the copyrights in the Work vested initially in Mr. Woodard and Defendant DeVito, and
15 they were co-owners thereof.

16 72. When the copyrights in the Work initially vested in Mr. Woodard and Defendant
17 DeVito, as alleged in Paragraph 71 hereof, Mr. Woodard qualified as a copyright “claimant” with
18 respect to the Work, under 37 C.F.R. § 202.3(a)(3).

19 73. U.S. Copyright Reg. No. TXu 454 118, obtained by Defendant DeVito, in his name,
20 on January 11, 1991, was secured, and has been held, in constructive trust for Mr. Woodard and
21 Plaintiff, and must be supplemented to reflect Mr. Woodard’s authorship of the Work, under 17
22 U.S.C. § 201(a), and his status as an original copyright claimant, under 37 C.F.R. § 202.3(a)(3), so
23 that Plaintiff may record her status as heir and successor to his interests, under 17 U.S.C. § 205.

24 74. Upon Mr. Woodard’s death on May 25, 1991, Plaintiff, an “author’s widow,” under
25 17 U.S.C. § 101, inherited Mr. Woodard’s entire ownership interest in the Work, in accordance with
26 17 U.S.C. § 201(d)(1), and became co-owner of the Work with Defendant DeVito, under 17 U.S.C.
27 § 201(d)(1), holding an indivisible fifty (50%) percent ownership interest therein.

28 75. As a co-owner, Plaintiff has the right to publish and exploit the Work independently

1 of Defendant DeVito, and to enjoy, exercise, and enforce all other rights, benefits, and causes of
2 action accorded to copyright owners with respect thereto, pursuant to, *inter alia*, 17 U.S.C. §§ 106,
3 501(b), 502, 503, 504, and 505, subject only to the prohibition on the issuance of exclusive licenses
4 by co-owners of copyrighted works, and Plaintiff's duty to account to Defendant DeVito for his share
5 of profits obtained from Plaintiff's use and exploitation of the Work, if any.

6 76. Defendant DeVito has wrongfully repudiated Mr. Woodard's co-authorship of the
7 Work, and Plaintiff's current ownership interest therein, intending to appropriate all profits from the
8 use and exploitation of the Work for himself.

9 77. A co-owner of a copyrighted work may not issue an exclusive license thereunder,
10 without the consent of all other co-owners thereof, as a co-owner does not exclusively possess
11 exclusive rights in a copyrighted work, but shares them, indivisibly, with his or her co-owner(s).

12 78. Defendant DeVito, as a co-owner of the Work, lacked the power, authority, and/or
13 requisite ownership interest to issue an exclusive license to Defendants Valli and Gaudio thereunder,
14 and the "exclusive license" Defendant DeVito granted thereto, on or about August 13, 1999, was
15 *void ab initio*, with no legal effect.

16 79. Alternatively, whereas, Defendant DeVito, as a co-owner of the Work, lacked the
17 power, authority and/or requisite ownership interest to issue an exclusive license to Defendants Valli
18 and Gaudio thereunder, the "exclusive license" Defendant DeVito granted thereto, on or about
19 August 13, 1999, must be construed as a non-exclusive license, which Defendants Valli and Gaudio
20 could not lawfully license, sublicense, or assign, under 17 U.S.C. § 201(d)(2), in the absence of
21 Plaintiff's express consent.

22 80. A co-owner of a copyrighted work may assign his own share in the exclusive rights
23 in a work, in whole or in part, under 17 U.S.C. § 201(d)(1), but unless he assigns all of his rights in
24 the work, the transferee is entitled, with respect to the rights assigned, only to the "protections and
25 remedies" accorded by the Copyright Act, and not to the "rights and benefits" conferred thereby, and
26 may not further license, sublicense, or assign those rights, under 17 U.S.C. § 201(d)(2). Thus, in the
27 alternative, under FED. R. CIV. P. 8(d)(2), Defendant DeVito's August 13, 1999 "exclusive license"
28 to Defendants Valli and Gaudio, constituted an assignment of Defendant DeVito's ownership interest

1 in the exclusive rights to prepare derivative works based upon the Work, in the media of, *inter alia*,
2 theater, film, and television, making Defendants Valli and Gaudio co-owners of said rights with
3 Plaintiff, with Plaintiff holding a fifty (50%) percent ownership interest therein, and Defendants
4 Valli and Gaudio holding a fifty (50%) percent ownership interest.

5 81. Upon information and belief, Defendants DeVito, Valli, and Gaudio intended that
6 Defendant DeVito's aforesaid grant of rights constitute an exclusive license or assignment,
7 encompassing all relevant rights in the Work (including Plaintiff's share), without regard for
8 Plaintiff's co-ownership of the Work or her ownership interests in the copyrights relating thereto.

9 82. As a result of Defendant DeVito's unfounded, allegations that he was the sole author
10 of the Work; as a result of Defendant DeVito's registration of the Work in his name, as sole author
11 and copyright claimant; as a result of Defendant DeVito's refusal to supplement said registration to
12 provide notice of Mr. Woodard's authorship, and status as a copyright claimant; as a result of
13 Defendant DeVito's refusal to recognize Plaintiff's co-ownership of the Work; as a result of
14 Defendant DeVito's issuance of an impermissible exclusive license thereunder; and, as a result of
15 Defendant DeVito's refusal to account to Plaintiff, notwithstanding Defendant DeVito's exploitation,
16 exclusive licensing, and/or assignment of rights in the Work for profit, an actual, present, and
17 justiciable controversy exists between Plaintiff and Defendant DeVito, as to whether the Work is a
18 "joint work;" whether Mr. Woodard was a co-author and co-owner thereof; whether Plaintiff is now
19 co-owner of the Work, with all rights, benefits, protections, and obligations attendant to this status;
20 and, whether Defendant DeVito's "exclusive license" to Defendants Valli and Gaudio is valid, void
21 or constituted an assignment, or a nontransferable, non-exclusive license.

22 83. Plaintiff seeks a Declaratory Judgment against Defendant DeVito, pursuant to 28
23 U.S.C. § 2201, decreeing that the Work is a "joint work" under 17 U.S.C. § 101; that Mr. Woodard
24 was a co-author of the Work, and co-owner thereof, under 17 U.S.C. § 201(a); that Mr. Woodard was
25 a qualified copyright claimant with respect to the Work, under 37 C.F.R. § 202.3(a)(3), when the
26 Work was first fixed in a tangible medium of expression; that U.S. Reg. No. Txu 454 118 has been
27 held in constructive trust by Defendant DeVito, and must be supplemented to reflect Mr. Woodard's
28 status as a co-author, co-owner, and copyright co-claimant; that Plaintiff is an "author's widow" with

1 respect to the Work, under 17 U.S.C. § 101; that Plaintiff inherited Mr. Woodard's ownership
2 interest in the Work upon his death, pursuant to 17 U.S.C. § 201(d)(1), and became co-owner thereof
3 with Defendant DeVito, holding an indivisible fifty (50%) percent ownership interest therein; that
4 Plaintiff may record, with the United States Copyright Office, her status as heir and successor to Mr.
5 Woodard's interests in the Work, under 17 U.S.C. § 205; that Plaintiff may publish and otherwise
6 exploit the Work, independently of Defendant DeVito, and enjoy, exercise, and enforce all other
7 rights, benefits, and causes of action accorded to copyright owners with respect thereto; that the
8 "exclusive license" granted by Defendant DeVito to Defendants Valli and Gaudio, in or around
9 August 1999, was *void ab initio*, with no legal effect, or, alternatively, constituted only a
10 nonexclusive license, which said Defendants could not license, assign, or otherwise transfer to the
11 remaining Defendants herein; or, that said "exclusive license" constituted an assignment of
12 Defendant DeVito's entire share in the subject exclusive rights to Defendants Valli and Gaudio,
13 under 17 U.S.C. § 201(d)(2), making them co-owners with Plaintiff thereof, holding collectively, a
14 fifty (50%) percent interest therein.

15 COUNT II

16 [Equitable Accounting]

17 (Against Defendant DeVito)

18 84. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 83
19 hereinabove, as if fully set forth in this Paragraph 84.

20 85. Co-owners of a copyrighted work are akin to tenants-in-common, with each co-owner
21 having an undivided, independent right to use the work, subject to a duty to account for profits to
22 the other co-owner(s).

23 86. As a co-owner of the Work, Mr. Woodard, during his lifetime, had a right to an
24 accounting from Defendant DeVito, of any and all profits obtained as a result of Defendant DeVito's
25 exploitation of the Work, and to payment of his fifty (50%) percent share of such profits..

26 87. As a result of Mr. Woodard's death, and Plaintiff's succession to his ownership
27 interest in the Work, Defendant DeVito has a continuing duty to account to Plaintiff for any and all
28 income derived from the exploitation of the copyrights therein. This duty requires Defendant DeVito

1 to disclose to Plaintiff all income that he has collected from such exploitation, and to pay Plaintiff
2 her fifty (50%) percent share of the profits.

3 88.. By virtue of the December 1, 1988 letter agreement between Defendant DeVito and
4 Mr. Woodard, Defendant DeVito has a continuing duty to account to Plaintiff for “any profits arising
5 from” the Work, “whether they be in the form of royalties, advances, adaptations fees or whatever”
6 *Exhibit 10*, at p. 2 (emphasis added) – an obligation which extends beyond profits arising only from
7 the exploitation of copyrights, encompassing any profits attributable directly or indirectly to the
8 Work. This duty independently requires that Defendant DeVito disclose to Plaintiff all income he
9 has collected as a result of the Work, and pay to Plaintiff her fifty (50%) percent share of the profits.

10 89. Defendant DeVito’s duty to account to Plaintiff, as aforesaid, includes a duty to
11 account for profits obtained, derived, or flowing from, the “exclusive license” issued to Defendants
12 Valli and Gaudio, on or about August 13, 1999, whether same is characterized as a license or
13 assignment.

14 90. Plaintiff has demanded that Defendant DeVito account for profits arising from the
15 existence of the Work, and from Defendant DeVito’s direct or indirect exploitation of the copyrights
16 therein, but Defendant DeVito has failed and refused, and continues to fail and refuse, to render an
17 accounting or pay Plaintiff her share of the profits.

18 91. The precise nature and extent of Defendant DeVito’s income attributable to the Work
19 are unknown to Plaintiff at the present time, and Defendant DeVito’s profits cannot be determined
20 without an accounting of his transactions relating to, *inter alia*, the Work, *Jersey Boys*, the *Jersey*
21 *Boys* book, the *Jersey Boys* cast recording, which includes portions of the *libretto*, and the motion
22 picture version of *Jersey Boys* which, upon information and belief, is planned. Moreover, the facts
23 and accounts presented are so complex that an investigation of Defendant DeVito’s accounts is
24 necessary to effect justice between the parties, and establish the value of Plaintiff’s interests.

25 92. Plaintiff seeks an Order from this Court that Defendant DeVito render an accounting
26 to Plaintiff of the amounts owed, as well as a Judgment against Defendant, for a sum to be
27 determined in the accounting, with prejudgment and post-judgment interest, as allowed by law.

28 **COUNT III**

1 **[Breach of Contract]**

2 (Against Defendant DeVito)

3 93. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 92
4 hereinabove, as if fully set forth in this Paragraph 93.

5 94. The December 1, 1988 letter agreement between Mr. Woodard and Defendant DeVito
6 attached hereto as *Exhibit 10*, constitutes a valid and enforceable contract, which was not
7 extinguished by Mr. Woodard's death.

8 95. Mr. Woodard performed fully under the December 1, 1988 letter agreement, by
9 writing and completing the Work, and according top billing to Defendant DeVito on the title page,
10 while showing both parties as co-authors of the Work.

11 96. Plaintiff succeeded Mr. Woodard as a party to the December 1, 1988 letter agreement
12 upon his death, and Defendant DeVito's obligations and duties to Mr. Woodard thereunder are
13 obligations and duties now owed to Plaintiff.

14 97. Defendant DeVito has breached the December 1, 1988 letter agreement between the
15 parties by removing Mr. Woodard's name from the title page of the Work and obliterating the
16 copyright notice placed by Mr. Woodard thereon; by distributing copies of the Work which do not
17 credit Mr. Woodard as co-author, and by misrepresenting the nature and extent of Defendant
18 DeVito's authorship.

19 98. Defendant DeVito has breached the December 1, 1988 letter agreement between the
20 parties by tendering an application for copyright registration with the United States Copyright Office,
21 which failed to credit Mr. Woodard as co-author of the Work, or to list Mr. Woodard as a copyright
22 claimant.

23 99. Defendant DeVito has breached the December 1, 1988 letter agreement between the
24 parties by refusing to share equally with Plaintiff all profits arising from the Work of whatever
25 nature, and by refusing to account to Plaintiff for such profits.

26 100. Defendant DeVito has breached the December 1, 1988 letter agreement between the
27 parties by transferring, and/or attempting to transfer, exclusive rights in the Work to Defendants
28 Valli and Gaudio, when the agreement does not permit such assignments, and contemplates that the

1 rights and obligations thereunder shall be binding upon Mr. Woodard's and Defendant DeVito's
2 heirs.

3 101. Defendant DeVito has breached the December 1, 1988 letter agreement between the
4 parties by permitting others to use and exploit the Work, while actively attempting to conceal this
5 fact from Plaintiff.

6 102. Defendant DeVito has repudiated the December 1, 1988 letter agreement between the
7 parties by absolutely and unconditionally refusing to perform thereunder, without just excuse.
8 Plaintiff rejects this repudiation, however, and Defendant DeVito remains subject to all obligations
9 of the letter agreement.

10 103. Plaintiff has been damaged by Defendant DeVito's breaches of contract, beyond the
11 loss of Plaintiff's rightful share of profits thereunder, and Plaintiff is entitled to recover from
12 Defendant DeVito, direct damages, as well as foreseeable, consequential damages resulting from
13 Defendant DeVito's breaches of contract, with prejudgment and post-judgment interest, as allowed
14 by law. Plaintiff is unable to ascertain, at present, the full extent of the direct and consequential
15 monetary damages Plaintiff has suffered by reason of Defendant DeVito's aforesaid breaches of
16 contract, but upon information and belief, if Defendant DeVito's conduct continues, Plaintiff will
17 sustain damages in an amount exceeding seven million five hundred thousand (\$7,500,000.00)
18 dollars, or such other amount, to be proved at trial.

19 **COUNT IV**

20 **[Unjust Enrichment]**

21 (Against Defendant DeVito)

22 104. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 103
23 hereinabove, and Paragraphs 105 through 110 hereinbelow, as if fully set forth in this Paragraph 104.

24 105. As a result of Defendant DeVito's foregoing failures to account to Plaintiff for profits
25 arising from the Work, and in the course of Defendant DeVito's foregoing breaches of contract,
26 Defendant DeVito has received, directly or indirectly, funds to which he is not entitled, in amounts
27 to be determined at trial, and has been unjustly enriched thereby.

28 106. Defendant DeVito holds said funds in trust for Plaintiff, the rightful owner, and is

1 liable to pay and transfer same to Plaintiff.

2 107. Plaintiff is entitled to, and requests, Judgment against Defendant DeVito for her
3 damages, together with pre-judgment and post-judgment interest, costs, imposition of a constructive
4 trust, and other just and proper relief.

5 **COUNT V**

6 **[Breach of Implied Covenant of Good Faith and Fair Dealing**

7 **In the Performance of Contractual Obligations]**

8 (Against Defendant DeVito)

9 108. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 107
10 hereinabove, as if fully set forth in this Paragraph 108.

11 109. Mr. Woodard and Defendant DeVito had a special and confidential relationship at
12 the time they entered into, and executed, the December 1, 1988 letter agreement. Specifically, Mr.
13 Woodard reposed special confidence and trust in Defendant DeVito due to his position and stature
14 as an original member of the Four Seasons – the band with which Mr. Woodard had been obsessed
15 since childhood – and, due to the friendship that had developed between the parties since Mr.
16 Woodard’s first interview with Defendant DeVito in 1981, and Defendant DeVito was aware, and/or
17 should have been aware, of Mr. Woodard’s special confidence and trust. As a result of his position,
18 and the opportunity Defendant DeVito presented – to write what would have been the first book ever
19 published about the Four Seasons, with full credit for his efforts – Defendant DeVito had
20 considerable influence over Mr. Woodard, and Mr. Woodard relied upon and trusted Defendant
21 DeVito to treat him fairly. As a result of this special confidence, Mr. Woodard de-emphasized his
22 law practice and focused upon the Work, without compensation, at a time when he was suffering
23 from lung cancer; had a wife and three children to support; and expenses were reaching a lifetime
24 high due to his terminal illness, all because he believed that his life-long idol, and friend of seven
25 years, would see the project through with him to completion (*i.e.*, through publication and/or
26 adaptation of the Work), and would cooperate in areas extending beyond the four corners of the
27 parties’ agreement, such as the selection and compilation of photographs for the Work; arrangements
28 for the final design and packaging therefor; collaboration on the screenplay the parties planned to

1 develop based upon the Work; and, looking after Mr. Woodard's interests in appreciation,
2 recognition, and just payment for his efforts, including Mr. Woodard's financial needs and those of
3 his family following his death, by reporting any opportunities that arose concerning the Work, and
4 promptly accounting for, and remitting, Mr. Woodard's share of any profits arising therefrom.

5 110. The foregoing relationship of special confidence survived Mr. Woodard's death, and
6 extended to Plaintiff, who similarly reposed confidence and trust in Defendant DeVito, as a result
7 of his celebrity, and his special relationship with her husband, in the matter to which her husband
8 had devoted the final years of his life. Moreover, Plaintiff believed that the Mass Card she received
9 from Defendant DeVito in mid-January 1991, as her husband approached death, was a symbol of
10 continued caring by Defendant DeVito, and an acknowledgment of this special relationship of
11 confidence. Defendant DeVito was also aware, and/or should have been aware of Plaintiff's
12 confidence, as it was manifest in Plaintiff's later contact with Defendant DeVito, through her sister-
13 in-law, Cindy Woodard Ceen, to discuss ways in which the parties might expedite publication of the
14 Work in view of the imminent Broadway debut of *Jersey Boys*, which Plaintiff believed would
15 maximize the Work's potential for success, to the parties' mutual benefit.

16 111. Due to the foregoing special and confidential relationship, Defendant DeVito owed
17 a duty to Mr. Woodard and Plaintiff, who reposed their confidence in him, similar to the duty of a
18 fiduciary, requiring Defendant DeVito to act in good faith, and to volunteer material information,
19 with due regard for their interests, in the performance of his obligations under their December 1,
20 1988 agreement, and this duty is ongoing, and remains in effect.

21 112. Defendant DeVito has breached the implied covenant of good faith and fair dealing
22 in the performance of his contractual obligations, by acting in a manner that is unfaithful to the
23 purpose of the parties' December 1, 1988 agreement, and denying the justified expectations of Mr.
24 Woodard and Plaintiff, by registering the copyrights in and to the Work in his own name, and
25 concealing this fact from both Mr. Woodard and Plaintiff; by licensing and/or assigning exclusive
26 rights in the Work to others and concealing these facts from Plaintiff; by receiving (and spending)
27 royalties and/or other payments arising from the use and adaptation of the Work, while concealing
28 their existence from Plaintiff, and then refusing to pay under the contract when these concealments

1 came to light; and, by publicly disparaging and humiliating Mr. Woodard's memory, by disavowing
2 Mr. Woodard's authorship of the Work, and mischaracterizing both Mr. Woodard, and his
3 contribution, in, *inter alia*, recorded podcast interviews, major newspaper interviews, and the very
4 magazine in which Mr. Woodard's detailed, caring article about Defendant DeVito, his family, and
5 his earliest bands had first appeared; and, by treating Plaintiff as if she did not exist, and refusing to
6 acknowledge, publicly or privately, that he is obligated to her by contract.

7 113. As a direct and proximate result of Defendant DeVito's aforesaid conduct, Plaintiff
8 has sustained substantial economic losses, including past and future compensation, and other
9 economic benefits, such as those which may have flowed from timely publication of the Work.
10 Plaintiff has also sustained loss of financial stability, peace of mind and future security and has
11 suffered embarrassment, humiliation, mental and emotional distress and discomfort, all to Plaintiff's
12 detriment and damage, in amounts not yet fully ascertained.

13 114. In acting as described above, Defendant DeVito acted oppressively, maliciously,
14 fraudulently, and outrageously towards Plaintiff, with conscious disregard for Plaintiff's known
15 rights, and with the intention of causing unjust and cruel hardship to Plaintiff. In acting in a
16 deliberate, cold, callous, and intentional manner, Defendant DeVito intended to injure, and injured
17 Plaintiff, and Plaintiff requests the assessment of exemplary and/or punitive damages against
18 Defendant DeVito, in an amount sufficient to punish and make an example of him, in addition to
19 compensatory damages, together with pre-judgment and post-judgment interest, as permitted by law,
20 Plaintiff's attorney's fees and the costs of this action, and the imposition of a constructive trust on
21 all of Defendant DeVito's income arising from or relating to the Work, including, but not limited
22 to, income arising from the licensing or assignment of rights therein for *Jersey Boys*.

23 COUNT VI

24 **[Constructive Fraud]**

25 (Against Defendant DeVito)

26 115. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 114
27 hereinabove, as if fully set forth in this Paragraph 115

28 116. The special and confidential relationship between Mr. Woodard and Defendant

1 DeVito, and between Plaintiff and Defendant DeVito, as aforesaid, gave rise, *inter alia*, to a duty to
2 disclose, such that non-disclosure is constructive fraud, and becomes the equivalent of a fraudulent
3 concealment, even in the absence of fraudulent intent, where it misleads the one reposing confidence
4 in the other to his prejudice, and/or gains advantage to the person at fault.

5 117. Defendant DeVito's failures to speak and disclose to Plaintiff: (a) that Defendant
6 DeVito had registered the copyrights in the Work in his own name; (b) that Defendant DeVito had
7 issued an "exclusive license" or assignment to Defendants Valli and Gaudio, covering certain rights
8 in and to the Work; (c) that Defendant DeVito was to obtain, and actually obtained, royalties and/or
9 other compensation as a result of said license or assignment, which were required to be shared with
10 Plaintiff in accordance with her co-ownership of the Work, and the parties' December 1, 1988
11 agreement; (d) that *Jersey Boys* was adapted from the Work, which had been referenced and used
12 extensively in connection therewith; (e) that the "exclusive license" conveyed by Defendant DeVito
13 to Defendants Valli and Gaudio had been further licensed and/or assigned to, *inter alia*, Defendants
14 Brickman, Elice, DSHT, Dodger Theatricals, and JB Viva Vegas, all of whom were profiting from
15 derivative works based upon the Work; (f) that Defendant DeVito and/or his attorney, Jay Julien, had
16 been receiving weekly and monthly statements concerning Defendant DeVito's royalties and/or
17 profits from the licensing of the Work; (g) that Defendant DeVito had worked, was working, or is
18 working with another writer, to prepare an autobiography that is derivative of the Work; and, (h) that
19 Peter C. Bennett, counsel to the Four Seasons Partnership, sent a demand letter to Defendant DeVito,
20 through his attorney Jay Julien, indicating that Defendant DeVito was prohibited from publishing
21 an autobiography, due to provisions in his separation agreement with the Four Seasons, all of which
22 provided gains and advantages to Defendant DeVito, to the detriment of Mr. Woodard and Plaintiff,
23 constitute constructive fraud. Moreover, Mr. Woodard and Plaintiff justifiably relied on Defendant
24 DeVito's silence, in view of the parties' special and confidential relationship, and took no steps to
25 enforce their co-ownership and contractual rights against him (believing, erroneously, that same had
26 not been violated or breached); to demand an accounting of profits therefrom (believing, erroneously,
27 that no profits had been obtained), or to pursue actions against the remaining Defendants herein, for
28 their infringing activities (unaware that there was any connection between *Jersey Boys* and the

1 Work).

2 118. As a direct and proximate result of Defendant DeVito's aforesaid conduct, Plaintiff
3 has sustained substantial economic losses, including past and future compensation, and other
4 economic benefits, such as those which may have flowed from timely publication of the Work.
5 Plaintiff has also sustained loss of financial stability and future security, all to Plaintiff's detriment
6 and damage, in amounts not yet fully ascertained.

7 119. Plaintiff seeks Judgment against Defendant DeVito for damages resulting from his
8 acts of constructive fraud, together with pre-judgment and post-judgment interest as provided by law,
9 Plaintiff's attorney's fees and the costs of this action, and the imposition of a constructive trust on
10 all of Defendant DeVito's income arising from or relating to the Work, including, but not limited
11 to, income arising from the licensing or assignment of rights therein for *Jersey Boys*.

12 COUNT VII

13 **[Fraud and Fraudulent Concealment]**

14 (Against Defendant DeVito)

15 120. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 119
16 hereinabove, as if fully set forth in this Paragraph 120.

17 121. On or about January 19, 1991, Defendant DeVito falsely, and fraudulently, with the
18 intent to deceive and defraud Plaintiff, sent a five-year, pre-paid, Catholic Mass Card thereto, in
19 apparent "sympathy" for Mr. Woodard's terminal illness, just eight days after registering the Work's
20 copyrights in Defendant DeVito's own name, in order to provide false assurances to Mr. Woodard
21 and Plaintiff that the parties' special, confidential relationship remained intact, and that Defendant
22 DeVito cared about Mr. Woodard and Plaintiff, as he took the first step in his fraudulent scheme to
23 deprive them of their rights in and to the Work, and of the opportunity to realize profits therefrom.
24 *Exhibit 15*, at p. 2.

25 122. On September 21, 2005, Defendant DeVito falsely, and fraudulently, with the intent
26 to deceive and defraud Plaintiff, represented to Plaintiff and Mrs. Ceen, in a message transmitted
27 through Charles Alexander on September 22, 2005, that Defendant DeVito "loved Rex [Woodard],"
28 and "would [help] in any way he could" with Plaintiff's efforts to publish the Work. *Exhibit 20*, at

1 p. 2.

2 123. On September 22, 2005, Defendant DeVito falsely, and fraudulently, with the intent
3 to deceive and defraud Plaintiff, represented to Plaintiff, through a conversation with Mrs. Ceen, that
4 Defendant DeVito remained interested in publishing the Work with Plaintiff, but wished to update
5 the Work, had lost his copy, and needed another, when in fact, Defendant DeVito intended to delay
6 and obstruct Plaintiff's ongoing efforts to publish the Work, and made such false statements to keep
7 Plaintiff at bay, prior to the debut of *Jersey Boys* on Broadway.

8 124. On November 2, 2005, Defendant falsely, and fraudulently, with the intent to deceive
9 and defraud Plaintiff, represented to Plaintiff, through Mrs. Ceen, using his attorney, Jay Julien, as
10 an instrumentality of deceit, that the Work was "not saleable," and could not be published in its
11 present form, when in fact, Defendant DeVito had already licensed or transferred significant
12 exclusive rights in the Work in exchange for substantial consideration. These statements were also
13 designed to keep Plaintiff at bay for a lengthy, indeterminate period, as *Jersey Boys* was prepared
14 for its official Broadway debut four days later, and, to deprive Plaintiff of the opportunity to realize
15 profits from said derivative work.

16 125. The foregoing representations were false in fact, and known to be false by Defendant
17 DeVito at the time they were so made.

18 126. Mr. Woodard and Plaintiff relied upon Defendant DeVito's foregoing false
19 representations, and were thereby induced to maintain their confidence and trust in Defendant
20 DeVito; to refrain from enforcing their co-ownership, contractual, equitable, and statutory rights
21 against him (believing that same had not been violated or breached); to refrain from demanding an
22 accounting of profits obtained by Defendant DeVito from the Work (believing that no such profits
23 had been obtained); to refrain from pursuing actions against the remaining Defendants herein, for
24 their infringing activities (unaware that there was any connection between *Jersey Boys* and the
25 Work); and, to refrain from further efforts to publish the Work (believing that Defendant DeVito was
26 reviewing the Work with the intention of updating it for publication).

27 127. Due to the parties' special and confidential relationship, described, *inter alia*, at
28 Paragraphs 109 and 110 hereof, Defendant DeVito owed a duty to Mr. Woodard and Plaintiff, who

1 he knew, or should reasonably have known, reposed their confidence in him, to speak, and to
2 disclose material facts peculiarly within his knowledge, and not within their fair and reasonable
3 reach.

4 128. Between 1991 and 2008, as detailed hereinabove, and evidenced by the *Exhibits*
5 hereto, Defendant DeVito breached his duty to disclose, and concealed material facts from Mr.
6 Woodard and/or Plaintiff, namely: (a) that Defendant DeVito had registered the copyrights in the
7 Work in his own name; (b) that Defendant DeVito had issued an exclusive license or assignment to
8 Defendants Valli and Gaudio, covering certain rights in and to the Work; (c) that Defendant DeVito
9 was to obtain, and actually obtained, royalties and/or other compensation as a result of said license
10 or assignment, which were required to be shared with Plaintiff in accordance with her co-ownership
11 of the Work, and the parties' December 1, 1988 agreement; (d) that *Jersey Boys* was adapted from
12 the Work, which had been referenced and used extensively in connection therewith; (e) that the
13 license granted by Defendant DeVito to Defendants Valli and Gaudio had been further licensed
14 and/or assigned to, *inter alia*, Defendants Brickman, Elice, DSHT, and Dodger Theatricals, all of
15 whom were profiting from derivative works based upon the Work; (f) that Defendant DeVito and/or
16 his attorney, Jay Julien, had been receiving weekly and monthly statements concerning Defendant
17 DeVito's royalties and/or profits from the licensing of the Work; (g) that Defendant DeVito had
18 worked, was working, or is working with another writer, to prepare an autobiography that is
19 derivative of the Work; and, (h) that Peter C. Bennett, counsel to the Four Seasons Partnership, sent
20 a demand letter to Defendant DeVito, through his attorney Jay Julien, indicating that Defendant
21 DeVito was prohibited from publishing an autobiography, due to provisions in his separation
22 agreement with the Four Seasons.

23 129. Mr. Woodard and Plaintiff justifiably relied on Defendant DeVito's silence, in view
24 of the parties' special and confidential relationship, and refrained from taking steps to enforce their
25 co-ownership and contractual rights against him (believing, erroneously, that same had not been
26 violated or breached); from demanding an accounting of profits from Defendant DeVito (believing,
27 erroneously, that no profits had been obtained), or from pursuing actions against the remaining
28 Defendants herein, for their infringing activities (unaware that there was any connection between

1 *Jersey Boys* and the Work).

2 130. As a direct and proximate result of Defendant DeVito's aforesaid conduct, Plaintiff
3 has sustained substantial economic losses, including past and future compensation, and other
4 economic benefits, such as those which may have flowed from timely publication of the Work.
5 Plaintiff has also sustained loss of financial stability, peace of mind and future security and has
6 suffered embarrassment, humiliation, mental and emotional distress and discomfort, all to Plaintiff's
7 detriment and damage, in amounts not yet fully ascertained.

8 131. In acting as described above, Defendant DeVito acted oppressively, maliciously,
9 fraudulently, and outrageously towards Plaintiff, with conscious disregard for Plaintiff's known
10 rights, and with the intention of causing unjust and cruel hardship to Plaintiff. Moreover, in acting
11 in a deliberate, cold, callous, and intentional manner, Defendant DeVito intended to injure, and
12 injured Plaintiff, and Plaintiff requests the assessment of exemplary and/or punitive damages against
13 Defendant DeVito, in an amount sufficient to punish and make an example of him, in addition to
14 compensatory damages, pre-judgment and post-judgment interest, as permitted by law, Plaintiff's
15 attorney's fees and the costs of this action, and the imposition of a constructive trust on all of
16 Defendant DeVito's income arising from or relating to the Work, including, but not limited to,
17 income arising from the licensing or assignment of rights therein for *Jersey Boys*.

18 **COUNT VIII**

19 **[Conversion]**

20 (Against Defendant DeVito)

21 132. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 131
22 hereinabove, as if fully set forth in this Paragraph 132.

23 133. Beginning in the summer of 2004, continuing through to the present, and, upon
24 information and belief, on at least a weekly basis since October 2005, Defendant DeVito has
25 converted, to his own use, numerous royalty payments and/or other compensation attributable to the
26 use, licensing, and/or assignment of the Work, or exclusive rights therein, which were due, owed,
27 and properly belonged to Plaintiff, by virtue of her status as co-owner of the Work, and pursuant to
28 the parties' December 1, 1988 agreement, in amounts not yet fully ascertained.

1 “national treatment” to U.S. authors, pursuant to, *inter alia*, Section 154(2) CDPA 1988, and
2 Statutory Instrument 1989, No. 157, *The Copyright (International Conventions)(Amendment) Order*
3 *1989*. Thus, at the time the Work was completed, the copyrights therein were protected under U.K.
4 law, without registration or any further formalities.

5 140. The Work is a work of “joint authorship” under s 10 (1) CDPA 1988, in that, *inter*
6 *alia*, it was produced by the collaboration of Mr. Woodard and Defendant DeVito; both Mr.
7 Woodard and Defendant DeVito made integral contributions thereto, which could not be removed
8 without fundamentally altering the whole; and, the parties worked together with a common design
9 or aim, and shared responsibility for the form of expression contained therein.

10 141. Whereas, the copyrights in a work vest initially with the author(s), under s 11(1)
11 CDPA 1988, all copyrights in the Work vested initially with Mr. Woodard and Defendant DeVito,
12 as joint authors, and they were co-owners thereof, each having an indivisible fifty (50%) percent
13 interest therein.

14 142. Whereas, copyright is transmissible by testamentary disposition or operation of law,
15 under s 90(1) CDPA 1988, Plaintiff inherited Mr. Woodard’s interest in the Work upon his death,
16 and became co-owner of all copyrights therein with Defendant DeVito.

17 143. Section 173(2) CDPA 1988 provides that the consent of all owners of a copyrighted
18 work is required to license the work.

19 144. One copyright co-owner may sue another co-owner for acts done without his license,
20 under s 16(2) CDPA 1988, and merely accounting to a co-owner for profits is insufficient to escape
21 liability for copyright infringement in such circumstances.

22 145. Pursuant to s 16(2) and s 173(2) CDPA 1988, copyright in a work is infringed by a
23 person who, without the license of all copyright owners does, or authorizes another to do, directly,
24 or indirectly, any of the acts restricted by the copyright, including, *inter alia*, copying the work;
25 issuing copies to the public in the European Economic Area (EEA) for the first time; communicating
26 the work to the public by electronic transmission; performing the work in public; renting or lending
27 the work to the public; and, making an adaptation of the work, as set forth in s 16(1) CDPA 1988,
28 and, pursuant to s 21(2) CDPA 1988, doing any of these acts in relation to an adaptation is also a

1 restricted act.

2 146. *Jersey Boys* is an adaptation of the Work, under s 21(3) CDPA 1988, as it is a
3 conversion of the Work into a dramatic work.

4 147. Defendant DeVito has infringed Plaintiff's copyrights in the Work, under s 16(2)
5 CDPA 1988, by entering into an agreement with Defendants Valli and Gaudio authorizing said
6 Defendants, and/or their licensees or assignees, to adapt the Work for *Jersey Boys*; to perform this
7 adaptation worldwide, including in the U.K., to arrange for and promote performances therein; to
8 broadcast excerpts from this adaptation by electronic transmissions therein; and, to otherwise deal
9 with restricted rights in the Work therein, all in the absence of Plaintiff's express consent.

10 148. Plaintiff is entitled to a permanent injunction against Defendant DeVito, for his acts
11 of U.K. copyright infringement, under s 96(2) CDPA 1988.

12 149. Plaintiff is also entitled to damages from Defendant DeVito, or an accounting of
13 profits, for his acts of U.K. copyright infringement, under s 96(2) CDPA 1988, in amounts to be
14 determined at trial, including additional (enhanced) damages, such as lost profits, other damages
15 appropriate to the actual prejudice suffered by Plaintiff as a result of Defendant DeVito's infringing
16 acts, and damages for the moral prejudice caused to Plaintiff by the infringement, under s 97(2)
17 CDPA 1988, and Regulation 3 of the Intellectual Property (Enforcement etc.) Regulations 2006 (SI
18 2006/1028), due, *inter alia*, to the flagrancy of Defendant DeVito's conduct in authorizing others
19 to use, adapt, and perform adaptations of the Work in the U.K., and the direct benefits obtained by
20 Defendant DeVito thereby, in the form of ongoing profits, all in the absence of Plaintiff's consent,
21 and with knowing disregard for her co-ownership of the Work.

22 **COUNT X**

23 **[Copyright Infringement under the Laws of Canada]**

24 (Against Defendant DeVito)

25 150. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 149
26 hereinabove, as if fully set forth in this Paragraph 150.

27 151. This is an action for copyright infringement under Section 27(1) of the Canadian
28 *Copyright Act* R.S.C. 1985, c. C-42 ("the Act"), arising from, *inter alia*, Defendant DeVito's

1 authorization of infringing acts in Canada.

2 152. Copyright infringement constitutes a transitory cause of action, and may be
3 adjudicated in the courts of a sovereign other than the one in which the cause of action arose.

4 153. The *Berne Convention for the Protection of Literary and Artistic Works*, to which the
5 United States and Canada are signatories, provides that works authored by citizens of signatory states
6 must be accorded at least the same copyright protection in other signatory states as such states accord
7 works authored by their own citizens, and Canada accords such “national treatment” to U.S. authors,
8 pursuant to, *inter alia*, Section 5(1) of the Act. Thus, at the time the Work was completed, the
9 copyrights therein were protected under Canadian law, without registration or any further formalities.

10 154. The Work is a work of “joint authorship” under Section 2 of the Act, in that, *inter*
11 *alia*, it was produced by the collaboration of Mr. Woodard and Defendant DeVito; both Mr.
12 Woodard and Defendant DeVito made substantial, original, and integral contributions thereto, which
13 could not be removed without fundamentally altering the whole; and, the parties worked together
14 with a common design or aim, and shared responsibility for the form of expression contained therein.

15 155. Whereas, the copyrights in a work vest initially with the author(s), under Section 13
16 of the Act, all copyrights in the Work vested initially with Mr. Woodard and Defendant DeVito, as
17 joint authors, and they were co-owners thereof, with each holding an indivisible fifty (50%) percent
18 ownership interest therein.

19 156. Whereas, copyright is transmissible by testamentary disposition, pursuant to, *inter*
20 *alia*, Section 14(1) of the Act, Plaintiff inherited Mr. Woodard’s interest in the Work upon his death,
21 and became co-owner of the copyrights therein, with Defendant DeVito.

22 157. Pursuant to, *inter alia*, Sections 3(1) and 27(1) of the Act, the consent of all owners
23 of a copyrighted work is required to license the work, or to exercise any of the rights of a copyright
24 owner under Section 3(1) of the Act, and one copyright co-owner may sue another co-owner for acts
25 done without his license, under Section 27(1) of the Act.

26 158. Pursuant to, *inter alia*, Sections 3(1)(a) -(I) and 27(1) and (5) of the Act, copyright
27 in a work is infringed by a person who, without license from all copyright owners does, or authorizes
28 another to: publish an unpublished work or any substantial part thereof; copy the work; convert the

1 work into a dramatic work, by way of performance in public or otherwise; reproduce, adapt and
2 publicly present the work as a cinematographic work; communicate the work to the public by
3 telecommunication; or, permit a theater or other place of entertainment to be used for the
4 performance in public of a work.

5 159. Defendant DeVito has infringed Plaintiff's copyrights in the Work, under Section
6 27(1) of the Act, by entering into an agreement with Defendants Valli and Gaudio authorizing said
7 Defendants, and/or their licensees or assignees, to copy and adapt the Work for *Jersey Boys*; to
8 perform this derivative work worldwide, including in Canada; to arrange for and promote
9 performances in theaters therein; to broadcast excerpts from this adaptation by electronic
10 transmissions therein; and, to otherwise deal with rights in the Work reserved exclusively to
11 copyright owners under Section 3(1) of the Act, all in the absence of Plaintiff's express consent.

12 160. Plaintiff is entitled to a permanent injunction against Defendant DeVito, for his acts
13 of copyright infringement under Canadian law, pursuant to Section 34(1) of the Act.

14 161. Plaintiff is also entitled to damages from Defendant DeVito, for his acts of Canadian
15 copyright infringement, in an amount to be determined at trial, under Sections 34(1) and 35 of the
16 Act, together with such part of Defendant DeVito's profits from such infringements as the Court
17 considers just, which were not taken into account in calculating such damages.

18 COUNT XI

19 **[Copyright Infringement under the Laws of Australia]**

20 (Against Defendant DeVito)

21 162. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 161
22 hereinabove, as if fully set forth in this Paragraph 162.

23 163. This is an action for copyright infringement under Sections 115(1), 36, and 39 of the
24 Australian *Copyright Act 1968* (Cth) ("the 1968 Act"), arising from, *inter alia*, Defendant DeVito's
25 authorization of infringing acts in Australia.

26 164. Copyright infringement constitutes a transitory cause of action, and may be
27 adjudicated in the courts of a sovereign other than the one in which the cause of action arose.

28 165. The *Berne Convention for the Protection of Literary and Artistic Works*, to which the

1 United States and Australia are signatories, provides that works authored by citizens of signatory
2 states must be accorded at least the same copyright protection in other signatory states as such states
3 accord works authored by their own citizens, and Australia accords such “national treatment” to U.S.
4 authors, pursuant to, *inter alia*, Section 184 of the 1968 Act, and Section 4, *Copyright (International*
5 *Protection) Regulations 1969*. Thus, at the time the Work was completed, the copyrights therein
6 were protected under Australian law, without registration or any further formalities.

7 166. The Work is a work of “joint authorship” under s 10(1) of the 1968 Act, in that, *inter*
8 *alia*, it was produced by the collaboration of Mr. Woodard and Defendant DeVito; both Mr.
9 Woodard and Defendant DeVito made substantial, original, and integral contributions thereto, and
10 invested skill and labor therein; and, the contributions of each are merged with and inseparable from
11 those of the other therein.

12 167. Whereas, the copyrights in a work vest initially with the author(s), under Section
13 35(2) of the 1968 Act, all copyrights in the Work vested initially with Mr. Woodard and Defendant
14 DeVito, as joint authors, and they were co-owners thereof, with each holding an indivisible fifty
15 (50%) percent ownership interest therein, as a tenant-in-common.

16 168. Whereas, copyright in an unpublished work is transmissible by testamentary
17 disposition, pursuant to s 198 of the 1968 Act, Plaintiff inherited Mr. Woodard’s interest in the
18 Work upon his death, and became co-owner of the copyrights therein, with Defendant DeVito.

19 169. Pursuant to, *inter alia*, s 36 of the 1968 Act, the consent of all owners of a
20 copyrighted work is required to license the work, or to exercise any of the rights of a copyright owner
21 under s 31(1) of the 1968 Act, and one copyright co-owner may sue another co-owner for acts done
22 without his license, under Sections 36 and 39 of the 1968 Act.

23 170. Pursuant to s 36 , s 39, s 31, and/or s 101 of the 1968 Act, copyright in a work is
24 infringed by a person who, without the license of all copyright owners does, or authorizes another
25 to do, any of the acts comprised in the copyright, including, *inter alia*, reproducing the work in
26 “material form” (which encompasses adaptations of the work, under Sections 10(1) and 21(2) of the
27 1968 Act); publishing the work; performing the work in public; communicating the work to the
28 public; making an adaptation of the work; doing or authorizing any of the foregoing acts in relation

1 to an adaptation of the work; and, in the case of indirect infringement, permitting a place of public
2 entertainment to be used for the public performance of a work.

3 171. *Jersey Boys* is an adaptation of the Work, under s 10(1) of the 1968 Act, as, *inter alia*,
4 it is a dramatization of the Work.

5 172. Defendant DeVito has infringed Plaintiff's copyrights in the Work, directly, and
6 indirectly, under Sections 36, 39, and/or 101 of the 1968 Act, by, *inter alia*, entering into an
7 agreement with Defendants Valli and Gaudio authorizing said Defendants, and/or their licensees or
8 assignees, to copy and adapt the Work for *Jersey Boys*; to perform this adaptation worldwide,
9 including in Australia; to arrange for and promote performances of this adaptation of the Work in
10 places of public entertainment therein; to communicate excerpts from this adaptation by electronic
11 transmissions therein; and, to otherwise deal with rights in the Work reserved exclusively to
12 copyright owners under Section 31(1) of the 1968 Act, all in the absence of Plaintiff's consent,
13 notwithstanding Defendant DeVito's full awareness of Plaintiff's co-ownership of the copyright in
14 the Work.

15 173. Plaintiff is entitled to a permanent injunction against Defendant DeVito, for his acts
16 of direct and indirect copyright infringement under Australian law, pursuant to, *inter alia*, Section
17 115(2) of the 1968 Act.

18 174. Plaintiff is also entitled to damages from Defendant DeVito, or an accounting of
19 profits, for his acts of Australian copyright infringement, under s 115(2) of the 1968 Act, in amounts
20 to be determined at trial, and additional (exemplary or punitive) damages, under s 115(4) of the 1968
21 Act, due, *inter alia*, to the flagrancy of Defendant DeVito's conduct in authorizing others to use,
22 adapt, and perform adaptations of the Work in Australia in utter disregard for Plaintiff's co-
23 ownership thereof; the direct benefits obtained by Defendant DeVito thereby, in the form of ongoing
24 profits; and, the need to deter similar future acts of copyright infringement thereby.

25 COUNT XII

26 **[Declarations of Invalidity, Non-Exclusivity, and/or Non-Transferability of "Exclusive** 27 **License" and Invalidity of Subsequent Licenses/Assignments]**

28 (Against Defendants Valli, Gaudio, DSHT and Dodger Theatricals)

1 175. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 174
2 hereinabove, as if fully set forth in this Paragraph 175.

3 176. Defendant DeVito, as a co-owner of the Work, lacked the power, authority, and/or
4 requisite ownership interest to unilaterally issue an exclusive license to Defendants Valli and Gaudio
5 thereunder, and accordingly, the “exclusive license” Defendant DeVito granted thereto, on or about
6 August 13, 1999, was *void ab initio*, under 17 U.S.C. §§ 201(a) and (d)(2), insofar as it purported
7 to cover the Work, or any of the rights, privileges, benefits, or protections accorded to an owner of
8 copyrights therein, under, *inter alia*, 17 U.S.C. §§ 106, 501(b), 502, 503, 504, and 505.

9 177. Alternatively, whereas, Defendant DeVito, as a co-owner of the Work, lacked the
10 power, authority and/or requisite ownership interest to unilaterally issue an exclusive license to
11 Defendants Valli and Gaudio thereunder, the “exclusive license” Defendant DeVito granted thereto,
12 on or about August 13, 1999, must be construed as a non-exclusive license, which Defendants Valli
13 and Gaudio could not lawfully license, sublicense, or assign, under 17 U.S.C. § 201(d)(2), in the
14 absence of Plaintiff’s express consent.

15 178. As a result of the invalidity of the aforesaid “exclusive license” from Defendant
16 DeVito, as set forth in Paragraph 176 hereof, Defendants Valli and Gaudio had, acquired, have, and
17 possess, no right, power, license, or other authority to use, reference, and/or adapt the Work; to
18 reproduce the Work or distribute copies thereof; to prepare derivative works based upon the Work;
19 to perform the Work or adaptations thereof; to authorize others to prepare derivative works based
20 upon the Work; to license, sublicense, lease, or otherwise permit third parties to use, exercise, or
21 exploit any of the copyrights in the Work; or to exercise, or authorize the exercise of, any right in
22 the Work reserved to copyright owners under 17 U.S.C. §§ 106 and 201(d).

23 179. Alternatively, as a result of the non-exclusive nature of the aforesaid “exclusive
24 license” from Defendant DeVito, as set forth in Paragraph 177 hereof, Defendants Valli and Gaudio
25 had, acquired, have, and possess, no right, power, license, or other authority to authorize others to
26 prepare derivative works based upon the Work; to license, sublicense, lease, or otherwise permit
27 third parties to use, exercise, or exploit any of the copyrights in the Work; or to authorize the
28 exercise of any other rights in the Work reserved to copyright owners under 17 U.S.C. §§ 106 and

1 201(d).

2 180. As a result of the invalidity or non-exclusivity of the aforesaid “exclusive license”
3 from Defendant DeVito to Defendants Valli and Gaudio, the subsequent purported transfer of these
4 rights by Defendants Valli and Gaudio to Defendants DSHT and/or Dodger Theatricals, in the May
5 1, 2004 agreement between these parties, and any purported license or transfer of these rights to
6 Defendants Brickman and Elice, and any other person, were void, *ab initio*, with no force or effect,
7 and conveyed no rights relating to or arising from the Work.

8 181. In this Circuit, a co-owner of a copyrighted work may assign his own exclusive rights
9 in the work, in whole or part, under 17 U.S.C. § 201(d)(1), but unless he assigns all of his rights in
10 the work, the transferee is entitled, with respect to the rights assigned, only to the “protections and
11 remedies” accorded by the Copyright Act, and not to the “rights and benefits” conferred thereby, and
12 accordingly, may not further license, sublicense, or assign those rights, under 17 U.S.C. § 201(d)(2).
13 Thus, in the alternative, under FED. R. CIV. P. 8(d)(2)-(3), Defendant DeVito’s foregoing “exclusive
14 license” to Defendants Valli and Gaudio constituted an assignment of Defendant DeVito’s entire
15 share in the exclusive rights to prepare derivative works based upon the Work in the media of, *inter*
16 *alia*, theater, film, and television, making Defendants Valli and Gaudio co-owners of said rights with
17 Plaintiff, with Plaintiff holding a fifty (50%) percent ownership interest therein, and Defendants
18 Valli and Gaudio holding a fifty (50%) percent ownership interest; but, because the assignment
19 encompassed less than Defendant DeVito’s entire share of all exclusive rights in the Work, the rights
20 acquired by Defendants Valli and Gaudio thereunder may not be further licensed, sublicensed,
21 leased, or transferred thereby, absent Plaintiff’s consent, under 17 U.S.C. § 201(d)(2). Consequently,
22 the further transfer of these rights by Defendants Valli and Gaudio to Defendants DSHT and/or
23 Dodger Theatricals, in the May 1, 2004 agreement between these parties and Defendants Brickman
24 and Elice, was void, *ab initio*, with no force or effect, and neither licensed nor conveyed any rights
25 relating to or arising from the Work.

26 182. Plaintiff seeks a Declaratory Judgment against Defendants Valli, Gaudio, DSHT, and
27 Dodger Theatricals, pursuant to 28 U.S.C. § 2201, decreeing that: (a) that the “exclusive license”
28 encompassing the Work which Defendant DeVito granted to Defendants Valli and Gaudio, on or

1 about August 13, 1999, was void, *ab initio*, under 17 U.S.C. §§ 201(a) and (d)(2); or, (b) was a
2 limited, nonexclusive license, which Defendants Valli and Gaudio could not further license, lease,
3 assign, or otherwise transfer or convey, in the absence of Plaintiff's consent, under 17 U.S.C. §
4 201(d)(2); (c) that all subsequent non-exclusive licenses, exclusive licenses, assignments, leases,
5 and/or transfers of said rights by Defendants Valli and Gaudio were void and invalid under 17 U.S.C.
6 § 201(d)(2), including, but not limited to, the licenses and/or assignments granted by Defendants
7 Valli and Gaudio to Defendants Brickman, Elice, McAnuff, DSHT, and/or Dodger Theatricals; and,
8 (d) that Defendants Valli, Gaudio, and/or DSHT and Dodger Theatricals have no rights to use,
9 reference, and/or adapt the Work; to reproduce the Work or distribute copies thereof; to prepare
10 derivative works based upon the Work; to perform the Work or adaptations thereof; to license,
11 sublicense, lease, or otherwise permit third parties to use, exercise, or exploit any of the copyrights
12 in the Work; or to exercise, or authorize the exercise of, any other right in the Work reserved to
13 copyright owners under 17 U.S.C. §§ 106 and 201(d).

14 183. Alternatively, under FED. R. CIV. P. 8(d)(2)-(3), Plaintiff seeks a Declaratory
15 Judgment against Defendants Valli, Gaudio, DSHT, and Dodger Theatricals, pursuant to 28 U.S.C.
16 § 2201, decreeing that: (a) that the "exclusive license" encompassing the Work which Defendant
17 DeVito granted to Defendants Valli and Gaudio, on or about August 13, 1999, constituted an
18 assignment of Defendant DeVito's share in the exclusive rights to prepare derivative works based
19 upon the Work in the media of, *inter alia*, theater, film, and television, resulting in the indivisible
20 co-ownership of these rights by Plaintiff (50%) and Defendants Valli and Gaudio (50%), under 17
21 U.S.C. §§ 201(a) and (d)(2); (b) that notwithstanding this "assignment," which encompassed less
22 than all of Defendant DeVito's rights in the Work, that Defendants Valli and Gaudio were and
23 remain prohibited from further licensing, sublicensing, leasing, or transferring the rights thereby
24 obtained, under 17 U.S.C. § 201(d)(2); (c) that all subsequent non-exclusive licenses, exclusive
25 licenses, assignments, leases, and/or transfers of said rights by Defendants Valli and Gaudio were
26 and remain void and invalid under 17 U.S.C. § 201(d)(2), including, but not limited to, the licenses
27 and/or assignments granted by Defendants Valli and Gaudio to Defendants Brickman, Elice,
28 McAnuff, DSHT, and/or Dodger Theatricals; and, (d) that Defendants DSHT and Dodger Theatricals

1 have no rights to use, reference, and/or adapt the Work; to reproduce the Work or distribute copies
2 thereof; to prepare derivative works based upon the Work; to perform the Work or adaptations
3 thereof; to authorize others to prepare derivative works based upon the Work; to license, sublicense,
4 lease, or otherwise permit third parties to use, exercise, or exploit any of the copyrights in the Work;
5 or to exercise, or authorize the exercise of, any right in the Work reserved to copyright owners under
6 17 U.S.C. §§ 106 and 201(d).

7 COUNT XIII

8 **[Alternative Declaration that “Exclusive License” from Defendant DeVito to Defendants** 9 **Valli and Gaudio Constituted a Transferable Assignment of Exclusive Rights]**

10 (Against Defendants Valli, Gaudio, DHST, and Dodger Theatricals, in the Alternative,

11 Under FED. R. CIV. P. 8(d)(2)-(3))

12 184. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 183
13 hereinabove, as if fully set forth in this Paragraph 184.

14 185. In the alternative to Counts XII, XV, XVI, and XVII hereof, under Fed. R. Civ. P.
15 8(d)(2)-(3), and pursuant to the allegations of Paragraphs 12(h), 15(c) and (f), 16, and 59 hereof,
16 Defendant DeVito’s August 13, 1999 grant of exclusive rights to Defendants Valli and Gaudio
17 effected an assignment of his entire share in the exclusive right to prepare derivative works based
18 upon the Work, in the fields of, *inter alia*, theater, film, and television, resulting in an indivisible co-
19 ownership of these rights by Plaintiff (50%) and Defendants Valli and Gaudio (50%), under 17
20 U.S.C. §§ 201(a) and (d)(2), which said Defendants could further assign, under 17 U.S.C. §
21 201(d)(1)-(2).

22 186. In the alternative to Counts XII, XV, XVI, and XVII hereof, under Fed. R. Civ. P.
23 8(d)(2)-(3), and pursuant to the allegations of Paragraphs 12(h), 15(c) and (f), 16, 59, and 185 hereof,
24 Defendants Valli’s and Gaudio’s May 1, 2004 transfer of the exclusive rights in the Work obtained
25 from Defendant DeVito, to Defendants DSHT and/or Dodger Theatricals, was effective, and
26 constituted an assignment of Valli’s and Gaudio’s entire share in the exclusive right to prepare
27 derivative works based upon the Work, in the fields of, *inter alia*, theater, film, and television,
28 resulting in an indivisible co-ownership of these rights by Plaintiff (50%) and Defendants DSHT

1 and/or Dodger Theatricals (50%), under 17 U.S.C. §§ 201(a) and (d).

2 187. Plaintiff seeks a Declaratory Judgment against Defendants Valli, Gaudio, DSHT, and
3 Dodger Theatricals, pursuant to 28 U.S.C. § 2201, decreeing that: (a) that the “exclusive license”
4 encompassing the Work which Defendant DeVito granted to Defendants Valli and Gaudio, on or
5 about August 13, 1999, effected an assignment of his entire share in the exclusive right to prepare
6 derivative works based upon the Work, in the fields of, *inter alia*, theater, film, and television,
7 resulting in an indivisible co-ownership of these rights by Plaintiff (50%) and Defendants Valli and
8 Gaudio (50%), under 17 U.S.C. §§ 201(a) and (d)(2); and, (b) that Defendants Valli’s and Gaudio’s
9 May 1, 2004 transfer of the exclusive rights in the Work obtained from Defendant DeVito as
10 aforesaid, to Defendants DSHT and/or Dodger Theatricals, constituted an assignment of Valli’s and
11 Gaudio’s entire share in the exclusive right to prepare derivative works based upon the Work, in the
12 fields of, *inter alia*, theater, film, and television, resulting in an indivisible co-ownership of these
13 rights by Plaintiff (50%) and Defendants DSHT and/or Dodger Theatricals (50%), under 17 U.S.C.
14 §§ 201(a) and (d).

15 COUNT XIV

16 **[Equitable Accounting]**

17 (Against Defendants Valli, Gaudio, DSHT, and Dodger Theatricals, in the Alternative,

18 Under FED. R. CIV. P. 8(d)(2)-(3))

19 188. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 187
20 hereinabove, as if fully set forth in this Paragraph 188.

21 189. Co-owners of a copyrighted work are akin to tenants-in-common, with each co-owner
22 having an undivided, independent right to use the work, subject to a duty to account for profits to
23 the other co-owner(s).

24 190. As a result of Defendant DeVito’s transfer of his entire share of certain of his
25 exclusive rights in the Work to Defendants Valli and Gaudio, under the “exclusive license” executed
26 on or about August 13, 1999, Defendants Valli and Gaudio became co-owners of these rights with
27 Plaintiff, under 17 U.S.C. §§ 201(a) and (d), with Defendants Valli and Gaudio holding an
28 indivisible fifty (50%) percent ownership interest therein, and Plaintiff holding the remaining fifty

1 (50%) percent ownership interest therein.

2 191. As a result of Defendants Valli's and Gaudio's May 1, 2004 transfer of certain of the
3 exclusive rights in the Work obtained from Defendant DeVito as aforesaid, to Defendants DSHT
4 and/or Dodger Theatricals – namely, all live stage musical rights in and to the Work as used,
5 referenced, and/or adapted for *Jersey Boys*, Defendants DSHT and/or Dodger Theatricals became
6 co-owners of these rights with Plaintiff, under 17 U.S.C. §§ 201(a) and (d), with Defendants DSHT
7 and/or Dodger Theatricals holding an indivisible fifty (50%) percent ownership share therein, and
8 Plaintiff holding the remaining indivisible fifty (50%) percent ownership interest therein.

9 192. As co-owner of the aforesaid rights in the Work transferred to Defendants Valli and
10 Gaudio, Plaintiff has a right to an accounting from Defendants Valli and Gaudio, of any and all
11 profits obtained as a result of their exercise of said rights, and the use and benefit of the Work, and
12 to payment of her fifty (50%) percent *pro rata* share of same.

13 193. As co-owner of the aforesaid rights in the Work transferred by Defendants Valli and
14 Gaudio to Defendants DSHT and/or Dodger Theatricals, Plaintiff has a right to an accounting from
15 Defendants DSHT and/or Dodger Theatricals, of any and all profits obtained as a result of their
16 exercise of said rights, and the use and benefit of the Work, and to payment of her fifty (50%)
17 percent *pro rata* share of same.

18 194. The duties of Defendants Valli and Gaudio, and Defendants DSHT and/or Dodger
19 Theatricals to account to Plaintiff, as aforesaid, includes, but is not limited to, a duty to account for
20 profits obtained, derived, or resulting from: (a) the use and/or adaptation of the Work for *Jersey Boys*
21 and collateral products by same; and, (b) the use and/or adaptation of the Work by any other person
22 or entity acting under a license, sublicense, lease and/or transfer of rights under the Work issued
23 formally or informally by said Defendants thereto.

24 195. Plaintiff has demanded that Defendants Valli and Gaudio, DSHT and Dodger
25 Theatricals account for profits arising directly or indirectly from their use, exploitation, and/or
26 exercise of rights assigned thereto by Defendant DeVito relating to the Work, but said Defendants
27 have failed and refused, and continue to fail and refuse, to render accountings or pay Plaintiff her
28 share of said profits.

1 conduct complained of herein, and the prerequisites and formalities of 17 U.S.C. § 411 have been
2 satisfied. Whereas, Plaintiff is a legal and/or beneficial owner of the copyrights embodied in U.S.
3 Reg. No. Txu 454 118, she has standing to bring this action for copyright infringement against the
4 above-named Defendants under 17 U.S.C. § 501(b).

5 201. Plaintiff also has standing to bring this action for copyright infringement against the
6 above-named Defendants under 17 U.S.C. § 411(a), by virtue of her application for supplementary
7 registration on Form CA, filed with the Copyright Office on July 2, 2007, and shown in *Exhibit 26*
8 hereof, which sought to supplement U.S. Reg. No. Txu 454 118 to include Mr. Woodard's claims
9 of authorship and ownership, and was refused by the Copyright Office on June 16, 2008, as shown
10 in *Exhibit 26* at p. 7. Whereas, Plaintiff's July 2, 2007 application was accompanied by the
11 necessary deposit, application form, and fee required for registration, was delivered to the Copyright
12 Office in proper form, but was nonetheless refused, Plaintiff has standing to bring suit for copyright
13 infringement based on the claims contained therein, under 17 U.S.C. § 411(a).

14 202. *Jersey Boys* is a derivative work based upon the Work, under 17 U.S.C. § 101, as it
15 is a dramatization, fictionalization, abridgment, condensation, or other recasting, transformation, or
16 adaptation of the Work.

17 203. Each of the above-named Defendants, and/or their principals, had extensive access
18 to the Work, over a period spanning at least several years, and, pursuant to the inverse ratio rule in
19 this Circuit, less similarity between the Work and *Jersey Boys* is required to establish "copying" than
20 would be required if said Defendants had less or no access to the Work.

21 204. *Jersey Boys* is substantially similar to the Work, extrinsically and intrinsically.

22 205. *Jersey Boys* includes passages copied verbatim from the Work.

23 206. Plaintiff has not authorized any of the above-named Defendants to prepare derivative
24 works based upon the Work; to otherwise appropriate material from the Work, or authorize others
25 to do so; to reproduce the Work; to perform the Work, or to distribute copies thereof.

26 207. The "exclusive license" granted by Defendant DeVito to Defendants Valli and
27 Gaudio, on or about August 13, 1999, was invalid under 17 U.S.C. § 201(a) and (d)(2), as set forth
28 hereinabove, and conveyed no rights to Defendants Valli and Gaudio, or constituted only a non-

1 exclusive license, with no rights to further transfer, lease, license, or sublicense same.

2 208. Alternatively, the “exclusive license” granted by Defendant DeVito to Defendants
3 Valli and Gaudio constituted an assignment of certain of Defendant DeVito’s exclusive rights in the
4 Work, under 17 U.S.C. § 201(d)(1), but did not permit the further licensing, sublicensing, leasing
5 and/or transfer of said rights by Defendants Valli and Gaudio to any third party, under 17 U.S.C. §
6 201(d)(2).

7 209. Defendants Valli and Gaudio have infringed Plaintiff’s copyrights in the Work, under
8 17 U.S.C. § 501(a), by their exercise of exclusive rights in the Work which are reserved to copyright
9 owners under 17 U.S.C. § 106, and are held, indivisibly, by Plaintiff and Defendant DeVito, as co-
10 owners thereof, namely: (a) the authorization of others, including Defendants Brickman, Elice,
11 McAnuff, DSHT, and Dodger Theatricals, to prepare derivative works based upon the Work,
12 including, but not limited to, the *Jersey Boys libretto* and production, the *Jersey Boys* original cast
13 recording, and the *Jersey Boys* book, in violation of Plaintiff’s rights under 17 U.S.C. § 106(2); (b)
14 the authorization of others, including Defendants Brickman, Elice, and McAnuff, to reproduce and
15 distribute copies of the Work, in violation of Plaintiff’s rights under 17 U.S.C. §§ 106(1) and 106(3);
16 and, (c) the authorization of others, including Defendants DSHT and Dodger Theatricals, to perform
17 portions of the Work, and/or derivative works based thereon, in violation of Plaintiff’s rights under
18 17 U.S.C. § 106(4), and said Defendants are jointly and severally liable for these infringements.

19 210. Defendants Brickman and Elice have infringed Plaintiff’s copyrights in the Work,
20 under 17 U.S.C. § 501(a), by, *inter alia*: (a) their preparation of a derivative work based upon the
21 Work, namely, the *Jersey Boys libretto*, in violation of Plaintiff’s rights under 17 U.S.C. § 106(2);
22 and, (b) their reproduction and distribution of copies of the Work, in violation of Plaintiff’s rights
23 under 17 U.S.C. §§ 106(1) and 106(3), and said Defendants are jointly and severally liable for these
24 infringements.

25 211. Defendant McAnuff has infringed Plaintiff’s copyrights in the Work, under 17 U.S.C.
26 § 501(a) by, *inter alia*: (a) his preparation of a derivative work based upon the Work, in concert with
27 Defendants Brickman and Elice, and in violation of Plaintiff’s rights under 17 U.S.C. § 106(2), and
28 (b) his reproduction and/or distribution of copies of the Work, in violation of Plaintiff’s rights under

1 17 U.S.C. §§ 106(1) and/or 106(3).

2 212. Defendant DSHT has infringed Plaintiff's copyrights in the Work, under 17 U.S.C.
3 § 501(a), by its unlawful exercise of exclusive rights therein which are reserved to copyright owners
4 under 17 U.S.C. § 106, and are held, indivisibly, by Plaintiff and Defendant DeVito, as co-owners
5 thereof, namely: (a) the authorization of others, including Defendants Brickman, Elice, McAnuff,
6 Dodger Theatricals, to prepare derivative works based upon the Work, including, but not limited to,
7 the *Jersey Boys libretto* and production, the *Jersey Boys* original cast recording, and the *Jersey Boys*
8 book, in violation of Plaintiff's rights under 17 U.S.C. § 106(2); (b) the authorization of others,
9 including Defendants Brickman, Elice, and McAnuff, to reproduce and distribute copies of the
10 Work, in violation of Plaintiff's rights under 17 U.S.C. §§ 106(1) and 106(3); and, (c) the
11 performance of, and/or authorization of others, including Defendants Dodger Theatricals and JB
12 Viva Vegas, to produce and perform, portions of the Work, and a derivative work based thereon, in
13 violation of Plaintiff's rights under 17 U.S.C. § 106(4).

14 213. Defendant Dodger Theatricals has infringed Plaintiff's copyrights in the Work, under
15 17 U.S.C. § 501(a), by its unlawful exercise of exclusive rights therein which are reserved to
16 copyright owners under 17 U.S.C. § 106, and are held, indivisibly, by Plaintiff and Defendant
17 DeVito, as co-owners, namely: (a) the authorization of others, including Defendants Brickman, Elice,
18 and McAnuff, to prepare derivative works based upon the Work, including, but not limited to, the
19 *Jersey Boys libretto* and production, the *Jersey Boys* original cast recording, and the *Jersey Boys*
20 book, in violation of Plaintiff's rights under 17 U.S.C. § 106(2); (b) the authorization of others,
21 including Defendants Brickman, Elice, and McAnuff, to reproduce and distribute copies of the
22 Work, in violation of Plaintiff's rights under 17 U.S.C. §§ 106(1) and 106(3); and, (c) the
23 performance of, and/or authorization of others, including JB Viva Vegas, to produce and perform,
24 portions of the Work, and a derivative work based thereon, in violation of Plaintiff's rights under 17
25 U.S.C. § 106(4).

26 214. Defendant JB Viva Vegas has infringed Plaintiff's copyrights in the Work, under 17
27 U.S.C. § 501(a), by its unlawful exercise of exclusive rights therein which are reserved to copyright
28 owners under 17 U.S.C. § 106, and are held, indivisibly, by Plaintiff and Defendant DeVito as co-

1 owners, namely, the production and performance of, and/or authorization of others to perform
2 publicly, portions of the Work, and a derivative work based thereon, in violation of Plaintiff's rights
3 under 17 U.S.C. § 106(4).

4 215. Defendants' foregoing unlawful activities were willful, and committed with the intent
5 to commercially exploit the Work, in which they have no legal or proprietary rights.

6 216. If Defendants' foregoing activities continue, Plaintiff will suffer irreparable harm of
7 a continuing nature for which there is no plain, speedy or adequate remedy at law, and Defendants'
8 acts of copyright infringement will continue unless they are enjoined from further committing such
9 wrongful acts.

10 217. By reason of the foregoing willful infringements of copyright, Plaintiff has sustained
11 injury, loss, and damage to her ownership rights, and Defendants have unlawfully, unfairly and
12 wrongfully derived, and will continue to derive, income from these infringing acts, and are being
13 unjustly enriched by these infringements.

14 218. Plaintiff has been damaged by said Defendants' acts in an amount not yet ascertained
15 but to be proven at trial.

16 219. Defendants' aforesaid infringing acts have been performed with knowledge of
17 Plaintiff's copyrights and were performed intentionally and willfully.

18 220. Plaintiff is entitled to injunctive relief against Defendants Valli, Gaudio, Brickman,
19 Elice, McAnuff, DSHT, Dodger Theatricals, and JB Viva Vegas, for their acts of infringement, as
20 provided in 17 U.S.C. § 502; namely to preliminary and permanent injunctions preventing
21 Defendants, their officers, partners, agents, servants, employees, and attorneys, and all those acting
22 in concert or participation therewith, from directly or indirectly copying and distributing the Work;
23 preparing derivative works based upon or adapted from the Work; performing the Work, in whole
24 or in part, performing derivative works based upon the Work, and/or authorizing third parties to
25 engage in such activities.

26 221. Plaintiff is further entitled to recover from Defendants Valli, Gaudio, Brickman,
27 Elice, McAnuff, DSHT, Dodger Theatricals, and JB Viva Vegas, Plaintiff's actual damages and any
28 additional profits of these infringers, under 17 U.S.C. § 504(b); to statutory damages in lieu of actual

1 damages, under 17 U.S.C. § 504(c); to enhanced damages for Defendants' willful infringements,
2 under 17 U.S.C. § 504(d); and, to Plaintiff's attorney fees and the costs of this action, under 17
3 U.S.C. § 505. Finally, Plaintiff is entitled to an Order allowing for the impoundment and destruction
4 of any and all infringing articles, under 17 U.S.C. § 503.

5 COUNT XVI

6 **[Vicarious Copyright Infringement]**

7 (Against Defendants Valli, Gaudio, McAnuff, DSHT, and Dodger Theatricals)

8 222. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 221
9 hereinabove, as if fully set forth in this Paragraph 222.

10 223. Defendants Valli, Gaudio, McAnuff, DSHT, and Dodger Theatricals, each had the
11 right and ability to control the acts of other infringers herein, and received direct financial benefit
12 from the infringements, as shown in the documents included in *Exhibit 31* hereof. Accordingly, said
13 Defendants are liable to Plaintiff for vicarious copyright infringement.

14 224. As a direct and proximate result of said Defendants' vicarious copyright infringement,
15 Plaintiff has suffered, and will continue to suffer, monetary damage and irreparable harm.

16 225. Plaintiff is entitled to injunctive relief against Defendants Valli, Gaudio, McAnuff,
17 DSHT, and Dodger Theatricals for their vicarious copyright infringements as provided in 17 U.S.C.
18 § 502, namely, to preliminary and permanent injunctions preventing the said Defendants, their
19 officers, agents, servants, employees, attorneys, and all those acting in concert or participation
20 therewith, from directly or indirectly copying and distributing the Work; preparing derivative works
21 based upon or adapted from the Work; performing the Work, in whole or in part; performing
22 derivative works based upon the Work, and/or authorizing third parties to engage in such activities.

23 226. Plaintiff is further entitled to recover from Defendants Valli, Gaudio, McAnuff,
24 DSHT, and Dodger Theatricals, Plaintiff's actual damages, plus any additional profits of these
25 infringers, under 17 U.S.C. § 504(b); statutory damages in lieu of actual damages, if Plaintiff so
26 elects, under 17 U.S.C. § 504(c); and, to Plaintiff's attorneys' fees and the costs of this action under
27 17 U.S.C. § 505. Finally, Plaintiff is entitled to an Order allowing for the impoundment and
28 destruction of any and all infringing articles under 17 U.S.C. § 503.

1 **COUNT XVII**

2 **[Contributory Copyright Infringement]**

3 (Against Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT, and Dodger Theatricals)

4 227. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 226
5 hereinabove, as if fully set forth in this Paragraph 227.

6 228. Defendants Valli, Gaudio, Brickman, Elice, and McAnuff were aware, and/or should
7 reasonably have been aware, that Defendant DeVito, whom they well know, was not the sole author
8 of the Work, or the sole owner of the copyrights therein, and upon information and belief, said
9 Defendants were also aware of Mr. Woodard’s authorship of the Work.

10 229. Notwithstanding the above-named Defendants’ knowledge of the infringing activities
11 complained of herein, each induced, caused, or materially contributed to the infringing conduct of
12 others, and are therefore liable to Plaintiff as contributory copyright infringers. Defendants Valli and
13 Gaudio, through their unlawful “authorizations,” licenses, and/or assignments, contributed to the
14 infringements of Defendants Brickman, Elice, McAnuff, DSHT, Dodger Theatricals, and JB Viva
15 Vegas. Defendants Brickman and Elice, through their drafting of the infringing *Jersey Boys libretto*,
16 and presentation of same to Defendants Valli, Gaudio, McAnuff, DSHT, and Dodger Theatricals,
17 caused, materially contributed to, and/or induced the acts of infringements thereof. And, Defendant
18 McAnuff induced, caused, and/or materially contributed to the infringing acts of Defendants
19 Brickman and Elice, and thereby the remaining Defendants, by encouraging them to transform the
20 original *libretto* for *Jersey Boys* into one that was adapted even more heavily from the Work.

21 230. Defendants’ foregoing activities were willful, and committed with the intent to
22 commercially exploit the Work, in which they have no legal or proprietary rights.

23 231. If Defendants’ foregoing activities continue, Plaintiff will suffer irreparable harm of
24 a continuing nature for which there is no plain, speedy or adequate remedy at law, and Defendants’
25 acts of copyright infringement will continue unless they are enjoined from further committing such
26 wrongful acts.

27 232. By reason of the foregoing willful acts of contributory infringement, Plaintiff has
28 sustained injury, loss, and damage to her ownership rights, and Defendants have unlawfully, unfairly

1 and wrongfully derived, and will continue to derive, income from these infringing acts, and are being
2 unjustly enriched thereby.

3 233. Plaintiff has been damaged by said Defendants' acts in an amount not yet ascertained
4 but to be proven at trial.

5 234. Plaintiff is entitled to injunctive relief against Defendants Valli, Gaudio, Brickman,
6 Elice, and McAnuff, for their acts of contributory infringement, as provided in 17 U.S.C. § 502;
7 namely to preliminary and permanent injunctions preventing said Defendants, their officers, agents,
8 servants, employees, and attorneys, and all those acting in concert or participation therewith, from
9 directly or indirectly copying and distributing the Work; preparing derivative works based upon or
10 adapted from the Work; performing the Work, in whole or part, or performing derivative works
11 based upon the Work; and/or authorizing third parties to engage in such activities.

12 235. Plaintiff is further entitled to recover from Defendants Valli, Gaudio, Brickman,
13 Elice, and McAnuff, Plaintiff's actual damages and any additional profits of these contributory
14 infringers, under 17 U.S.C. § 504(b); statutory damages in lieu of actual damages, under 17 U.S.C.
15 § 504(c); enhanced damages for the willfulness of said Defendants' infringements, under 17 U.S.C.
16 § 504(d); and, Plaintiff's attorneys' fees and the costs of this action, under 17 U.S.C. § 505. Finally,
17 Plaintiff is entitled to an Order allowing for the impoundment and destruction of any and all
18 infringing articles, under 17 U.S.C. § 503.

19 COUNT XVIII

20 **[Copyright Infringement under the Laws of the United Kingdom]**

21 (Against Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT, and Dodger Theatricals)

22 236. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 235
23 hereinabove, as if fully set forth in this Paragraph 236.

24 237. This is an action for copyright infringement under s 16(2) of the U.K. *Copyright,*
25 *Designs and Patents Act 1988*, as amended ("CDPA 1988"), arising from, *inter alia*, the
26 authorization and/or execution by Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT,
27 and/or Dodger Theatricals, of infringing acts in the United Kingdom.

28 238. Copyright infringement constitutes a transitory cause of action, and may be

1 adjudicated in the courts of a sovereign other than the one in which the cause of action arose.

2 239. The *Berne Convention for the Protection of Literary and Artistic Works*, to which the
3 United States and the United Kingdom are signatories, provides that works authored by citizens of
4 signatory states must be accorded at least the same copyright protection in other signatory states as
5 such states accord works authored by their own citizens, and the United Kingdom accords such
6 “national treatment” to U.S. authors, pursuant to, *inter alia*, Section 154(2) CDPA 1988, and
7 Statutory Instrument 1989, No. 157, *The Copyright (International Conventions)(Amendment) Order*
8 *1989*. Thus, at the time the Work was completed, the copyrights therein were protected under U.K.
9 law, without registration or any further formalities.

10 240. The Work is a work of “joint authorship” under s 10 (1) CDPA 1988, in that, *inter*
11 *alia*, it was produced by the collaboration of Mr. Woodard and Defendant DeVito; both Mr.
12 Woodard and Defendant DeVito made integral contributions thereto, which could not be removed
13 without fundamentally altering the whole; and, the parties worked together with a common design
14 or aim, and shared responsibility for the form of expression contained therein.

15 241. Whereas, the copyrights in a work vest initially with the author(s), under s 11(1)
16 CDPA 1988, all copyrights in the Work vested initially with Mr. Woodard and Defendant DeVito,
17 as joint authors, and they were co-owners thereof, each having an indivisible fifty (50%) percent
18 interest therein.

19 242. Whereas, copyright is transmissible by testamentary disposition or operation of law,
20 under s 90(1) CDPA 1988, Plaintiff inherited Mr. Woodard’s interest in the Work upon his death,
21 and became co-owner of all copyrights therein with Defendant DeVito.

22 243. Section 173(2) CDPA 1988 provides that the consent of all owners of a copyrighted
23 work is required to license a work, or otherwise authorize any of the acts restricted to copyright
24 owners therein.

25 244. Pursuant to s 16(2) and s 173(2) CDPA 1988, copyright in a work is infringed by a
26 person who, without the license of all copyright owners does, or authorizes another to do, directly,
27 or indirectly, any of the acts restricted by the copyright, including, *inter alia*, copying the work;
28 issuing copies to the public in the European Economic Area (EEA) for the first time; communicating

1 the work to the public by electronic transmission; performing the work in public; renting or lending
2 the work to the public; and, making an adaptation of the work, as set forth in s 16(1) CDPA 1988,
3 and, pursuant to s 21(2) CDPA 1988, doing any of these acts in relation to an adaptation is also a
4 restricted act.

5 245. *Jersey Boys* is an adaptation of the Work, under s 21(3) CDPA 1988, as it is a
6 conversion of the Work into a dramatic work.

7 246. Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT, and Dodger Theatricals
8 have infringed Plaintiff's copyrights in the Work, under s 16(2) CDPA 1988, by entering into
9 agreements among themselves and others, authorizing themselves and others to copy from and adapt
10 the Work for *Jersey Boys*; copying and adapting the Work for *Jersey Boys*; staging and performing
11 this adaptation worldwide, including in the United Kingdom, and arranging for and promoting
12 performances in public theaters and/or other entertainment establishments therein; broadcasting
13 excerpts from said adaptation by electronic transmissions therein; and, otherwise dealing with
14 restricted rights in the Work therein, all in the absence of Plaintiff's consent.

15 247. Plaintiff is entitled to a permanent injunction against Defendants Valli, Gaudio,
16 Brickman, Elice, McAnuff, DSHT, and Dodger Theatricals, for their acts of U.K. copyright
17 infringement, under s 96(2) CDPA 1988.

18 248. Plaintiff is also entitled to damages from Defendants Valli, Gaudio, Brickman, Elice,
19 McAnuff, DSHT, and Dodger Theatricals, or an accounting of profits therefrom, for their acts of
20 U.K. copyright infringement, under s 96(2) CDPA 1988, in amounts to be determined at trial,
21 including additional (enhanced) damages, such as lost profits, other damages appropriate to the
22 actual prejudice suffered by Plaintiff as a result of said Defendants' infringing acts, and damages for
23 the moral prejudice caused to Plaintiff by their infringements, under s 97(2) CDPA 1988, and
24 Regulation 3 of the Intellectual Property (Enforcement etc.) Regulations 2006 (SI 2006/1028), due,
25 *inter alia*, to the flagrancy of their conduct in adapting, performing, and authorizing others to use,
26 adapt, and perform adaptations of the Work in the U.K., and due to the direct benefits obtained by
27 said Defendants thereby, in the form of ongoing profits, in the absence of Plaintiff's consent, and
28 with knowing disregard for her co-ownership of the Work.

1 COUNT XIX

2 **[Copyright Infringement under the Laws of Canada]**

3 (Against Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT, and Dodger Theatricals)

4 249. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 248
5 hereinabove, as if fully set forth in this Paragraph 249.

6 250. This is an action for copyright infringement under Section 27(1) of the Canadian
7 *Copyright Act* R.S.C. 1985, c. C-42 ("the Act"), arising from, *inter alia*, the authorization and/or
8 execution. by Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT, and/or Dodger
9 Theatricals, of infringing acts in Canada.

10 251. Copyright infringement constitutes a transitory cause of action, and may be
11 adjudicated in the courts of a sovereign other than the one in which the cause of action arose.

12 252. The *Berne Convention for the Protection of Literary and Artistic Works*, to which the
13 United States and Canada are signatories, provides that works authored by citizens of signatory states
14 must be accorded at least the same copyright protection in other signatory states as such states accord
15 works authored by their own citizens, and Canada accords such "national treatment" to U.S. authors,
16 pursuant to, *inter alia*, Section 5(1) of the Act. Thus, at the time the Work was completed, the
17 copyrights therein were protected under Canadian law, without registration or any further formalities.

18 253. The Work is a work of "joint authorship" under Section 2 of the Act, in that, *inter*
19 *alia*, it was produced by the collaboration of Mr. Woodard and Defendant DeVito; both Mr.
20 Woodard and Defendant DeVito made substantial, original, and integral contributions thereto, which
21 could not be removed without fundamentally altering the whole; and, the parties worked together
22 with a common design or aim, and shared responsibility for the form of expression contained therein.

23 254. Whereas, the copyrights in a work vest initially with the author(s), under Section 13
24 of the Act, all copyrights in the Work vested initially with Mr. Woodard and Defendant DeVito, as
25 joint authors, and they were co-owners thereof, with each holding an indivisible fifty (50%) percent
26 ownership interest therein.

27 255. Whereas, copyright is transmissible by testamentary disposition, pursuant to, *inter*
28 *alia*, Section 14(1) of the Act, Plaintiff inherited Mr. Woodard's interest in the Work upon his death,

1 and became co-owner of the copyrights therein, with Defendant DeVito.

2 256. Pursuant to, *inter alia*, Sections 3(1) and 27(1) of the Act, the consent of all owners
3 of a copyrighted work is required to license the work, or to exercise any of the rights of a copyright
4 owner under Section 3(1) of the Act, and one copyright co-owner may sue any person, including his
5 co-owner, and a purported licensee thereof, for acts done without his license, under Section 27(1)
6 of the Act.

7 257. Pursuant to, *inter alia*, Sections 3(1)(a) -(I) and 27(1) and (5) of the Act, copyright
8 in a work is infringed by a person who, without license from all copyright owners does, or authorizes
9 another to: publish an unpublished work or any substantial part thereof; copy the work; convert the
10 work into a dramatic work, by way of performance in public or otherwise; reproduce, adapt and
11 publicly present the work as a cinematographic work; communicate the work to the public by
12 telecommunication; or, permit a theater or other place of entertainment to be used for the
13 performance in public of a work.

14 258. Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT, and Dodger Theatricals
15 have infringed Plaintiff's copyrights in the Work, under Section 27(1) of the Act, by, *inter alia*,
16 entering into agreements among themselves and with others, authorizing themselves and/or others
17 to copy from and adapt the Work for *Jersey Boys*; to stage and perform this derivative work
18 worldwide, including in Canada; to arrange for and promote performances of this adaptation in
19 theaters in Canada; to broadcast excerpts from this adaptation by electronic transmissions therein;
20 and, to otherwise deal with rights in the Work reserved exclusively to copyright owners under
21 Section 3(1) of the Act, all in the absence of Plaintiff's consent.

22 259. Plaintiff is entitled to a permanent injunction against Defendants Valli, Gaudio,
23 Brickman, Elice, McAnuff, DSHT, and Dodger Theatricals, for their acts of copyright infringement
24 under Canadian law, pursuant to Section 34(1) of the Act.

25 260. Plaintiff is also entitled to damages from Defendants Valli, Gaudio, Brickman, Elice,
26 McAnuff, DSHT, and Dodger Theatricals, for their acts of Canadian copyright infringement, in an
27 amount to be determined at trial, under Sections 34(1) and 35 of the Act, together with such part of
28 said Defendants' profits from such infringements as the Court considers just, which were not taken

1 into account in calculating such damages.

2 **COUNT XX**

3 **[Copyright Infringement under the Laws of Australia]**

4 (Against Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT, and Dodger Theatricals)

5 261. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 260
6 hereinabove, as if fully set forth in this Paragraph 261.

7 262. This is an action for copyright infringement under Sections 115(1), 36, and 39 of the
8 Australian *Copyright Act 1968 (Cth)* (“the 1968 Act”), arising from, *inter alia*, the authorization
9 and/or execution. by Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT, and/or Dodger
10 Theatricals, of infringing acts in Australia.

11 263. Copyright infringement constitutes a transitory cause of action, and may be
12 adjudicated in the courts of a sovereign other than the one in which the cause of action arose.

13 264. The *Berne Convention for the Protection of Literary and Artistic Works*, to which the
14 United States and Australia are signatories, provides that works authored by citizens of signatory
15 states must be accorded at least the same copyright protection in other signatory states as such states
16 accord works authored by their own citizens, and Australia accords such “national treatment” to U.S.
17 authors, pursuant to, *inter alia*, Section 184 of the 1968 Act, and Section 4, *Copyright (International
18 Protection) Regulations 1969*. Thus, at the time the Work was completed, the copyrights therein
19 were protected under Australian law, without registration or any further formalities.

20 265. The Work is a work of “joint authorship” under s 10(1) of the 1968 Act, in that, *inter
21 alia*, it was produced by the collaboration of Mr. Woodard and Defendant DeVito; both Mr.
22 Woodard and Defendant DeVito made substantial, original, and integral contributions thereto, and
23 invested skill and labor therein; and, the contributions of each are merged with and inseparable from
24 those of the other therein.

25 266. Whereas, the copyrights in a work vest initially with the author(s), under Section
26 35(2) of the 1968 Act, all copyrights in the Work vested initially with Mr. Woodard and Defendant
27 DeVito, as joint authors, and they were co-owners thereof, with each holding an indivisible fifty
28 (50%) percent ownership interest therein, as a tenant-in-common.

1 267. Whereas, copyright in an unpublished work is transmissible by testamentary
2 disposition, pursuant to s 198 of the 1968 Act, Plaintiff inherited Mr. Woodard's interest in the
3 Work upon his death, and became co-owner of the copyrights therein, with Defendant DeVito.

4 268. Pursuant to, *inter alia*, s 36 of the 1968 Act, the consent of all owners of a
5 copyrighted work is required to license the work, or to exercise any of the rights of a copyright owner
6 under s 31(1) of the 1968 Act, and Plaintiff has not provided her consent to the use or exercise of
7 any rights in the Work in Australia by Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT,
8 or Dodger Theatricals, or any purported lessee, licensee, sublicensee, or assignee thereof.

9 269. Pursuant to s 36 , s 39, s 31, and/or s 101 of the 1968 Act, copyright in a work is
10 infringed by a person who, without the license of all copyright owners does, or authorizes another
11 to do, any of the acts comprised in the copyright, including, *inter alia*, reproducing the work in
12 "material form" (which encompasses adaptations of the work, under Sections 10(1) and 21(2) of the
13 1968 Act); publishing the work; performing the work in public; communicating the work to the
14 public; making an adaptation of the work; doing or authorizing any of the foregoing acts in relation
15 to an adaptation of the work; and, in the case of indirect infringement, permitting a place of public
16 entertainment to be used for the public performance of a work.

17 270. *Jersey Boys* is an adaptation of the Work, under s 10(1) of the 1968 Act, as, *inter alia*,
18 it is a dramatization of the Work.

19 271. Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT, and Dodger
20 Theatricals, have infringed Plaintiff's copyrights in the Work, directly, and indirectly, under Sections
21 36, 39, and/or 101 of the 1968 Act, by, *inter alia*, entering into agreements among themselves and
22 with others, authorizing themselves and/or others to copy from and adapt the Work for *Jersey Boys*;
23 to perform this adaptation worldwide, including in Australia; to arrange for and promote
24 performances of this adaptation of the Work in places of public entertainment therein; to
25 communicate excerpts from this adaptation by electronic transmissions therein; and, to otherwise
26 deal with rights in the Work reserved exclusively to copyright owners under Section 31(1) of the
27 1968 Act, all in the absence of Plaintiff's consent, and, notwithstanding their awareness of Plaintiff's
28 co-ownership of the copyright in the Work.

1 272. Plaintiff is entitled to a permanent injunction against Defendants Valli, Gaudio,
2 Brickman, Elice, McAnuff, DSHT, and Dodger Theatricals, for their acts of direct and indirect
3 copyright infringement under Australian law, pursuant to, *inter alia*, Section 115(2) of the 1968 Act.

4 273. Plaintiff is also entitled to damages from Defendants Valli, Gaudio, Brickman, Elice,
5 McAnuff, DSHT, and Dodger Theatricals, or an accounting of profits therefrom, for their acts of
6 Australian copyright infringement, under s 115(2) of the 1968 Act, in amounts to be determined at
7 trial, along with additional (exemplary or punitive) damages, under s 115(4) of the 1968 Act, due,
8 *inter alia*, to the flagrancy of said Defendants' conduct in using, adapting, and performing
9 adaptations of the Work in Australia, and in authorizing others to do so, in utter disregard for
10 Plaintiff's co-ownership of the copyright therein; the direct benefits obtained by said Defendants
11 thereby, in the form of ongoing profits; and, the need to deter similar future acts of copyright
12 infringement thereby.

13 **WHEREFORE**, Plaintiff demands:

14 A. That the Court enter a Declaratory Judgment in favor of Plaintiff, and against
15 Defendant DeVito, decreeing as follows:

- 16 1. That the Work is a "joint work" under 17 U.S.C. § 101;
- 17 2. That Mr. Woodard was a co-author of the Work, and co-owner thereof, under
18 17 U.S.C. § 201(a);
- 19 3. That Mr. Woodard was a qualified copyright claimant with respect to the
20 Work, under 37 C.F.R. § 202.3(a)(3), when the Work was first fixed in a tangible medium of
21 expression;
- 22 4. That U.S. Reg. No. Txu 454 118 has been held in constructive trust by
23 Defendant DeVito, and must be supplemented, by Defendant DeVito or the Copyright Office, to
24 reflect Mr. Woodard's status as a co-author, co-owner, and copyright co-claimant;
- 25 5. That Plaintiff is an "author's widow" with respect to the Work, under 17
26 U.S.C. § 101;
- 27 6. That Plaintiff inherited Mr. Woodard's ownership interest in the Work upon
28 his death under 17 U.S.C. § 201(d)(1), and is a co-owner thereof with Defendant DeVito, holding

1 an indivisible fifty (50%) percent ownership interest therein;

2 7. That Plaintiff is eligible and entitled to record, with the United States
3 Copyright Office, her status as heir and successor to Mr. Woodard's interests in the Work, under 17
4 U.S.C. § 205;

5 8. That Plaintiff may publish and otherwise exploit the Work, independently of
6 Defendant DeVito, and enjoy, exercise, and enforce all other rights, benefits, and causes of action
7 accorded to copyright owners with respect thereto;

8 9. That the "exclusive license" granted by Defendant DeVito to Defendants Valli
9 and Gaudio, in or around August 1999, was *void ab initio*, with no legal effect; or, alternatively,

10 10. That the "exclusive license" granted by Defendant DeVito to Defendants Valli
11 and Gaudio, in or around August 1999, amounted to only a nonexclusive license, which said
12 Defendants could not further sublicense, assign, or otherwise transfer, under 17 U.S.C. § 201(d)(2),
13 in the absence of Plaintiff's express consent; or, alternatively,

14 11. That the "exclusive license" granted by Defendant DeVito to Defendants Valli
15 and Gaudio in or around August 1999, constituted an assignment to Defendants Valli and Gaudio
16 of Defendant DeVito's entire share in the exclusive right to prepare derivative works based upon the
17 Work, in the fields of, *inter alia*, theater, film, and television, resulting in an indivisible co-
18 ownership of such right by Plaintiff (50%) and Defendants Valli and Gaudio (50%), under 17 U.S.C.
19 §§ 201(a) and (d)(2).

20 B. That the Court order Defendant DeVito to render an accounting to Plaintiff of the
21 amounts owed under the parties' December 1, 1988 letter agreement and by virtue of their status as
22 copyright co-owners;

23 C. That Judgment be entered against Defendant DeVito for a sum to be determined in
24 the accounting, together with prejudgment and post-judgment interest, as provided by law;

25 D. That Plaintiff be awarded direct damages, and foreseeable consequential damages,
26 in amounts to be determined through discovery, or at trial, resulting from Defendant DeVito's
27 breaches of contract, together with prejudgment and post-judgment interest, as provided by law;

28 E. That Judgment be entered against Defendant DeVito for damages resulting from his

1 unjust enrichment, in an amount to be determined at trial, together with pre-judgment and post-
2 judgment interest, attorneys' fees, and the costs of this action;

3 F. That a constructive trust be imposed on all of Defendant DeVito's income arising from
4 or relating to the Work, including, but not limited to, income arising from the licensing or assignment
5 of rights therein for *Jersey Boys*;

6 G. That exemplary and/or punitive damages be assessed against Defendant DeVito,
7 pursuant to, *inter alia*, NEV. REV. STAT. § 42.001, in amounts to be determined at trial, for his breach
8 of the implied covenant of good faith and fair dealing in the performance of contractual obligations
9 in the presence of a special and confidential relationship, and his acts of fraud, fraudulent
10 concealment, and fraudulent conversion;

11 H. That the Court enjoin and restrain Defendant DeVito from further acts of copyright
12 infringement in the United Kingdom, Canada, and Australia, and from the authorization of
13 adaptations, and public performances of adaptations of, or derivative works based upon, the Work,
14 in countries where the consents of all copyright co-owners are required before rights under a copyright
15 may be exercised, licensed, or otherwise exploited;

16 I. That the Court award damages and/or an accounting of profits to Plaintiff, for
17 Defendant DeVito's acts of copyright infringement, and authorizations of copyright infringement,
18 under the laws of the United Kingdom, Canada, and Australia, and that said damages be enhanced,
19 to the full extent permitted therein, as a result of the flagrancy and willfulness of Defendant DeVito's
20 infringing acts, in utter disregard for Plaintiff's co-ownership of the copyrights in the Work; the direct
21 benefits Defendant DeVito has derived from said infringements, in the form of ongoing profits; and,
22 the need to deter similar future acts of copyright infringement;

23 J. That the Court enter a Declaratory Judgment in favor of Plaintiff, and against
24 Defendants Valli, Gaudio, DSHT, and Dodger Theatricals, decreeing as follows:

25 1. That the "exclusive license" encompassing the Work which Defendant DeVito
26 granted to Defendants Valli and Gaudio, on or about August 13, 1999, was void and invalid under
27 17 U.S.C. §§ 201(a) and (d)(2), or, amounted to a nonexclusive license and/or an assignment of
28 certain limited rights, which said Defendants could not further license, lease, sublicense, assign, or

1 otherwise transfer, in the absence of Plaintiff's consent;

2 2. That all subsequent nonexclusive licenses, exclusive licenses, assignments,
3 leases, and/or transfers of said rights by Defendants Valli and Gaudio were void and invalid under
4 17 U.S.C. § 201(d)(2), including, but not limited to, the licenses and/or assignments granted by
5 Defendants Valli and Gaudio to Defendants Brickman, Elice, McAnuff, DSHT, and/or Dodger
6 Theatricals; and,

7 3. That Defendants Valli, Gaudio, DSHT and Dodger Theatricals have no rights
8 to use, reference, and/or adapt the Work; to reproduce the Work or distribute copies thereof; to
9 prepare derivative works based upon the Work; to perform the Work or adaptations thereof; to
10 authorize others to prepare derivative works based upon the Work; to license, sublicense, lease, or
11 otherwise permit third parties to use, exercise, or exploit any of the copyrights in the Work; or to
12 exercise, or authorize the exercise of, any right in the Work reserved to copyright owners under 17
13 U.S.C. §§ 106 and 201(d);

14 K. That, in the alternative, the Court enter a Declaratory Judgment in favor of Plaintiff,
15 and against Defendants Valli, Gaudio, DSHT, and Dodger Theatricals, decreeing as follows:

16 1. That the "exclusive license" encompassing the Work which Defendant DeVito
17 granted to Defendants Valli and Gaudio, on or about August 13, 1999, constituted an effective
18 assignment of Defendant DeVito's entire share of the exclusive right to prepare derivative works
19 based upon the Work in the media of, *inter alia*, theater, film, and television, resulting in the
20 indivisible co-ownership of this right by Plaintiff (50%) and Defendants Valli and Gaudio (50%),
21 under 17 U.S.C. §§ 201(a) and (d)(2); and,

22 2. That Defendants Valli's and Gaudio's May 1, 2004 transfer of the exclusive
23 rights in the Work obtained from Defendant DeVito, to Defendants DSHT and Dodger Theatricals,
24 was effective, and constituted an assignment of Defendants Valli's and Gaudio's entire share in, *inter*
25 *alia*, the exclusive right to prepare and perform derivative works based upon the Work, in the medium
26 of live stage musicals, resulting in an indivisible co-ownership of these rights by Plaintiff (50%) and
27 Defendants DSHT and/or Dodger Theatricals (50%), under 17 U.S.C. §§ 201(a) and (d);

28 L. That the Court order Defendants Valli, Gaudio, DSHT, and Dodger Theatricals, to

1 render accountings to Plaintiff of all profits obtained from their use and exploitation of the Work,
2 including, but not limited to, profits obtained, derived, or resulting from: (1) the use and/or adaptation
3 of the Work in connection with *Jersey Boys* and collateral products, such as the *Jersey Boys Original*
4 *Cast Recording* and the *Jersey Boys* book; and, (2) the use and/or adaptation of the Work by all other
5 persons or entities acting under a lease, license, sublicense, or other authorization from said
6 Defendants relating to any rights under the Work, whether issued formally or informally thereby;

7 M. That Judgment be entered against Defendants Valli, Gaudio, DSHT, and Dodger
8 Theatricals, for a sum to be determined in the accounting, together with prejudgment and post-
9 judgment interest, as provided by law;

10 N. That Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT, Dodger
11 Theatricals, JB Viva Vegas, their officers, partners, agents, servants, affiliates, employees, attorneys
12 and representatives, related companies, and all those in privity with, or acting in concert therewith,
13 be forthwith preliminarily and/or permanently enjoined and restrained, from directly or indirectly
14 infringing Plaintiff's copyrights in the Work in any manner, including by copying, reproducing, and/or
15 imitating the Work; distributing copies of the Work; preparing and/or publishing derivative works
16 based upon the Work; performing the Work, in whole or in part; performing derivative works based
17 upon the Work, and/or authorizing third parties to engage in such activities; and, preliminarily and
18 permanently enjoined from continuing the ongoing, nationwide and foreign productions of *Jersey*
19 *Boys*, until such time as all infringing material has been removed;

20 O. That Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT, Dodger Theatricals
21 and JB Viva Vegas, be required to account for all gains, profits and advantages derived from each of
22 their direct infringements, willful infringements, vicarious infringements, and/or contributory
23 infringements of Plaintiff's copyrights in the Work, and pay to Plaintiff such damages as Plaintiff has
24 sustained in consequence of each infringement thereof, plus any additional profits gained by these
25 infringers, under 17 U.S.C. § 504(b), or such other damages as to this Court may appear proper within
26 the provisions of the Copyright Act, including statutory damages, in lieu of actual damages, if elected
27 by Plaintiff under 17 U.S.C. § 504(c), and enhanced damages for Defendants' willful infringements,
28 under 17 U.S.C. § 504(d);

1 P. That Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT, Dodger
2 Theatricals, and JB Viva Vegas, be required to pay Plaintiff's attorneys' fees and the costs of this
3 action under 17 U.S.C. § 505;

4 Q. That Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT, Dodger
5 Theatricals, and JB Viva Vegas, be ordered to deliver up on oath, for impoundment and destruction,
6 any and all infringing articles, under 17 U.S.C. § 503, including but not limited to scripts,
7 manuscripts, drafts, books, records, compact discs, and other items which include material taken or
8 adapted from the Work;

9 R. That the Court impose a constructive trust on all gains and profits realized by
10 Defendants Valli, Gaudio, Brickman, Elice, McAnuff, DSHT, Dodger Theatricals, and JB Viva
11 Vegas, as a direct or indirect result of their acts of infringement, including, but not limited to, gains
12 and profits realized from performances of *Jersey Boys* throughout the United States and abroad;

13 S. That the Court enjoin and restrain Defendants Valli, Gaudio, Brickman, Elice,
14 McAnuff, DSHT, and Dodger Theatricals, from further acts of copyright infringement in the United
15 Kingdom, Canada, and Australia, and from the authorization of adaptations, and public performances
16 of adaptations of, or derivative works based upon, the Work, in countries where the consents of all
17 copyright co-owners are required before rights under a copyright may be exercised, licensed, or
18 otherwise exploited;

19 T. That the Court award damages and/or an accounting of profits to Plaintiff, for the
20 foregoing acts of copyright infringement, and authorizations of copyright infringement, by Defendants
21 Valli, Gaudio, Brickman, Elice, McAnuff, DSHT, and Dodger Theatricals, under the laws of the
22 United Kingdom, Canada, and Australia, and that said damages be enhanced, to the full extent
23 permitted therein, as a result of the flagrancy and willfulness of said Defendants' infringing acts, in
24 utter disregard for Plaintiff's co-ownership of the copyrights in the Work; as a result of the direct
25 benefits said Defendants have derived from said infringements, in the form of ongoing profits; and,
26 as a result of the need to deter similar future acts of copyright infringement; and,

27 U. That the Court provide Plaintiff with such other and further relief as the Court deems
28 just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues so triable.

RESPECTFULLY SUBMITTED:

DONNA CORBELLO, PLAINTIFF

February 2, 2009

By : /s/ Gregory H. Guillot

Gregory H. Guillot

John L. Krieger

George L. Paul

Robert H. McKirgan

Her Attorneys

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