

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-1921-JLK

ARETHA FRANKLIN,

Plaintiff,

v.

ALAN ELLIOTT, D/B/A AL'S RECORDS AND TAPES,

Defendants.

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**FIRST AMENDED COMPLAINT FOR A DECLARATORY JUDGMENT AND  
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

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**I. GENERAL ALLEGATIONS**

1. This is a lawsuit brought against Alan Elliott by the international recording artist Aretha Franklin to stop the unauthorized release and showing for commercial purposes of a documentary film made of Ms. Franklin's 1972 concert performance at the New Missionary Baptist Church in Los Angeles, California. Ms. Franklin has never given permission for the use of this footage in any commercial or other context and has not authorized the public release of the footage. The footage was taken with the express understanding that it would not be released or used commercially without agreement and consent by Ms. Franklin.

2. Working in connection with the Telluride Film Festival, California resident Alan Elliott, individually and/or by and through his agent WME Entertainment Parent, LLC, attempted on September 4, 5, and 6, 2015 to show a full-length film, titled "Amazing Grace,"

(“the Film”) that consists almost entirely of this concert footage. *See Exhibit 1* (Telluride Film Festival Brochure).

3. Mr. Elliott had also planned to show the Film during the Toronto Film Festival in Canada, beginning September 11, 2015. Other screenings were planned by Mr. Elliott at a Chicago film festival, in Los Angeles and Mill Valley, California.

4. On Friday, September 4, 2015, this Court issued a temporary restraining order barring the Telluride Film Festival from screening the Film. On September 4, 2015, Mr. Elliott, through his counsel, was informed of the Court’s T.R.O. against the Telluride Film Festival, and on September 9, 2015 was given a copy of the transcript from the hearing where the Court explained why the Film should not be shown without Aretha Franklin’s consent.

5. After this Court’s order, the Telluride, Toronto, and Chicago Film Festivals withdrew the Film from their respective schedules.

6. In addition, on September 8, 2015, Mr. Elliott’s counsel agreed via e-mail that Mr. Elliott would not show the Film publicly. *See Exhibit 2* (September 8, 2015 e-mail of Elliott’s counsel, Todd W. Musburger stating, “We fully respect the notion that there will be no public showings. You have my word on that.”).

7. Yet, on Saturday, September 12, 2015, Ms. Franklin’s counsel was informed via press inquiries that Mr. Elliott on that day was holding a screening of the Film in Toronto for commercial purposes for film executives and others. The screening was allegedly attended by film industry executives for the particular purpose of obtaining a distribution agreement for the Film. This screening was done without Ms. Franklin’s permission or knowledge, and was contrary to Mr. Elliott’s counsel’s specific representations. *See Exhibit 3* (Ramin Setoodeh,

“Toronto: Aretha Franklin Doc ‘Amazing Grace’ Holds Secret Screening for Buyers”, *Variety* September 12, 2015).

8. Allowing the Film to be shown publicly or for commercial purposes violates Ms. Franklin’s contractual and statutory rights, her rights to use and control her name and likeness, and represents an invasion of her privacy. It is also in direct and specific violation of the Quitclaim Agreement by which Mr. Elliott obtained certain rights to the original concert footage from Warner Brothers Pictures.

9. The Quitclaim Agreement that Mr. Elliott signed for the Aretha Franklin concert footage contained a specific condition precedent informing Mr. Elliott that any use by him of the footage would require the prior permission of Ms. Franklin:

“Assignee represents, warrant and agrees that in connection with Assignee’s use of the Material, Assignee will obtain all other authorizations, consents and releases and pay all re-use fees and other compensation required by applicable collective bargaining or individual contracts or otherwise required by law. **Assignee specifically understands that Assignee will need to obtain authorization from Aretha Franklin.** Without limiting the foregoing, with respect to any music included in the Material as exhibited, **Assignee will obtain all necessary music synchronization and performance rights (particularly from Ms. Franklin) from the copyright proprietors of such music and such other persons or entities . . . .**”

“Aretha Franklin Concert Footage (1972)” Quitclaim Agreement of December 11, 2007 between Warner Brothers Pictures and Alan Elliott and Al’s Records and Tapes. See **Exhibit 4** (“Quitclaim Agreement”)(emphasis added).

10. Ms. Franklin is an expressed third-party beneficiary of the Quitclaim Agreement between Mr. Elliott and the Assignor.

11. While over the last five years or more Mr. Elliott has attempted to obtain from Ms. Franklin her permission, Ms. Franklin has never given her consent or permission for this

footage to be publicly released or used for commercial purposes. *See Exhibit 5* (Affidavit of Ms. Franklin of September 4, 2015).

12. The album produced from the concert is the best-selling album of Ms. Franklin's fifty-year musical career. The album went "double platinum." Ms. Franklin (along with others) holds a copyright to this album.

13. The concert was filmed with Ms. Franklin's permission with the understanding and agreement that it would not be publicly or commercially released without the consent and agreement of Ms. Franklin.

14. More than 80 percent of the footage of this film is images of Ms. Franklin and Ms. Franklin's performance. *See Exhibit 6* (Declaration of Rhonda Jacobs-Sturges of 8/24/2011).

15. Ms. Franklin previously had to sue Mr. Elliott in 2011 in the Central District of California to enjoin him from releasing the Film. The lawsuit was dismissed after Elliott stated, in his verified answer to the complaint, that he had no intention to release the Film.

16. On information and belief, Mr. Elliott, and/or his agents worked through the Telluride Film Festival to publicly release and display the concert footage, with the ultimate goal to commercially benefit from its distribution, without Ms. Franklin's consent, in violation of her contractual, federal statutory and common law rights.

17. This Court issued a T.R.O. on Friday, September 4, 2015 against the Telluride Film Festival to preserve the status quo.

18. On information and belief, Mr. Elliott continues to publicly assert that he does not require Ms. Franklin's consent or authorization to show or distribute this Film publicly, or to profit from it commercially.

19. On information and belief, Mr. Elliott continues to attempt to schedule public and private screenings of the Film without permission from Ms. Franklin. These screenings are for the express commercial purpose of entering into a distribution deal for the Film.

20. Ms. Franklin is entitled to, and respectfully prays for a declaratory judgment that Mr. Elliott, his agents, employees and all those working in concert with him, be required to get permission/authorization from Ms. Franklin in order to screen, show or project the Film in public or for any intended commercial purposes.

21. Ms. Franklin is entitled to a preliminary and permanent injunction against Mr. Elliott, his agents, employees and all those working in concert with him, barring them from publicly screening, showing or projecting the Film "Amazing Grace," or any footage from the 1972 gospel concert, or using or showing the Film or any such footage for commercial purposes without the permission of Ms. Franklin.

## **II. THE PARTIES**

22. Aretha Franklin is a legendary vocalist and artist of international renown. She has won eighteen Grammy Awards and has been named the ninth greatest singer of all time by Rolling Stone magazine. She is a resident and citizen of Detroit, Michigan.

23. Defendant Alan Elliott, d/b/a Al's Records and Tapes is a California resident and citizen. Elliott purports to be one of the producers of the Film "Amazing Grace," which consists entirely of film footage shot at the 1972 gospel concert.

### **III. JURISDICTION**

24. There is well in excess of \$100,000 in controversy, as the rights to Ms. Franklin's name and likeness are worth millions of dollars.

25. This court has jurisdiction based on federal question jurisdiction under 28 U.S.C. §1331 because this complaint alleges a violation of the federal anti-bootlegging statute – 17 U.S.C. §1101 (1).

26. The court also has jurisdiction based on diversity of citizenship pursuant to 28 U.S.C. 1332(a)(1).

27. This Court has personal jurisdiction over Mr. Elliott because, on information and belief, he acted in concert with the Telluride Film Festival to violate Ms. Franklin's statutory and common law rights by attempting to screen the Film "Amazing Grace" in Colorado.

28. On information and belief, Mr. Elliott traveled to Colorado for the planned screening of the Film in Colorado, and was attempting to generate interest in a distribution deal for the Film while present in Colorado for the Telluride Film Festival.

29. In addition, on information and belief, Mr. Elliott's sales agents from the William Morris Endeavor agency were present in Telluride, Colorado attempting to generate sales or distribution interest in the Film. In this respect, Mr. Elliott, by himself and through his agents, has purposefully directed his actions toward the State of Colorado, has brought his purported property (the footage of "Amazing Grace") to Colorado, and has sufficient minimum contacts with the State of Colorado in relation to the conduct complained of that it is fair and proper, and consistent with due process, for this Court to exercise jurisdiction over him.

**IV. ADDITIONAL FACTUAL ALLEGATIONS INCORPORATED BY REFERENCE TO PRIOR 2011 LAWSUIT AND PRIOR 2011 MOTION FOR EMERGENCY INJUNCTIVE RELIEF.**

30. None of the facts have materially changed since the last time Ms. Franklin had to sue to protect her contractual rights, her rights of publicity, and rights to her name and likeness in 2011. Those facts can be seen in the Complaint attached as **Exhibit 7** (Verified Complaint in *Franklin v. Elliott*, 2:11-cv-07225-PA-JEM, Central District of California).

31. In that case, after failed negotiations with Ms. Franklin, Mr. Elliott was preparing to publicly release the Film “Amazing Grace” without Ms. Franklin’s consent.

32. The case was dismissed by the court after Mr. Elliott professed to having no intent to proceed with the public commercial release of the Film. *See Exhibit 8* (Answer of Alan Elliott at ¶27 -- denial “to the extent that it alleges that Defendants are proceeding with the release of the unauthorized film ‘Amazing Grace’.”)

33. If Mr. Elliott were to conduct any unauthorized public or commercial showings of the 1972 concert footage, such showings would constitute an invasion of privacy, and exploitation and misappropriation of Ms. Franklin’s name and likeness for commercial and other purposes in violation of California and Colorado common law and federal statutory law.

34. Ms. Franklin further incorporates the factual allegations and exhibits found in the Ex Parte Application for Preliminary Injunction and Associated Exhibits filed on August 31, 2011 in the matter of *Franklin v. Elliott*, 2:11-cv-07225-PA-JEM, attached as **Exhibit 9**.

**COUNT ONE:**

**DECLARATORY JUDGMENT PURSUANT TO 28 U.S.C. §2201**

35. Ms. Franklin adopts by reference the prior allegations.

36. There is a present existing controversy between Ms. Franklin and Mr. Elliott.

37. Mr. Elliott apparently believes that he is entitled to show, distribute, and profit from the footage of Ms. Franklin's 1972 gospel concert without obtaining permission or authorization from Ms. Franklin.

38. Pursuant to contract, state common law, and federal statute, Ms. Franklin has the right to control the use of her name and likeness, and the footage of her 1972 gospel concert may not be used by Mr. Elliott without her explicit authorization.

39. Pursuant to Fed. R. Civ. Proc. 57, Ms. Franklin is entitled to a declaration of the rights and other legal relations between herself and Mr. Elliott with respect to the 1972 gospel concert footage and Mr. Elliott's use of the Film "Amazing Grace."

40. Pursuant to Rule 57, this Court may order a speedy hearing of this declaratory judgment action and advance the matter on the calendar.

**COUNT TWO:**

**PRELIMINARY AND PERMANENT INJUNCTION**

41. Ms. Franklin adopts by reference the prior allegations.

42. Ms. Franklin seeks to enjoin the Defendant Alan Elliott, his agents, employees and all those working in concert with him, from infringing upon her contractual rights, as agreed to and stated in the Quitclaim Agreement, and her right of publicity by proceeding with the unauthorized release of the Film "Amazing Grace."

43. The usual function of a preliminary injunction is to preserve the status quo ante litem pending a determination of the action on the merits.

44. Ms. Franklin has a high probability of success and will be irreparably injured if an injunction is not released.

45. The raw footage has been locked away in the vaults of Warner Brother Studios for nearly forty (40) years. There is no urgency in its immediate release. Conversely, Ms. Franklin will be irreparably injured if the Film is released.

46. In this instance, the status quo is the last uncontested status which preceded the pending controversy. Ms. Franklin therefore seeks to enjoin Defendant Elliott from publicly releasing or using for commercial purposes any film, documentary, movie or concert footage which involves Ms. Franklin's 1972 performance at the New Missionary Baptist Church in Los Angeles, California.

47. Ms. Franklin can and will demonstrate the likelihood that she will prevail on her claim for violation of her contractual rights and rights of publicity against Defendant Elliott. Ms. Franklin faces irreparable harm unless Defendant Elliott is restrained from engaging in the infringing conduct.

48. WHEREFORE, Ms. Franklin requests this Court grant a temporary and permanent restraining order and injunction barring Mr. Elliott, his agents, employees and all those working in concert with him, from publicly releasing or using for commercial purposes of the Film or any footage from Ms. Franklin's 1972 gospel concert.

**COUNT THREE: VIOLATION OF COMMON RIGHT TO PUBLICITY**  
**(STATE LAW COUNT)**

49. Ms. Franklin adopts by reference all prior allegations.

50. California's law regarding the Right to Publicity is governed by its common law and statutory laws which protect the use of a person's "name, voice ... or likeness" Cal. Civ. Code § 3344(a).

51. California common law recognizes this right of publicity in a person's name, likeness and identity.

52. Colorado similarly recognizes the rights of publicity in a person's name, likeness and identity. The misappropriation of such is a tort. *See Joe Dickerson & Associates v. Dittmar*, 34 P.3d 995 (Colo. 2001).

53. Defendant Elliott, by publicly displaying this Film and footage from the 1972 gospel concert, is using Ms. Franklin's identity or likeness, for commercial gain, without authorization.

54. Not only is Ms. Franklin's identity used in the Film which is being released without authorization, but it was also used in promotional materials as well.

55. If the Film is shown, Defendant Elliott will continue to be advantaged from the appropriation, or more accurately, the misappropriation of Ms. Franklin's name and likeness.

56. Additionally, the advantages that Defendant Elliott has gained and continues to gain exceed those strictly economic in nature and include the commercial advantages of enhancing his professional repute and industry clout which in turn leads to further commercial opportunities and reputational gain for Defendant Elliott.

57. Defendant Elliott is benefiting from the misappropriation of Ms. Franklin's name and likeness in direct and indirect economic ways, as well as in ways not limited to economics at all.

58. Defendant Elliott has attempted for over five (5) years to obtain Ms. Franklin's consent to release the movie or to use her name and likeness in advertising for the Film. The end result is that Defendant Elliott has been unable to obtain any such consent from Ms. Franklin.

59. Use of this footage and other images of Ms. Franklin, without Ms. Franklin's consent, violate her rights of publicity.

WHEREFORE, Ms. Franklin requests this Court grant her the injunctive relief prayed for above together with just and equitable damages in excess of \$75,000, including her attorney fees and costs. Ms. Franklin also requests this Court award punitive and exemplary damages designed to deter similar future misconduct by others.

**COUNT FOUR: ANTI-BOOTLEGGING CLAIM**  
**(FEDERAL QUESTION JURISDICTION)**

60. Ms. Franklin adopts the prior paragraphs.

61. 17 U.S.C. Sec. 1101(l) provides in pertinent part:

(a) Unauthorized Acts.--Anyone who, without the consent of the performer or performers involved—

(1) fixes the sounds or sounds and images of a live musical performance in a copy or phonorecord, or reproduces copies or phonorecords of such a performance from an unauthorized fixation,

(2) transmits or otherwise communicates to the public the sounds or sounds and images of a live musical performance, or

(3) distributes or offers to distribute, sells or offers to sell, rents or offers to rent, or traffics in any copy or phono record fixed as described in paragraph (1), regardless of whether the fixations occurred in the United States, shall be subject to the remedies provided in sections 502 through 505, to the same extent as an infringer of copyright .

62. Ms. Franklin is the performer of the Film and footage in question.

63. Defendant Elliott has publicly expressed his intent to release or distribute large portions of the content of the Film without Ms. Franklin's consent.

64. The Film in question includes both sounds and images.

65. Defendant Elliott wishes to release the Film of Ms. Franklin's performance commercially to the public at large.

66. Defendant Elliott is therefore in violation of the foregoing statute.

67. Ms. Franklin will be affirmatively harmed if this Film is released.

68. Ms. Franklin has no other recourse other than an application for relief to this Court. Despite a lawsuit in 2011, and this Court's injunction against the Telluride Film Festival, on September 4, 2015, Defendant Elliott continues and persists in using this Film for his own commercial purposes.

WHEREFORE, Ms. Franklin requests this Court grant her the injunctive relief prayed for above together with just and equitable damages in excess of \$75,000, including her attorney fees and costs. Plaintiff also requests this Court award punitive and exemplary damages designed to deter similar future misconduct by others.

**COUNT FIVE: VIOLATION OF RIGHT OF PUBLICITY**  
**(STATE LAW COUNT)**

69. Ms. Franklin adopts by reference the prior allegations.

70. Several courts have held that a celebrity's property interest in his or her name and likeness is unique, and cannot reasonably be compensated by money damages.

71. Thus, Defendant Elliott's unauthorized use of Ms. Franklin's name, voice and likeness is per se causing irreparable harm.

72. Additionally, Defendant Elliott's disregard to Ms. Franklin's rights of publicity and insistence on releasing the Film without authorization undermines the value of Ms. Franklin's property interest in his or her name or likeness (as a celebrity).

73. The market for the publicity and commercial rights would collapse, and the rights themselves would be rendered valueless without the ability of the law to adequately protect them through injunctions.

74. Punishing violations of publicity rights after the fact through damages cannot effectively enforce the law in this respect to the same degree that issuing an injunction can and often does.

75. By releasing the Film without authorization and using it for commercial purposes, Defendant Elliott will get publicity for himself in a value that exceeds \$75,000.00.

76. WHEREFORE, Ms. Franklin requests this Court grant her the injunctive relief prayed for above together with just and equitable damages in excess of \$75,000, including her attorney fees and costs. Plaintiff also requests this Court award punitive and exemplary damages designed to deter similar future misconduct by others.

**COUNT SIX:**

**BREACH OF CONTRACT—THIRD PARTY BENEFICIARY**

77. Ms. Franklin adopts the prior paragraphs.

78. In the Quitclaim Agreement between Warner Brothers Pictures and Defendant Elliott previously outlined in this Amended Complaint, Ms. Franklin's consent was an explicit condition precedent to Defendant Elliott using the film footage that he obtained via the agreement.

79. Ms. Franklin was an express third-party beneficiary of the limiting language in the Quitclaim Agreement between Defendant Elliott and Warner Brothers.

80. Without Ms. Franklin's consent, Defendant Elliott has unilaterally decided the express condition precedent of the Quitclaim Agreement requiring Ms. Franklin's consent is a nullity. Defendant Elliott has decided to release the Film in violation of the terms of the Quitclaim Agreement for his own commercial gain.

81. Ms. Franklin repeatedly has, over the last five (5) years, made it clear to Defendant Elliott that he does not have her consent.

82. As an express third-party beneficiary under this agreement, Ms. Franklin has standing to enforce the Quitclaim Agreement.

83. Defendant Elliott accepted the film footage of the 1972 gospel concert performance, subject to all of the terms and conditions of the Quitclaim Agreement, not those that he selective decided to abide by over time.

84. This Court must enforce the agreement as written. Defendant Elliott needed Ms. Franklin's consent to proceed and never obtained the same.

85. WHEREFORE, Ms. Franklin requests this Court grant her the injunctive relief prayed for above together with just and equitable damages in excess of \$75,000 including her attorney fees and costs.

#### **PRAYER FOR RELIEF**

Wherefore, Ms. Franklin asks for a judgment in her favor and the following relief:

- A. A declaratory judgment in favor of Ms. Franklin declaring that Defendant Alan Elliott and anyone acting in concert with Mr. Elliott must obtain authorization from Aretha Franklin prior to any public screening or**

commercial use of either the film *Amazing Grace*, or any of the 1972 gospel concert footage.

- B. A preliminary and permanent injunction barring Defendant Mr. Elliott or anyone acting in concert with Defendant Elliott from publicly showing, screening, releasing or otherwise distributing footage of the Film or any portions of the 1972 gospel concert or using such footage for any commercial purpose (including screenings for the purpose of obtaining distribution deals) without first obtaining express authorization from Ms. Franklin**
- C. An award of damages.**
- D. An award of attorney's fees and costs.**
- E. Such other relief as would be in the interests of justice.**

Dated: September 13, 2015

Respectfully submitted,

*s/ N. Reid Neureiter*

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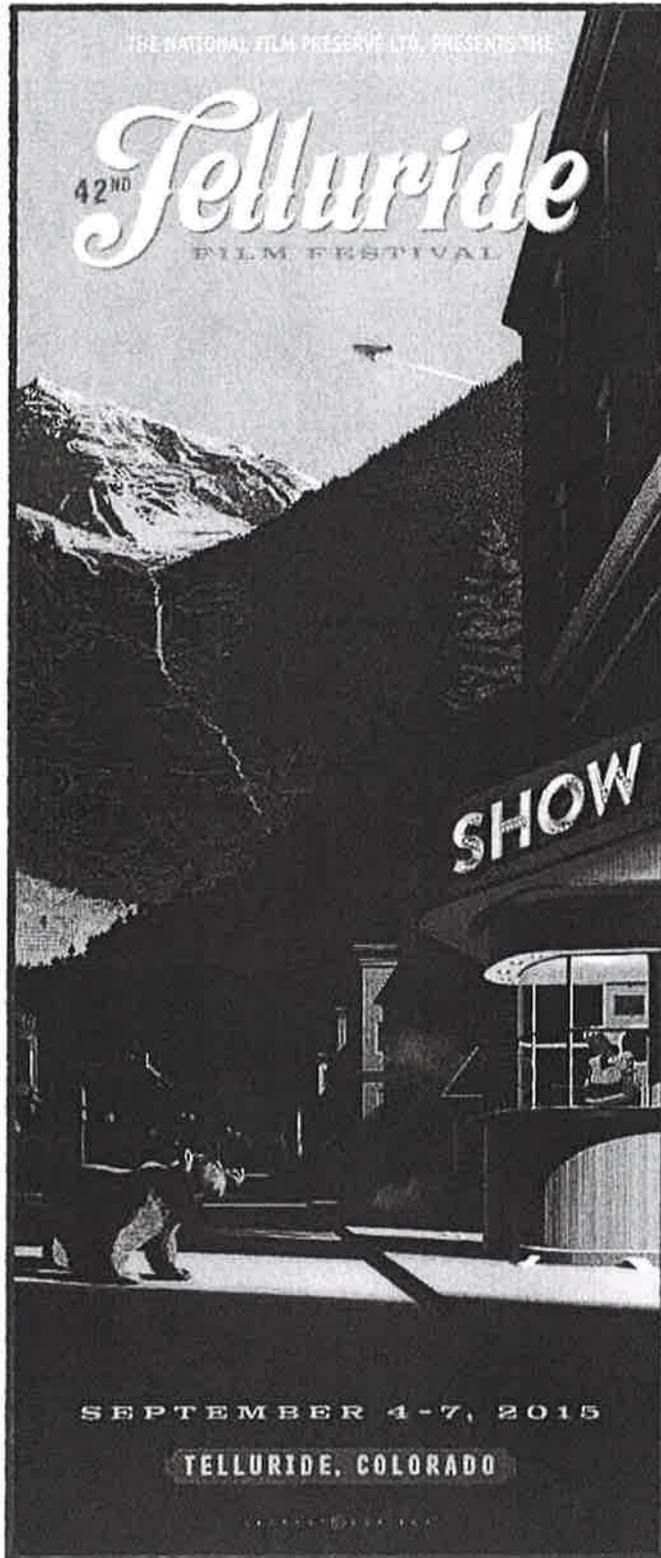
**CERTIFICATE OF SERVICE (CM/ECF)**

I HEREBY CERTIFY that on September 13, 2015, I electronically filed the foregoing **FIRST AMENDED COMPLAINT FOR A DECLARATORY JUDGMENT AND PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses:

- **N. Reid Neureiter**  
neureiter@wtotrial.com, brock@wtotrial.com
  
- **Scott Thomas Rodgers**  
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*s/ Faith Farina for N. Reid Neureiter*

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Amedeo d  
Complaint  
Exh. I

**THIS FESTIVAL IS  
DEDICATED TO**



**Peter von Bagh**

**1943-2014**

THE NATIONAL FILM PRESERVE LTD. PRESENTS THE

# 42<sup>ND</sup> Telluride

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**Tom Luddy**

**Rachel Kushner** | Guest Director

**Mara Fortes** | Curator

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**Bärbel Hacke** | Hosts Manager

**Shannon Mitchell** | VP, Publicity

**Justin Bradshaw** | Media Manager

**Lily Coyle** | Assistant to the Directors

**Marc McDonald** | Theater Operations Manager

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**Erica Gioga** | Housing/Travel Manager

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**Ross Krantz** | Technical Wizard

**Barbara Grassia** | Projection and Inspection

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**Mark Danner** | Resident Curators

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**Peter Sellars**

**Paolo Cherchi Usai**

## Publications Editor

Jason Silverman (JS)

## Chief Writer

Larry Gross (LG)

## Prized Program Contributors

Sheerly Avni (SA), Serge Bromberg (SB), Paolo Cherchi Usai (PCU),  
Jesse Dubus (JD), Geoff Dyer (GD), Mara Fortes (MF), Scott Foundas (SF),  
Barry Jenkins (BJ), Rachel Kushner (RK), Nicholas O'Neill (NO),  
Todd McCarthy (TM), Errol Morris (EM), Caspar Llewellyn Smith (CLS),  
Milos Stehlik (MS), Fyodor Urnov (FU)

<b>Tribute Curator</b>	<b>Short Films Curators</b>	<b>Student Prints Curator</b>
Chris Robinson	Bill Pence Barry Jenkins	Gregory Nava

## Shows

P/Fri 6:30PM - C/Sat 8:30AM



### 1 A Tribute to Rooney Mara

Rooney Mara, just 30 years old, may seem young to be considered among cinema's finest actors. But in films including *THE GIRL WITH THE DRAGON TATTOO* (for which she was nominated for an Oscar), *AIN'T THEM BODIES SAINTS* and, now, *CAROL* (Best Actress, Cannes), Mara's talented performances, rich with layers and complexity, reveal an old-soul wisdom. Her steadfast dedication to her craft has allowed her, in a relatively short period of time, to emerge as a sophisticated, world-class artist.

The third of four children, Mara was born and raised in Bedford, New York, enamored of Broadway musicals and classic films. After graduating from NYU, having studied psychology and social policy, she founded a non-profit dedicated to supporting struggling residents of a Nairobi neighborhood. Her start as a professional actress came in television—*ER* and *Law & Order: Special Victims Unit*—and independent productions—*THE WINNING SEASON*, *DARE*, *YOUTH IN REVOLT*, *TANNER HALL* (all 2009)—followed with a lead role in the 2010 remake of *A NIGHTMARE ON ELM STREET*.

Her brief, unforgettable turn in the opening sequence of David Fincher's *THE SOCIAL NETWORK* (2010), as the girlfriend of the self-absorbed Facebook founder Mark Zuckerberg, was a breakthrough, and marked the beginning of her creative partnership with David Fincher. In their adaptation of the Stieg Larsson bestselling saga *THE GIRL WITH THE DRAGON TATTOO* (2011), Mara scored the coveted role of Lisbeth Salander, the fiercely intelligent punk-reegade computer hacker. The part demanded a radical physical transformation, handling scenes of brutal sexual violence, and navigating twisted historical intrigue, with the affectless poise and cerebral cool of the novel's iconic character.

Next, she portrayed a determined, broken-hearted lover with steel in the acclaimed *AIN'T THEM BODIES SAINTS* (2011) and, in Steven Soderbergh's Hitchcockian psychological drama *SIDE EFFECTS* (2013), played a duplicitous, clinically depressed woman and calculated accomplice in a murder plot. Since then, Mara has elevated an eclectic slate of films, including Spike Jonze's *HER*, as the ex-wife of a reclusive writer; Stephen Daldry's Brazilian *favela* thriller *TRASH* (2013), playing an American activist who helps three boys in trouble with a corrupt politician; and of course, Todd Haynes's exquisite *CAROL*.

Mara plays a young shop girl and aspiring photographer who falls in love with an older and sophisticated woman, a wife and mother who has managed to keep her illicit passions concealed under the veil of acceptable womanhood. With its eloquent stillness and expressive silences, the film creates a perfect space for Mara's gifts at understated emotion. Her performance amplifies the force of the unspoken in the film, and she reveals the gravitas housed in her petite frame and "snowy solitary face" (to recall Barthes famous essay on Greta Garbo)—a face that is "an Idea," a face that itself is a screen.

—Mara Fortes

*The program includes a selection of clips followed by the presentation of the Silver Medallion, an onstage interview led by John Horn (Friday) and Davia Nelson (Saturday), followed by CAROL (see opposite page), shown in its entirety.*

## Shows

II/Sat 6:15PM **O&A**



### 1a Carol

Made possible by a donation from The Alexander Schoch Family

Romantic sparks fly when Therese (Rooney Mara), an inexperienced shop girl with vague artistic ambitions, crosses path with Carol (Cate Blanchett), a wealthy, sophisticated married woman. But in post-World War II America, a romance like theirs is not only forbidden; it is dangerous. Master filmmaker Todd Haynes (*SAFE*, *VELVET GOLDMINE*), collaborating with ace cinematographer Ed Lachman for the fourth time, transmutes Phyllis Nagy's adaptation of Patricia Highsmith's early, little-known novel into an elegant exploration of class tension, psychological domination, and the ultimately liberating hunger for beauty. It's a film that, in examining transgression, conveys intense longing reminiscent of the most potent Golden Era Hollywood romance. Blanchett, as one might expect, is the luminously perfect object of desire. But it is Mara's quietly urgent performance, a prizewinner at Cannes, that provides the film's heart and soul. —LG (U.S., 2015, 118m) *In person: Todd Haynes, Rooney Mara, Ed Lachman*

C/Fri 7:30PM - G/Sat 10:30PM - P/Sun 8PM **O&A**



### 2 Amazing Grace

Made possible by a donation from Peter & Linda Bynoe

In 1972, Aretha Franklin arrived at the New Temple Missionary Baptist Church in Los Angeles to record an album of the gospel music she'd heard—and sung—as a girl growing up in her father's church in Detroit. A film crew directed by Sydney Pollack was on hand to document the making of what would go on to become her biggest-selling album. But technical problems relating to the synching of sound meant the film was never completed. Until now. Thanks to the rescue efforts of producer Alan Elliott we are taken back in time, with no talking heads to break the spell, to a moment of sustained and increasingly ecstatic creation. (The specialness of the occasion can be gauged by a cameo shot of Mick Jagger in the audience—an audience that is an essential part of the performance.) And we don't stop at 1972: We are witnessing nothing less than the living roots of American music. —GD (U.S., 1972/2015, 87m) *In person: Alan Elliott, Alexander Hamilton*

## Guest Director

The National Film Preserve, Inc.  
A Colorado 501(c)(3) nonprofit, tax-exempt educational corporation  
Founded in 1974 by James Card, Tom Luddy and Bill & Stella Pence

### Directors Emeriti Bill & Stella Pence

### Board of Governors

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Bertrand Tavernier		Paris, France
David Thomson		San Francisco, CA

### Poster Artist Laurent Durieux

Inspired by the great French cartoonist Jean Giraud, the Brussels-based Durieux has become a cult figure in the world of collectible posters. His impeccable craft and use of color can be admired on new versions of posters for films including the Hitchcock classics, *JAWS*, the Universal monster movies and Criterion releases including *THINGS TO COME*.

Durieux's posters do more than try to lure us into the theater; they reimagine the films we love—allowing us to consider them anew, often recontextualizing the characters and places with the subtlest brand of tongue-in-cheek humor. In this year's instant-classic poster, set in some far-off Telluridean future, little has changed on main street, except for the retro-style movie theater that belongs exactly where it is.

Each year, Telluride's Guest Director serves as a key collaborator in the Festival's programming decisions, bringing new ideas and overlooked films. Past Guest Directors include Laurie Anderson, Geoff Dyer, Buck Henry, Guy Muddin, Michael Ondaatje, Alexander Payne, B. Ruby Rich, Stephen Sondheim, and Caetano Veloso.

### Rachel Kushner



Rachel Kushner is best known for *The Flamethrowers*—her widely acclaimed novel about a young woman nicknamed Reno who races motorbikes, makes films, navigates the 70s New York art scene and then is sucked into the turbulence of Italy's Red Brigades. This portrait of an era shuffles between times and places, channeling the energies of the 20th century with such palpable detail that feels as if it were written from the pulse of history.

It's no surprise that Rachel is drawn to cinema, a medium similarly attuned to the clamor of the world. There's something inherently cinematic about Kushner's prose—an attention to how people speak and a strong, playful temporal sense. Her fiction has a rare immediacy. And it is full of encounters with cinema, including references to specific films. Chantal Akerman's meticulous housewife from *JEANNE DIELMAN*, the solitary title character from Barbara Loden's *WANDA*, and the enigmatic homeless teenager from an obscure Italian documentary *ANNA* all make cameos, wandering seamlessly from screen to the text, bringing the weight of their own stories.

Kushner's enticing selection for this year's festival includes the throbbing intensity of *WAKE IN FRIGHT* and *THE MATTEI AFFAIR*, the delightful seductions of *UNCLE YANCO* and *A DAY IN THE COUNTRY*, the lost, powerful Robert Frank masterpiece *COCKSUCKER BLUES*, and the sweet melancholy of Jean Eustache's two feature films. Despite their diverse contexts, these films share an anarchic streak—they plunge us deep into the thick of existence, leaving us somewhat shaken, or maybe even changed.

Rachel holds the distinctive honor of having her first two novels nominated for a National Book Award in Fiction, and has also written extensively on art and literature, publishing essays in *ArtForum*, *The Believer*, *The Paris Review* and *BOMB*, among others. Her eclectic interests—Land Art, motorcycles, American expats in 1950s Cuba, Futurism, photography, a Swedish claymation artist—come with a deep appreciation for radical gesture, and her generous disposition to share them with the world. Telluride is fortunate to have her energy and deep knowledge of cinema informing this year's festival. —Mara Fortes

**From:** Todd Musburger [<mailto:todd@musburger.com>]  
**Sent:** Tuesday, September 08, 2015 6:13 PM  
**To:** Cantor, Jon D.  
**Subject:** LA Times article

Jon: You will see or perhaps have seen an LA Times article on our little piece of business...the information for it was gathered earlier - before we had agreed how this should be handled...We fully respect the notion that there will be no public showings. You have my word on that. Contrary information in the article is being retracted. Sometimes I feel like a cat herder and you know how that goes...Best, Todd

**Todd W. Musburger**  
**Todd W. Musburger, Ltd.**  
142 E. Ontario  
Suite 500  
Chicago, Illinois 60611  
312 664 2600

**DyKEMA**

Jon D. Cantor  
Member  
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Los Angeles, California 90071  
[www.dykema.com](http://www.dykema.com)

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Complaint  
Ex. 2

# VARIETY

## Toronto: Aretha Franklin Doc 'Amazing Grace' Holds Secret Screening for Buyers (EXCLUSIVE)



SEPTEMBER 12, 2015 | 08:20AM PT

ERIK PENDZICH/REX/REX

**Ramin Setoodeh** (<http://variety.com/author/ramin-setoodeh/>)

Film Editor, New York

[@RaminSetoodeh](http://twitter.com/@RaminSetoodeh) (<http://twitter.com/@RaminSetoodeh>)

Producers (<http://variety411.com/us/los-angeles/producers/>) of the Aretha Franklin (<http://variety.com/t/aretha-franklin/>) documentary "Amazing Grace" held a secret screening on Saturday for buyers at the Toronto International Film Festival, *Variety* has learned, after pulling the film from the festival's lineup at the last minute.

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Ex. 3

"Amazing Grace" was supposed to debut at both Telluride and Toronto, but a lawsuit filed by Franklin blocked its premiere. A federal judge in Denver ruled last week that the concert footage, shot by Sydney Pollack in 1972, couldn't be shown without Franklin's consent, forcing the filmmakers to yank it from Telluride, Toronto and the upcoming Chicago Film Festival.

According to sources, the private screening—which is currently in progress—is being attended by about 40 buyers in a theater away from festival venues. Those in attendance include Lionsgate, A24, The Weinstein Company, Bleecker Street, CBS Films, IFC Films as well as a smattering of foreign sales representatives.

It's unclear if the controversy surrounding the film will help or hurt it from landing a deal, given that the litigation could cast a cloud over its release. On Sept. 4, U.S. District Judge John Kane granted Franklin's request for a temporary restraining order, barring the producers from screening the film for 14 days. At the time, the producers decided to cancel the film's Toronto debut as well.

"We are extremely disappointed that Toronto audiences will not be able to see this extraordinary piece of art," the festival said in a statement after losing "Amazing Grace." "The footage in the film is truly a cinematic treasure of 20th century music and we hope global audiences will have opportunity to experience this film once a resolution is found."

The screening on Saturday is not associated with the film festival, but it shows that the producers are intent on getting "Amazing Grace" into theaters. A rep for Franklin didn't immediately respond to comment.

***Want to read more articles like this one? SUBSCRIBE TO VARIETY TODAY***

"ARETHA FRANKLIN CONCERT FOOTAGE (1972)"

QUITCLAIM AGREEMENT

THIS QUITCLAIM AGREEMENT ("Agreement") dated December 11, 2007 between, on the one hand, WARNER BROS. PICTURES, a division of WB Studio Enterprises, Inc. ("Assignor") and, on the other hand, A's Records and Tapes and Alan Elliott (collectively, "Elliott"), whose address is c/o Steve Kalleman, Esq., Greenberg, Traurig, 2450 Colorado Avenue, Suite 400 East, Santa Monica, CA 90404 ("Assignee");

WITNESSETH

In consideration of the mutual covenants and agreements herein set forth, the parties hereto agree as follows:

1. Quitclaim:

Assignor does hereby quitclaim to Assignee, without representations or warranties of any kind, all of Assignor's right, title and interest in and to the film elements and documents (collectively, "Material") set forth in Exhibit "A" attached hereto and related to the concert performance by Aretha Franklin at the New Temple Missionary Church of Los Angeles in January of 1972 ("Project"). Assignor will, upon execution of this Agreement, deliver to Assignee a copy of the documents listed in Exhibit "A".

2. Representations and Warranties:

Assignee represents, warrants and agrees that in connection with Assignee's use of the Material, Assignee will obtain all other authorizations, consents and releases and pay all re-use fees and other compensation required by applicable collective bargaining or individual contracts or otherwise required by law. Assignee specifically understands that Assignee will need to obtain authorization from Aretha Franklin. Without limiting the foregoing, with respect to any music included in the Material as exhibited, Assignee will obtain all necessary music synchronization and performance rights (particularly from Ms. Franklin) from the copyright proprietors of such music and such other persons or entities, including performing rights societies, as may own or control the rights thereto, and will obtain all necessary master recording licenses required in connection with any music included in any audio or visual recordings of the Material.

3. Additional Consideration:

Amended  
Complaint  
Ex. 4

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In addition to the above compensation, Assignee shall reimburse Assignor for all laboratory and shipping charges and all other direct costs and expenses incurred by Assignor in making the Material available, including, but not limited to, the cost of replacing any material that may be damaged in the process of making the Material available hereunder. Such reimbursement shall be made promptly on receipt of Licensor's invoice therefor. Assignee shall have the right to approve lab, shipping and other charges in connection with the Material prior to such charges being incurred.

4. Executory Obligations/Assumption Agreement: Assignee assumes and agrees to be bound by and to perform all executory obligations of Assignor in connection with the Project including under and pursuant to the documents referred to in said Exhibit "A" and under any applicable collective bargaining agreements which are binding on Assignor.

5. Quitclaim Contingency: If Assignee fails to finalize and execute this Agreement within ten (10) business days of Assignee's receipt of the Agreement, then this Agreement shall be automatically rescinded and all rights in the Project shall remain with Assignor.

6. Rights Personal to Assignee: The rights quitclaimed hereunder by Assignor are personal to Assignee and as such, may not be sold, assigned, hypothecated, bequeathed or transferred by Assignee without the express prior written consent of Assignor. In the event Assignee fails to obtain such consent, the rights quitclaimed hereunder shall immediately revert to Assignor. This restriction on transfer applies to the right to produce and complete a production based on the Project, as opposed to the transfer of rights to distribute or exhibit such completed production.

---

8. First Negotiation/First Refusal: If and when Assignee elects to sell available distribution rights in the Project, Assignee shall submit to Assignor in writing all distribution rights in the Project and Assignor shall have an opportunity to negotiate to acquire any or all such distribution rights (collectively, the "Rights") prior to Assignee negotiating with any third party.

If Assignor elects to so negotiate, Assignee and Assignor shall negotiate for a period of not less than fifteen (15) business days the terms under which Assignor would acquire the Rights. If an agreement is not reached during said 15 business day period, Assignee may thereafter enter into an agreement with any third party on principal financial terms which are not materially less favorable to Assignee than those principal financial terms last submitted by Assignee (or those last offered by Assignor, if applicable) with the same basic elements as submitted to Assignor. If Assignee desires to enter into an agreement with a third party on principal financial terms which are materially less favorable to Assignee than those last submitted by Assignee (or those last offered by Assignor, if applicable), or if the basic elements change (e.g., new narrator, new content, star involvement, etc.) or if the material Rights (e.g., media offered, territory offered, etc.) change from those last submitted by Assignee, or those last offered by Assignor, if applicable, then Assignor shall have a first refusal to acquire the applicable Rights on such less favorable terms and/or changed basic elements, which first refusal must be exercised within five (5) business days. The first refusal procedure set forth herein shall be repeated each time such principal financial terms and/or basic elements changes.

If Assignor elects at any time not to acquire Rights or if the parties fail to reach an agreement for Rights, but said Rights are still available when the picture based upon the Project is completed, Assignee shall immediately arrange for a viewing of such picture by Assignor and, upon viewing the completed picture, Assignor shall be given the first opportunity to acquire Rights on the terms set forth above for a period of five (5) business days. Assignor's rights under this paragraph 6 shall apply regardless of whether Assignee is selling distribution rights on a territory-by-territory basis or as a package.

9. Assignee Indemnification: Assignee will indemnify Assignor and save and hold Assignor harmless from and against any and all claims, demands, actions and liabilities of every kind and character whatsoever, including reasonable attorneys' fees, arising out of any breach by Assignee of its obligations and/or representations contained herein or arising out of or resulting from any use made by Assignee of the Project.

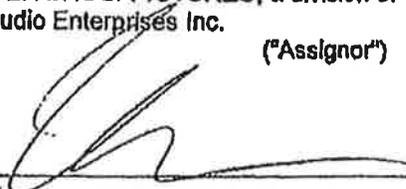
10. Further Documents: Each party hereto agrees to execute and deliver, or cause to be executed and delivered, all such documents, and do all such things as may be reasonably necessary and proper to carry out and effectuate the intents and purposes of this Agreement, and particularly, without limiting the generality of the foregoing, Assignor will execute and deliver, or cause to be executed and delivered, to Assignee such instruments as may be necessary and proper to vest in Assignee the rights herein assigned to Assignee as a matter of record in the United States Copyright Office, all without any further payment by or cost or expense to Assignee other than customary recording charges.

11. Parties Bound: This Agreement shall be binding upon and [except as specified otherwise herein] shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, trustees, successors and assigns.

12. Governing Law: This Agreement shall be construed in accordance with the laws of the State of California applicable to agreements which are executed and fully performed within the State of California.

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

WARNER BROS. PICTURES, a division of  
WB Studio Enterprises Inc.  
("Assignor")

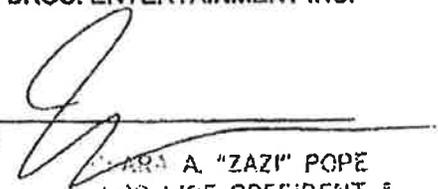
By: 

Its: CLARA A. "ZAZI" POPE  
SENIOR VICE PRESIDENT &  
DEPUTY GENERAL COUNSEL

  
ALAN ELLIOTT AND AL'S RECORDS AND TAPES ("Assignee")

Warner Bros. Entertainment Inc. hereby joins in the foregoing quitclaim agreement to the extent of its interests and agrees to be bound by the terms thereof.

WARNER BROS. ENTERTAINMENT INC.

By: 

Its: CLARA A. "ZAZI" POPE  
SENIOR VICE PRESIDENT &  
DEPUTY GENERAL COUNSEL

**AFFIDAVIT**

STATE OF MICHIGAN    )  
  ) ss.  
COUNTY OF OAKLAND )

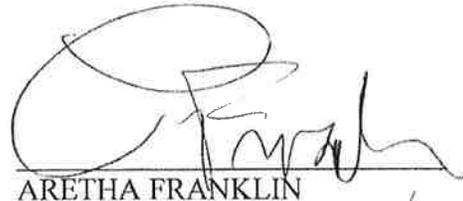
ARETHA FRANKLIN, being first duly sworn upon her oath at law, deposes and says:

1. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. In 1972, I conducted a live recording of my album Amazing Grace at the New Missionary Baptist Church in Los Angeles, California.
3. The recording of the Amazing Grace album was videotaped.
4. Mr. Alan Elliott, owner of Al's Tapes and Records, has claimed for years to have purchased the rights to the film footage of my 1972 performance at the New Missionary Baptist Church in Los Angeles, California.
5. I have never given permission or entered into any agreement -- verbal, written or otherwise -- with Alan Elliott, Al's Tapes & Records or any entity granting permission to use my name and or likeness for commercial purposes with regards to the "Amazing Grace" movie, or any film footage or audio recording of my 1972 performance at the New Missionary Baptist Church in Los Angeles, California.
6. In spite of not having prior authorization, as referenced above, Mr. Alan Elliott made plans in 2011 to release a movie based on my 1972 performance as mentioned above which uses my name, likeness and voice for commercial purposes.
7. I sued Mr. Elliott in 2011 based on his stated plans to release the film, and we resolved the lawsuit when Mr. Elliott said he had no plans to release the film.
8. In August 2015, I discovered that Mr. Elliott plans to show the film at the Toronto Film Festival during the week of September 7, 2015. Mr. Elliott gave me no notice of his intent to show the film at the Toronto Film Festival. I found out after seeing it on the internet.
9. On September 3, 2015, I discovered that Mr. Elliott plans to show the film at the Telluride Film Festival during the weekend of September 4, 2015. Mr. Elliott gave me no notice of his intent to show the film at the Telluride Film Festival. I found out after seeing it on the internet.

Amended  
Complaint  
Ex. 5

10. No representatives of the Toronto Film Festival or the Telluride Film Festival have contacted me regarding their planned showing of the film.
11. My public image and persona are important to me and have been carefully maintained over the decades. I believe that the right as to when my concert footage should be seen publicly, and under what conditions, is a right that belongs to me. I have never given that right with respect to the 1972 concert to anyone else. If you come to one of my concerts today, you are not given the right to videotape and rebroadcast that footage. Mr. Elliot, the Telluride Film Festival and the Toronto Film Festival are using my image, likeness, and persona for their own benefit without my permission.

DATED this 4th day of September, 2015.

  
ARETHA FRANKLIN

Subscribed and sworn to before me

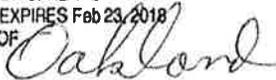
This 4<sup>th</sup> day of September, 2015.

  
Notary Public

9/4/15

Commission expires:

LARRY A. REEVE  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF OAKLAND  
MY COMMISSION EXPIRES Feb 23, 2018  
ACTING IN COUNTY OF



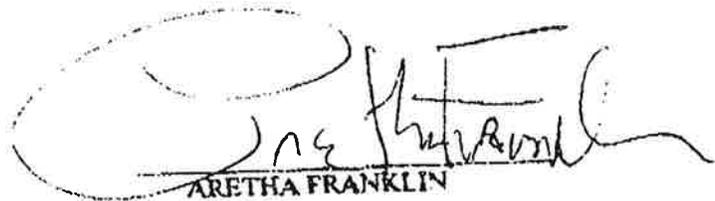
BH012312569.1  
ID\FJFR - 619956000999

**Declaration**

I, Aretha Franklin, do hereby swear and affirm that if called upon to testify, I would testify to the following including but not limited to:

- a. That in 1972, I did a live recording of my album Amazing Grace at the New Missionary Baptist Church in Los Angeles, California.
- b. That the recording of this album was videotaped.
- c. That Mr. Alan Elliott, owner of Al's Tapes and Records claims to have purchased the rights to the film or footage of my 1972 performance at the New Missionary Baptist Church in Los Angeles, California.
- d. That I have never given permission or entered into any agreement, verbal, written or otherwise with Alan Elliott, Al's Tapes & Records or any entity to exploit my name and or likeness for commercial purposes with regards to the "Amazing Grace" movie, or any film or footage of my 1972 performance at the New Missionary Baptist Church in Los Angeles, California.
- e. That in spite of not having prior authorization, as referenced above, Mr. Alan Elliott has plans to release a movie based on my 1972 performance as mentioned above which exploits my name and likeness solely for commercial purposes.

Further affiant sayeth not



ARETHA FRANKLIN

Amended  
Complaint  
Ex. 6

1 Arnold Reed  
Michigan Bar #P46959  
3225 Northwestern Hwy Ste 251  
2 Farmington Hills, MI 48334  
Phone: (248) 855-6330  
3 Fax: (248) 855-6340  
4 e-Mail: arnoldreed@earthlink.net

5 Attorney for Plaintiff  
(appearing pro hac vice)

6  
7 Local Counsel Kendric V. Rollins  
California Bar #170564

11 AUG 31 PM 4:12  
CLERK OF COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

FILED

10 UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 **CV 11-07225 PA (JEM)**

12 ARETHA FRANKLIN,

13 Plaintiff,

14 vs.

15 ALAN ELLIOTT, and, AL'S RECORDS  
AND TAPES,

16  
17 Defendant

) Case No. \_\_\_\_\_  
) Judge \_\_\_\_\_  
) **VERIFIED COMPLAINT**  
) (With Request for Restraining  
) Order and Demand for Trial by  
) Jury)

19 I. FACTS

20 This suit is being filed by musician Aretha Franklin to  
21 prevent the unauthorized release of her 1972 concert performance  
22 at the New Missionary Baptist Church in Los Angeles California.  
23 She also seeks monetary damages in excess of \$75,000 based on  
24 Defendant's actions. Punitive damages are also being requested.  
25

26 1. Ms. Franklin is a legendary vocalist and musical  
27 artist whose fame and international recognition are arguably  
28 unequalled. She is the recipient of eighteen Grammy Awards, been

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Complaint  
Ex. 7

1           7. Based on a number of considerations not relevant to  
2 this suit, Ms. Franklin decided it was best not release this  
3 video.

4           8. The video remained locked away in the vaults at Warner  
5 Brothers studio until 2007.

6  
7           9. Defendant Elliott is a music and video producer whose  
8 offices are within this District.

9           10. Defendant Al's Records & Tapes is an artificial entity  
10 of currently undetermined status which is wholly controlled by  
11 Defendant Elliott and is being held out at the production  
12 company of the video/film in dispute.

13  
14           11. Unless otherwise noted, references Defendant or  
15 Defendant Elliott also include the entity Al's Records & Tape.

16           12. The Defendant obtained the deeds to this footage from  
17 Warner Brothers Studios in 2007 through a Quitclaim Agreement  
18 (See Exhibit H) and has since then produced and released a film  
19 entitled "Amazing Grace" for release.

20  
21           13. The Quit Claim Agreement directly states that, "in  
22 connection to [Defendant's] use of the material" Defendant "will  
23 need to obtain authorization from [Plaintiff]."

24           14. The development and production of the Amazing Grace  
25 movie is unquestionably the kind of "use" for which Defendant  
26 must obtain Plaintiff's authorization before releasing.

27           15. No such authorization has been granted by Plaintiff to  
28

1 the Defendant or anyone else and, as such, Plaintiff has not  
2 assigned her rights of publicity to the Defendant or anyone  
3 else.

4 16. Defendant is aware that Ms. Franklin does not consent  
5 to the release of this production because he sought her consent  
6 and she turned him down.

7  
8 17. Sometime after this aborted overture, the Defendant  
9 decided that Ms. Franklin consent was not needed and proceeded  
10 with his production.

11 18. Ms. Franklin's image and performance is continuously  
12 displayed in this work. Her appearance is central to the  
13 documentary.

14  
15 19. The Defendants currently have scheduled a private  
16 viewing of the film during the month of August and on  
17 information and belief intend to release the film shortly  
18 thereafter.

19 20. Given Defendants insistence on producing the film and  
20 intending to release it without Plaintiff's authorization,  
21 Plaintiff has no reasonable alternative but to seek a Court  
22 Order enjoining Plaintiff's infringing conduct.

23  
24 **II. JURISDICTION AND VENUE**

25 21. Ms. Franklin is and has been a Michigan resident at  
26 all times relevant to this dispute.

27 22. Defendant is a California resident.  
28

1 23. The amount in dispute is in excess of \$75,000.

2 24. As is demonstrated later in this Complaint, multiple  
3 federal questions are also involved.  
4

5  
6 **III. LEGAL THEORIES FOR RECOVERY**

7 25. Ms. Franklin has multiple legal theories for monetary  
8 and injunctive relief against the Defendant.  
9

10 **Count 1: Emergency Restraining Order**  
11 **and Temporary Injunction**

12 26. Plaintiff adopts by reference the prior allegations.

13 27. Plaintiff seeks to enjoin the Defendant from  
14 infringing upon her right of publicity by proceeding with the  
15 release of the unauthorized film "Amazing Grace."

16 28. Indeed "the usual function of a preliminary injunction  
17 is to preserve the status quo ante litem pending a determination  
18 of the action on the merits."

19 29. As is demonstrated in the accompanying brief, Ms.  
20 Franklin as a high probability of success and will be  
21 irreparably injured if an injunction is not released.

22 30. The raw footage has been locked away in the vaults of  
23 Warner Brother studios for nearly forty years. There is no  
24 urgency in its immediate release. Conversely, Ms. Franklin will  
25 be irreparably injured if the film is released.

26 31. In this instance, "the status quo is the last  
27 uncontested status which preceded the pending controversy." Id.  
28

1 Plaintiff therefore seeks to enjoin Defendant from releasing any  
2 film, documentary, movie or concert footage which involves  
3 Plaintiff's 1972 performance at the New Missionary Baptist  
4 Church in Los Angeles California.

5 32. Plaintiff can and will demonstrate the likelihood that  
6 it will prevail on its claim for violation of rights of  
7 publicity against Defendant. Plaintiff also faces irreparable  
8 harm unless Defendants are immediately restrained from engaging  
9 in the infringing conduct. Additionally, serious questions are  
10 raised and the balance of hardships tips in Plaintiff's favor.  
11 Plaintiff therefore respectfully requests that its Motion for  
12 Preliminary Injunction be granted.

13  
14 WHEREFORE, Ms. Franklin requests this Court grant a temporary  
15 and permanent restraining order barring the release of this  
16 film. Plaintiff also requests this Court award punitive and  
17 exemplary damages designed to deter similar future misconduct by  
18 others.

19 **Count 2: Violation of Common Right to Publicity**  
20 **(State Law Count)**

21 33. Plaintiff adopts by reference all prior allegations.

22 34. California's law regarding the Right to Publicity is  
23 governed by its common law and statutory laws which protect the  
24 use of a person's "name, voice...or likeness" Cal. Civ. Code §  
25 3344(a). Plaintiff can effectively show an exceedingly high  
26 probability of success on her Right of Publicity claim.

27  
28 35. California common law recognizes this right of

1 publicity in a person's name, likeness and identity.

2 36. There is no question that the Defendant "used" the  
3 Plaintiff's identity or likeness.

4  
5 37. Not only was the Plaintiffs identity used in the film  
6 which was released without authorization, but it was also used  
7 in promotional materials as well.

8 38. Equally evident is the fact that the Defendant, a  
9 producer, has been and will continue to be advantaged from the  
10 appropriation, or more accurately, the misappropriation of the  
11 Defendant's name or likeness.

12  
13 39. Even the Defendant's own modest projections which were  
14 provided to the Plaintiff during a failed negotiation attempt  
15 project revenues exceeding two million dollars.

16 40. These amounts are substantially in excess of the  
17 \$75,000 jurisdictional threshold for this Court.

18  
19 41. These substantial economic gains represent a  
20 significant advantage that the Defendant has obtained through  
21 the misappropriation of the Plaintiff's name and likeness.

22 42. Additionally, the advantages that the Defendant has  
23 gained and continues to gain exceed those strictly economic in  
24 nature and include the commercial advantages of enhancing the  
25 defendant's resume, professional repute and industry clout which  
26 in turn leads to further commercial opportunities.

27  
28 43. On information and belief, the Defendant's production

1 and unauthorized release of *Amazing Grace* has and will continue  
2 to serve this same purpose of bolstering the Defendant's resume,  
3 repute and clout for commercial purposes.

4  
5 44. For these reasons, the defendant is benefiting from  
6 the misappropriation of the Plaintiff's name and likeness in  
7 directly economic way, indirectly economic ways as well as in  
8 ways not limited to economics at all.

9  
10 45. Defendant never obtained the Plaintiff's consent to  
11 release the movie.

12  
13 46. The Defendant's quick claim agreement with Warner Bros  
14 wherein he purchased the deeds of the footage originally owned  
15 by the late Sidney Pollack, clearly indicates that the Defendant  
16 must obtain consent from the Plaintiff before he uses the  
17 material

18  
19 47. Use of this footage without Ms. Franklin's consent  
20 would violate the Plaintiff's rights of publicity merely because  
21 the Defendant was unable to offer terms that the Plaintiff was  
22 amenable to.

23 WHEREFORE, Ms. Franklin requests this Court grant her the  
24 injunctive relief prayed for above together with just and  
25 equitable damages in excess of \$75,000 including her attorney  
26 fees and costs. Plaintiff also requests this Court award  
27  
28

1 punitive and exemplary damages designed to deter similar future  
2 misconduct by others.

3 **Count 3: Anti-Bootlegging Claim**  
4 **(Federal Question Jurisdiction)**

5 48. Ms. Franklin adopts the prior paragraphs.

6  
7 49. 17 U.S.C. Sec. 1101(1) provides in pertinent part:

8 (a) Unauthorized Acts.--Anyone who, without  
9 the consent of the performer or performers  
involved--

10 (1) fixes the sounds or sounds and images of  
11 a live musical performance in a copy or  
12 phonorecord, or reproduces copies or  
13 phonorecords of such a performance from an  
unauthorized fixation,

14 (2) transmits or otherwise communicates to  
15 the public the sounds or sounds and images  
of a live musical performance, or

16 (3) distributes or offers to distribute,  
17 sells or offers to sell, rents or offers to  
18 rent, or traffics in any copy or phono  
19 record fixed as described in paragraph (1),  
20 regardless of whether the fixations occurred  
21 in the United States, shall be subject to the  
remedies provided in sections 502 through  
505, to the same extent as an infringer of  
copyright.

22  
23 50. Ms. Franklin is the performer of the video in  
24 question.

25 51. Defendant intends to distribute large portions of the  
26 content of the video without her consent.

27 52. The video in question includes both sounds and images.  
28



1 contract in violation of the terms of the agreement for his own  
2 commercial gain.

3 60. Ms. Franklin has made it clear that Mr. Elliott that  
4 he does not have this consent.

5  
6 61. Ms. Franklin is a third party beneficiary under this  
7 agreement and has standing to enforce this contract.

8 62. Defendant has constructed a flawed theory why Ms.  
9 Franklin's interest in her performance was unprotectable and  
10 decided to proceed without her consent in violation of the  
11 contract.

12  
13 63. Mr. Elliott took the performance subject to a Quit  
14 Claim Agreement from Warner Brothers. Whatever interest they  
15 may have had in the performance was being relinquished. The  
16 clause requiring Ms. Franklin's consent was not a proxy for  
17 saying that it was Mr. Elliott's problem to find a way to deal  
18 with the issue in any legal way he saw fit.

19  
20  
21 64. Even the Defendant's own modest projections which were  
22 provided to the Plaintiff during a failed negotiation attempt  
23 project revenues exceeding two million dollars.

24 65. These amounts are substantially in excess of the  
25 \$75,000 jurisdictional threshold for this Court.  
26  
27  
28

1           66. This Court must enforce the contract as written.  
2 Defendants needed Ms. Franklin's consent to proceed and never  
3 obtained the same. They have no rights whatsoever to this  
4 footage.

5           WHEREFORE, Ms. Franklin requests this Court grant her the  
6 injunctive relief prayed for above together with just and  
7 equitable damages in excess of \$75,000 including her attorney  
8 fees and costs.  
9

10  
11                           **Count 5: Statutory Right of Publicity Claim**  
12                           **Pursuant to Cal Civ. Code § 3344**  
13                           **(State Law Count)**

14           67. Plaintiff adopts by reference the prior allegations.

15           68. The California legislature has created a statutory  
16 right of publicity in a person's "name, voice, signature,  
17 photograph, or likeness." Cal. Civ. Code § 3344(a).

18           69. California law not only provides for the protection of  
19 publicity rights through an action for damages but Plaintiff may  
20 also seek enjoinder from the exploitation of her rights of  
21 publicity.  
22

23           70. Defendant's use of the Plaintiff's name or likeness  
24 was "knowing." This movie is about Ms. Franklin's 1972  
25 performance.  
26

27           71. Defendant's literature concerning this movie is  
28 riddled with references to Ms. Franklin, her fame, her

1 recognition as the "Queen of Soul," her likeness and her voice.

2 72. Plaintiff will be harmed by this usage. Many people  
3 will regard this product as a substitute for her album, will  
4 believe she

5  
6 73. Plaintiff has demonstrated a likelihood of success on  
7 the merits of its claim for violation of the California common  
8 law and statutory right to publicity.

9 WHEREFORE, Ms. Franklin requests this Court grant her the  
10 injunctive relief prayed for above together with just and  
11 equitable damages in excess of \$75,000 including her attorney  
12 fees and costs.

13  
14 **Count 6: Unjust Enrichment**  
15 **(State Law Count)**

16 74. Plaintiff adopts by reference the prior allegations.

17 75. California courts have long recognized a cause of  
18 action based on unjust enrichment.

19 76. By Defendant's wrongful acts and omissions, Defendant  
20 has unjustly enriched himself at the expense, and to the  
21 detriment, of the Plaintiff.

22 77. The Defendant has violated and continues to violate  
23 the Plaintiff's rights of publicity through his release and  
24 continued promotion of *Amazing Grace*.

25 78. The release of this film has lead to substantial  
26 economic gains by the Defendant (See Exhibit A: Revenue  
27 Projections) which Defendant is not entitled to receive.  
28

1 79. Additionally, by presenting the film as if it was  
2 authorized by the Plaintiff and by promoting and releasing said  
3 film, Defendant has also boosted his reputation and recognition  
4 in the industry which invariably leads to further opportunities  
5 to be unjustly enriched and to exploit the name, image and voice  
6 of the Plaintiff without her authorization.

7 80. Although, Defendant may own the deeds to the footage,  
8 he has not obtained Plaintiffs full and complete release and  
9 authorization to use the material.

10 81. By releasing Amazing Grace without authorization and  
11 using it for commercial purposes, the Defendant has gained  
12 hundreds of thousands of dollars to date and has also led to an  
13 amount in controversy which far exceeds \$75,000.00.

14 82. As noted above, Defendant has gone on record stating  
15 that he believes this project is worth substantially more than  
16 \$75,000.

17 WHEREFORE, Ms. Franklin requests this Court grant her the  
18 injunctive relief prayed for above together with just and  
19 equitable damages in excess of \$75,000 as well as her attorney  
20 fees and costs. Plaintiff also requests this Court award  
21 punitive and exemplary damages designed to deter similar future  
22 misconduct by others.  
23

24  
25 **Count 7: Violation of Right of Publicity**  
26 **(State Law Count)**

27 83. Plaintiff adopts by reference the prior allegations.

28 84. Several courts have held that a celebrity's property

1 interest in his or her name and likeness is unique, and cannot  
2 reasonably be compensated by money damages.

3 85. Thus Defendant's unauthorized use of Plaintiff's name,  
4 voice and likeness is per se causing irreparable harm.

5 86. Additionally, Defendant's disregard to Plaintiffs  
6 rights of publicity and insistence on releasing a movie without  
7 authorization undermine the value of a celebrity's property  
8 interest in his or her name or likeness.

9 87. The market for the publicity rights would collapse and  
10 the rights themselves would be rendered valueless without the  
11 ability of the law to adequately protect them through  
12 injunctions.

13 88. Punishing violations of publicity rights after the  
14 fact through damages cannot effectively enforce the law in this  
15 respect to the same degree that issuing an injunction can and  
16 often does.

17 89. By releasing Amazing Grace without authorization and  
18 using it for commercial purposes, the Defendant has gained  
19 hundreds of thousands of dollars to date and has also led to an  
20 amount in controversy which far exceeds \$75,000.00.

21 90. As noted above, Defendant has gone on record stating  
22 that he believes this project is worth substantially more than  
23 \$75,000.

24  
25 WHEREFORE, Ms. Franklin requests this Court grant her the  
26 injunctive relief prayed for above together with just and  
27 equitable damages in excess of \$75,000 including her attorney  
28 fees and costs. Plaintiff also requests this Court award

1 punitive and exemplary damages designed to deter similar future  
2 misconduct by others.

3 **Count 8: Unjust Enrichment**  
4 **(State Law Count)**

5 91. Plaintiff adopts by reference the prior allegations.

6 92. The Plaintiff brought this cause of action before the  
7 court because the Defendant completely disregarding her rights  
8 of publicity after failing to come to an agreement regarding her  
9 release.

10  
11 93. Because the Defendant moved full speed ahead without  
12 regard to the rights or the interest of the Plaintiff and  
13 unlawfully and illegally released "Amazing Grace", all proceeds  
14 directly or indirectly attributable to the release have been  
15 obtained unjustly.  
16

17  
18 94. The enrichment that the Defendant has received has  
19 caused irreparable harm to the Plaintiff in that they preclude  
20 the Plaintiff from receiving such funds under a legal agreement  
21 should one have been entered.  
22

23 95. The Defendant has no right to the proceeds from a  
24 movie which was released without the full and complete  
25 authorization of the Plaintiff and hence any and all revenues,  
26 particularly those which constitute a profit represent  
27 irreparable harm to the Plaintiff.  
28

1 WHEREFORE, Ms. Franklin requests this Court grant her the  
2 injunctive relief prayed for above together with just and  
3 equitable damages in excess of \$75,000 including her attorney  
4 fees and costs. Plaintiff also requests this Court award  
5 punitive and exemplary damages designed to deter similar future  
6 misconduct by others.  
7

8 **V. RESERVATION OF RIGHTS.**

9 96. The counts pled herein are the counts that counsel  
10 currently knows of without conducting formal discovery. As  
11 these case progresses, counsel presumes additional counts and  
12 parties will be added.  
13

14 **VI. DEMAND FOR A JURY TRIAL.**

15 Defendant exercises her right to a trial by jury on all  
16 issues so triable.  
17

18 Dated this August 23, 2011

Respectfully submitted,

ARNOLD REED & ASSOCIATES

19  
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21 ARNOLD REED  
Attorney for Plaintiff  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ARETHA FRANKLIN,  
Plaintiff,  
v.  
ALAN ELLIOT, et al.,  
Defendants.

Case No. CV 11-7225 PA (JEMx)  
STANDING ORDER

**READ THIS ORDER CAREFULLY. IT CONTROLS THE CASE  
AND DIFFERS IN SOME RESPECTS FROM THE LOCAL RULES.**

This action has been assigned to the calendar of Judge Percy Anderson. Both the Court and the attorneys bear responsibility for the progress of litigation in the Federal Courts. To secure the just, speedy, and inexpensive determination of every action, Fed. R. Civ. P. 1, all counsel are ordered to familiarize themselves with the Federal Rules of Civil Procedure and the Local Rules of the Central District of California.

**IT IS HEREBY ORDERED:**

1. **Service of the Complaint:** The Plaintiff shall promptly serve the Complaint in accordance with Fed. R. Civ. P. 4 and file the proofs of service pursuant to Local Rule 5-3.1.

1           2.     Presence of Lead Counsel: Lead trial counsel shall attend all proceedings  
2 before this Court, including all status and settlement conferences.

3           3.     Discovery:

4           (a)    All discovery matters have been referred to a United States Magistrate  
5 Judge, who will hear all discovery disputes. (The Magistrate Judge's initials follow the  
6 Judge's initials next to the case number.) All discovery documents must include the words  
7 "DISCOVERY MATTER" in the caption to ensure proper routing. Counsel are directed to  
8 contact the Magistrate Judge's Courtroom Deputy Clerk to schedule matters for hearing.  
9 Please do not deliver courtesy copies of these documents to this Court.

10           The decision of the Magistrate Judge shall be final, subject to modification by the  
11 District Court only where it has been shown that the Magistrate Judge's Order is clearly  
12 erroneous or contrary to law. Any party may file and serve a motion for review and  
13 reconsideration before this Court. The moving party must file and serve the motion within  
14 fourteen (14) days of service of a written ruling or within fourteen (14) days of an oral ruling  
15 that the Magistrate Judge states will not be followed by a written ruling. The motion must  
16 specify which portions of the ruling are clearly erroneous or contrary to law and support the  
17 contention with points and authorities. Counsel shall deliver a conformed copy of the  
18 moving papers and responses to the Magistrate Judge's clerk at the time of filing.

19           (b)    Unless there is a likelihood that upon motion by a party the Court  
20 would order that any or all discovery is premature, it is advisable for counsel to begin to  
21 conduct discovery actively before the Scheduling Conference. At the very least, the parties  
22 shall comply fully with the letter and spirit of Fed. R. Civ. P. 26(a) and thereby obtain and  
23 produce most of what would be produced in the early stage of discovery, because at the  
24 Scheduling Conference the Court will impose tight deadlines to complete discovery.

25           (c)    If expert witnesses are to be called at trial, the parties shall designate  
26 experts to be called at trial and provide reports required by Fed. R. Civ. P. 26(a)(2)(B), not  
27 later than eight weeks prior to the discovery cutoff date. Rebuttal expert witnesses shall be  
28 designated and reports provided as required by Fed. R. Civ. P. 26(a)(2)(B), not later than

1 five weeks prior to the discovery cutoff date. Failure to timely comply with this deadline  
2 may result in the expert being excluded at trial as a witness.

3 4. Electronic Filing:

4 As of November 1, 2007 for patent, trademark, and copyright cases, and January 1,  
5 2008 for all other cases, the United States District Court for the Central District of California  
6 requires electronic filing of documents in all new and pending civil cases. Information about  
7 the Court's Electronic Case Filing system ("ECF") is available on the Court's website at  
8 [www.cacd.uscourts.gov/cmecf](http://www.cacd.uscourts.gov/cmecf).

9 All manually filed documents (those documents excused from the electronic filing  
10 requirements by General Order 08-02, Section V) shall be served on the person as otherwise  
11 required by the Federal Rules of Civil Procedure or the Local Rules.

12 5. Courtesy Copies:

13 Counsel are ordered to serve courtesy copies of all electronically filed documents,  
14 and conformed courtesy copies of all manually filed documents, to the courtesy box next to  
15 the entrance to chambers on the Spring Street level of the U.S. Courthouse, 312 North  
16 Spring Street, by 12:00 noon of the business day following filing. Courtesy copies may be  
17 delivered to chambers by either personally delivering them to the courtesy box or sending  
18 them by guaranteed overnight delivery. If a courtesy copy is sent to chambers by guaranteed  
19 overnight delivery, the sender shall notify the delivery service that the signature of the  
20 recipient is not required.

21 6. Motions:

22 (a) Time for Filing and Hearing Motions: Motions shall be filed in  
23 accordance with Local Rule 7.<sup>1/</sup> This Court hears motions on **Mondays, commencing at**  
24

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25 <sup>1/</sup> Among other things, Local Rule 7-3 requires counsel to engage in a pre-filing  
26 conference "to discuss thoroughly . . . the substance of the contemplated motion and any  
27 potential resolution." Counsel should discuss the issues sufficiently so that if a motion is still  
28 necessary, the briefing may be directed to those substantive issues requiring resolution by  
the Court. Counsel should resolve minor procedural or other nonsubstantive matters during  
the conference.

1 **1:30 p.m. No supplemental brief shall be filed without prior leave of Court. No motion**  
2 **shall be noticed for hearing for more than thirty-five (35) days after service of the motion**  
3 **unless otherwise ordered by the Court.**

4 Many motions to dismiss or to strike could be avoided if the parties confer in good  
5 faith (as they are required to do under L.R. 7-3), especially for perceived defects in a  
6 complaint, answer or counterclaim which could be corrected by amendment. See Chang v.  
7 Chen, 80 F.3d 1293, 1296 (9th Cir. 1996) (where a motion to dismiss is granted, a district  
8 court should provide leave to amend unless it is clear that the complaint could not be saved  
9 by *any* amendment). Moreover, a party has the right to amend his complaint "once as a  
10 matter of course at any time before a responsive pleading is served." Fed. R. Civ. P. 15(a).  
11 A 12(b)(6) motion is not a responsive pleading and therefore plaintiff might have a right to  
12 amend. See Nolen v. Fitzharris, 450 F.2d 958, 958-59 (9th Cir. 1971); St. Michael's  
13 Convalescent Hospital v. California, 643 F.2d 1369, 1374 (9th Cir. 1981). And even where  
14 a party has amended his Complaint once or a responsive pleading has been served, the  
15 Federal Rules provide that leave to amend should be "freely given when justice so requires."  
16 F.R.Civ.P. 15(a). The Ninth Circuit requires that this policy favoring amendment be applied  
17 with "extreme liberality." Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079  
18 (9th Cir. 1990). These principles require that counsel for the plaintiff should carefully  
19 evaluate the defendant's contentions as to the deficiencies in the complaint and in many  
20 instances, the moving party should agree to any amendment that would cure a curable  
21 defect.

22 In the unlikely event that motions under Fed. R. Civ. P. 12 challenging pleadings are  
23 filed after the Rule 16 Scheduling Conference, the moving party shall attach a copy of the  
24 challenged pleading to the Memorandum of Points and Authorities in support of the motion.  
25 The foregoing provisions apply as well to motions to dismiss a counterclaim, answer or  
26 affirmative defense, which a plaintiff might file.

1                   **(b) Length and Format of Motion Papers: Memoranda of Points**  
2 **and Authorities in support of or in opposition to motions shall not exceed 25 pages.**  
3 **Replies shall not exceed 12 pages.** Only in rare instances and for good cause shown will the  
4 Court grant an application to extend these page limitations.

5                   **Typeface shall comply with Local Rule 11-3.1.1. NOTE: If Times Roman font is**  
6 **used, the size must be no less than 14; if Courier is used, the size must be no less than**  
7 **12.** Footnotes shall be in typeface no more than one size smaller than text size and shall be  
8 used sparingly.

9                   Filings which do not conform to the Local Rules and this Order will not be  
10 considered.

11                   **(c) Citations to Case Law:** Citations to case law **must** identify not only  
12 the case being cited, but the specific page being referenced. Certain kinds of authority are  
13 considered more useful – or authoritative – than others. If more than one authority is cited  
14 in support of a proposition, these supporting authorities are to be listed such that the more  
15 authoritative ones appear first.

16                   **(d) Citations to Other Sources:** Counsel are reminded that the basic  
17 purpose of a legal citation is to allow the reader to locate a cited source accurately and  
18 efficiently. Accordingly, statutory references should identify, with specificity, which  
19 sections and subsections are being referenced (e.g., Jurisdiction over this cause of action  
20 may appropriately be found in 47 U.S.C. § 33, which grants the district courts jurisdiction  
21 over all offenses of the Submarine Cable Act, whether the infraction occurred within the  
22 territorial waters of the United States or on board a vessel of the United States outside said  
23 waters). Statutory references which do not indicate specifically which section and  
24 subsection are being referred to (e.g., Plaintiffs allege conduct in violation of the Federal  
25 Electronic Communication Privacy Act, 18 U.S.C. § 2511, et seq.) are to be **avoided**.  
26 Citations to treatises, manuals, and other materials should similarly include the volume and  
27 the section being referenced.

28

1           **7. Proposed Orders:** Each party filing or opposing a motion or seeking the  
2 determination of any matter shall serve and lodge a Proposed Order setting forth the relief or  
3 action sought and a brief statement of the rationale for the decision with appropriate  
4 citations. The proposing party shall also submit a copy of the Proposed Order to the Court's  
5 ECF e-mail address, in WordPerfect format (X3 or earlier versions) or Microsoft Word  
6 (Word 2003 or earlier versions).

7           **8. Ex Parte Applications:** Counsel are reminded ex parte applications are solely  
8 for extraordinary relief. See Mission Power Engineering Co. v. Continental Casualty Co.,  
9 883 F. Supp. 488 (C.D. Cal. 1995). Applications which fail to conform with Local Rules 7-  
10 19 and 7-19.1, including a statement of opposing counsel's position, will not be  
11 considered. Any opposition must be filed not later than 24 hours after service. If counsel do  
12 not intend to oppose the ex parte application, counsel must inform the court clerk by  
13 telephone. The Court considers ex parte applications on the papers and usually does not set  
14 these matters for hearing. Counsel shall deliver a courtesy copy of moving, opposition, or  
15 notice of non-opposition papers to the courtesy box outside the entrance to chambers on the  
16 Spring Street level of the U.S. Courthouse, 312 North Spring Street. The Courtroom Deputy  
17 Clerk will notify counsel of the Court's ruling or a hearing date and time, if the Court  
18 determines a hearing is necessary.

19           **9. Applications or Stipulations to Extend the Time to File any Required**  
20 **Document or to Continue any Pretrial or Trial Date:** No stipulations extending  
21 scheduling requirements or modifying applicable rules are effective until and unless the  
22 Court approves them. Both applications and stipulations must be filed in advance of the date  
23 due and set forth:

24           (a) the existing due date or hearing date as well as the discovery cutoff  
25 date, the last date for hearing motions, the pre-trial conference date and the trial date;

26           (b) specific, concrete reasons supporting good cause for granting the  
27 extension. In this regard, a statement that an extension "will promote settlement" is  
28 insufficient. The requesting party or parties must indicate the status of ongoing negotiations:

1 (i.e., have written proposals been exchanged? Is counsel in the process of reviewing a draft  
2 settlement agreement? Has a mediator been selected?);

3 (c) whether there have been prior requests for extensions, and whether  
4 these were granted or denied by the Court.

5 **10. TROs and Injunctions:** Parties seeking emergency or provisional relief shall  
6 comply with Fed. R. Civ. P. 65 and Local Rule 65. The Court will not rule on any  
7 application for such relief for at least 24 hours after the party subject to the requested order  
8 has been served; such party may file opposing or responding papers in the interim. The  
9 parties shall lodge a courtesy copy, conformed to reflect that it has been filed, of all papers  
10 relating to TROs and injunctions. The courtesy copy shall be placed in the courtesy box  
11 outside the entrance to chambers. All such papers shall be filed "loose" – i.e., not inside  
12 envelopes.

13 **11. Cases Removed From State Court:** All documents filed in state court,  
14 including documents appended to the complaint, answers and motions, must be refiled in  
15 this Court as a supplement to the Notice of Removal, if not already included. See 28 U.S.C.  
16 § 1447(a)(b). If the defendant has not yet responded, the answer or responsive pleading  
17 filed in this Court must comply with the Federal Rules of Civil Procedure and the  
18 Local Rules of the Central District. If a motion was pending in state court before the case  
19 was removed, it must be re-noticed in accordance with Local Rule 7.

20 **12. ERISA Cases:** Absent an agreed upon statement of facts, the court will not  
21 hear motions for summary judgment, but will hear motions to determine the standard of  
22 review and the scope of the administrative record. See *Kearney v. Standard Ins. Co.*, 175  
23 F.3d 1084 (9th Cir. 1999). There will be a court trial (usually confined to oral argument) on  
24 the administrative record.

25 **13. Status of Fictitiously Named Defendants:** This Court intends to adhere to  
26 the following procedures where a matter is removed to this Court on diversity grounds with  
27 fictitiously named defendants referred to in the complaint. See 28 U.S.C. §§ 1441(a), 1447.

28 (a) Plaintiff is normally expected to ascertain the identity of and serve

1 any fictitiously named defendants within 120 days of the removal of the action to  
2 this Court.

3 (b) If plaintiff believes (by reason of the necessity for discovery or  
4 otherwise) that fictitiously named defendants cannot be fully identified within the 120-day  
5 period, an ex parte application requesting permission to extend that period to effectuate  
6 service may be filed with this Court. Such application shall state the reasons therefor, and  
7 may be granted upon a showing of good cause. The ex parte application shall be served  
8 upon all appearing parties, and shall state that appearing parties may comment within seven  
9 (7) days of the filing of the ex parte application.

10 (c) If plaintiff desires to substitute a named defendant for one of the  
11 fictitiously named parties, plaintiff first shall seek to obtain consent from counsel for the  
12 previously-identified defendants (and counsel for the fictitiously named party, if that party  
13 has separate counsel). If consent is withheld or denied, plaintiff may apply ex parte  
14 requesting such amendment, with notice to all appearing parties. Each party shall have  
15 seven days to respond. The ex parte application and any response should comment not only  
16 on the substitution of the named party for a fictitiously named defendant, but on the question  
17 of whether the matter should thereafter be remanded to the Superior Court if diversity of  
18 citizenship is destroyed by the addition of the new substituted party. See 28 U.S.C. §  
19 1447(c)(d).

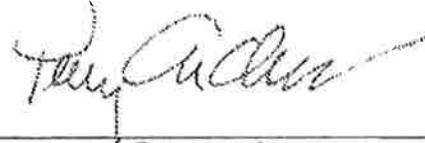
20 14. **Bankruptcy Appeals:** Counsel shall comply with the Notice Regarding  
21 Appeal from Bankruptcy Court issued at the time the appeal is filed in the District Court.  
22 The matter is considered submitted upon the filing of the appellant's reply brief. No oral  
23 argument is held unless otherwise ordered by this Court.

24 15. **Communications with Chambers:** Counsel shall not attempt to contact the  
25 Court or its chambers staff by telephone or by any other ex parte means, although counsel  
26 may contact the Courtroom Deputy, at (213) 894-1795, with appropriate inquiries. To  
27 facilitate communication with the Courtroom Deputy, counsel should list their facsimile  
28 transmission numbers along with their telephone numbers on all papers.

1           **16. Notice of this Order:** Counsel for plaintiff shall immediately serve this Order  
2 on all parties, including any new parties to the action. If this case came to the Court by  
3 noticed removal, defendant shall serve this Order on all other parties.

4           IT IS SO ORDERED.

5           Dated: September 1, 2011



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Percy Anderson  
UNITED STATES DISTRICT JUDGE

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ARNOLD E. REED & ASSOCIATES, P.C.  
ARNOLD E. REED  
32255 NORTHWESTERN HWY, STE. 251  
FARMINGTON HILLS, MI 48334

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ARETHA FRANKLIN

CASE NUMBER

CV11-07225 PA (JEM)

PLAINTIFF(S)

v.

ALAN ELLIOTT AND AL'S RECORDS AND TAPES

SUMMONS

DEFENDANT(S)

TO: DEFENDANT(S): \_\_\_\_\_

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached  complaint  \_\_\_\_\_ amended complaint  counterclaim  cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Arnold E. Reed, whose address is 32255 Northwestern Highway, Ste. 251, Farmington Hills, MI 48334. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

AUG 31 2011

Clerk, U.S. District Court

Dated: \_\_\_\_\_

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

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

ARNOLD E. REED & ASSOCIATES, P.C.  
ARNOLD E. REED  
32255 NORTHWESTERN HWY, STE. 251  
FARMINGTON HILLS, MI 48334

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ARETHA FRANKLIN

CASE NUMBER

PLAINTIFF(S)

CV11-07225 PA (JEM)

v.

ALAN ELLIOTT AND AL'S RECORDS AND TAPES

SUMMONS

DEFENDANT(S)

TO: DEFENDANT(S): \_\_\_\_\_

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached  complaint  amended complaint  counterclaim  cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Arnold E. Reed, whose address is 32255 Northwestern Highway, Ste. 251, Farmington Hills, MI 48334. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

AUG 31 2011

Clerk, U.S. District Court

Dated: \_\_\_\_\_

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

JULIE PRADO

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

1 George M. Rush (California Bar # 212952)  
2 Law Offices of George M. Rush  
3 220 Montgomery St., Suite 411  
4 San Francisco, CA 94104  
5 Phone: (415) 393 8005  
6 Fax: (415) 393 8021  
7 Email: george@gmrush.com

8 Attorney for Defendants  
9 Alan Elliott, and Al's Records and Tapes

10 UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 ARETHA FRANKLIN, ) Case No.: CV11-07225  
13 )  
14 Plaintiff, )  
15 ) **DEFENDANT'S ANSWER TO**  
16 ) **COMPLAINT**  
17 vs. )  
18 )  
19 )  
20 )  
21 ALAN ELLIOTT, and AL'S RECORDS )  
22 AND TAPES. )  
23 )  
24 Defendants. )

25 Defendants Alan Elliott and Al's Records and Tapes ("Defendants")  
26 answer the Complaint filed by Aretha Franklin ("Plaintiff") as  
27 follows:  
28

- 25 1. Defendants admit the allegations in Paragraph 1.
- 26 2. Defendants admit the allegations in Paragraph 2.
- 27 3. Defendants admit the allegations in Paragraph 3.
- 28 4. Defendants admit the allegations in Paragraph 4.

*Amended  
Complaint  
Ex. 8*

1 5. Defendants are without knowledge or information sufficient to  
2 form a belief as to the truth of the allegations in Paragraph 5 and  
3 on that basis deny the allegations of Paragraph 5.

4 6. Defendants are without knowledge or information sufficient to  
5 form a belief as to the truth of the allegations in Paragraph 6 and  
6 on that basis deny the allegations of Paragraph 6.

7 7. Defendants are without knowledge or information sufficient to  
8 form a belief as to the truth of the allegations in Paragraph 7 and  
9 on that basis deny the allegations of Paragraph 7.

10 8. Defendants admit the allegations of Paragraph 8.

11 9. Defendants admit the allegations of Paragraph 9.

12 10. Defendants deny the allegations of Paragraph 10.

13 11. A responsive pleading is not required for Paragraph 11. To the  
14 extent that an answer is required, Defendants deny the allegations.

15 12. Defendants admit the allegations of Paragraph 12.

16 13. Defendants admit the allegations of Paragraph 13.

17 14. Defendants deny the allegations of Paragraph 14.

18 15. Defendants admit the allegations of Paragraph 15.

19 16. Defendants are without knowledge or information sufficient to  
20 form a belief as to the truth of the allegations in Paragraph 16 and  
21 on that basis deny the allegations of Paragraph 16.

22 17. Defendants deny the allegations of Paragraph 17.

23 18. Defendants admit the allegations of Paragraph 18.

24 19. Defendants deny the allegations of Paragraph 19.

25 20. Defendants deny the allegations of Paragraph 20.

26 21. Defendants are without knowledge or information sufficient to  
27 form a belief as to the truth of the allegations in Paragraph 21 and  
28 on that basis deny the allegations of Paragraph 21.

1 22. Defendants admit the allegations of Paragraph 22.

2 23. Defendants deny the allegations of Paragraph 23.

3 24. Defendants admit the allegations of Paragraph 24.

4 25. Defendants deny the allegations of Paragraph 25.

5 26. The allegations of Paragraph 26 are an incorporation of the  
6 preceding allegations of the Complaint to which no responsive  
7 pleading is required. To that extent that a response is required,  
8 Defendants deny the allegations of Paragraph 26.

9 27. Defendants deny the allegations of Paragraph 27 to the extent  
10 that it alleges that Defendants are proceeding with the release of  
11 the unauthorized film "Amazing Grace."

12 28. The allegations of Paragraph 28 are conclusions of law to  
13 which no responsive pleading is required. To the extent that a  
14 response is required, Defendants deny the allegations of Paragraph  
15 28.

16 29. Defendants deny the allegations of Paragraph 29.

17 30. Defendants deny the allegations of Paragraph 30 to the extent  
18 that it alleges that Plaintiff will be irreparably injured if the  
19 film is released.

20 31. The allegations of Paragraph 31 are conclusions of law to  
21 which no responsive pleading is required. To the extent that a  
22 response is required, Defendants deny the allegations of Paragraph of  
23 31.

24 32. Defendants deny the allegations of Paragraph 32.

25 33. The allegations of Paragraph 33 are an incorporation of the  
26 preceding allegations of the Complaint to which no responsive  
27 pleading is required. To that extent that a response is required,  
28 Defendants deny the allegations of Paragraph 33.

1 34. Defendants deny the allegations of Paragraph 34 to the extent  
2 that it alleges that Plaintiff claims can effectively show an  
3 exceedingly high probability of success on her Right of Publicity  
4 claim.

5 35. The allegations of Paragraph 35 are conclusions of law to  
6 which no responsive pleading is required. To the extent that a  
7 response is required, Defendants deny the allegations of Paragraph  
8 35.

9 36. Defendants deny the allegations of Paragraph 36.

10 37. Defendants deny the allegations of Paragraph 37 to the extent  
11 that it alleges that the film was released without authorization and  
12 that her identity was used in promotional materials for the release  
13 of the film.

14 38. Defendants deny the allegations of Paragraph 38.

15 39. Defendants deny the allegations of Paragraph 39 to the extent  
16 that it alleges that the projections demonstrate that the film has  
17 been released or that the Defendants intend to release the film.

18 40. Defendants deny the allegations of Paragraph 40.

19 41. Defendants deny the allegations of Paragraph 41.

20 42. Defendants deny the allegations of Paragraph 42.

21 43. Defendants deny the allegations of Paragraph 43.

22 44. Defendants deny the allegations of Paragraph 44.

23 45. Defendants admit the allegations for Paragraph 45.

24 46. Defendants deny the allegations of Paragraph 46 to the extent  
25 that it alleges that consent is required before Defendant can use the  
26 material.

27 47. Defendants deny the allegations of Paragraph 47.

28 48. The allegations of Paragraph 48 are an incorporation of the

1 preceding allegations of the Complaint to which no responsive  
2 pleading is required. To that extent that a response is required,  
3 Defendants deny the allegations of Paragraph 48.

4 49. The allegations of Paragraph 49 are conclusions of law to  
5 which no responsive pleading is required. To the extent that a  
6 response is required, Defendants deny the allegations of Paragraph  
7 49.

8 50. Defendants admit the allegations of Paragraph 50.

9 51. Defendants deny the allegations of Paragraph 51.

10 52. Defendants admit the allegations of Paragraph 52.

11 53. Defendants admit the allegations of Paragraph 53 to the extent  
12 that they do wish to commercially release to the film to the public,  
13 but have not yet released the film and, at this time, do not intended  
14 to release the film without the Plaintiff's authorization.

15 54. Defendants deny the allegations of Paragraph 54.

16 55. Defendants deny the allegations of Paragraph 55.

17 56. Defendants deny the allegations of Paragraph 56.

18 57. The allegations of Paragraph 57 are an incorporation of the  
19 preceding allegations of the Complaint to which no responsive  
20 pleading is required. To that extent that a response is required,  
21 Defendants deny the allegations of Paragraph 57.

22 58. Defendants deny the allegations of Paragraph 58 because  
23 Defendants believe use of the Plaintiff's identity would be  
24 considered a fair use.

25 59. Defendants deny the allegations of Paragraph 59.

26 60. Defendants deny the allegations of Paragraph 60 to the extent  
27 that Plaintiff has engaged in negotiations with the Defendants and  
28 the Defendants believe that this lawsuit is merely a negotiating

1 tactic.

2 61. Defendants are without knowledge or information sufficient to  
3 form a belief as to the truth of the allegations in Paragraph 61.

4 62. Defendants deny the allegations of Paragraph 62.

5 63. Defendants are without knowledge of information sufficient to  
6 form a belief as to the truth of the allegations in Paragraph 63.

7 64. Defendants deny the allegations of Paragraph 64 to the extent  
8 that it alleges that the projections in any way demonstrate that the  
9 film has been released or that the Defendants intend to release the  
10 film.

11 65. Defendants deny the allegations of Paragraph 65.

12 66. Defendants deny the allegations of Paragraph 66 to the extent  
13 that it alleges that consent is necessarily required before the film  
14 can be released and to the extent that it alleges that Defendants  
15 have no rights whatsoever to the footage.

16 67. The allegations of Paragraph 67 are an incorporation of the  
17 preceding allegations of the Complaint to which no responsive  
18 pleading is required. To that extent that a response is required,  
19 Defendants deny the allegations of Paragraph 67.

20 68. The allegations of Paragraph 68 are conclusions of law to  
21 which no responsive pleading is required. To the extent that a  
22 response is required, Defendants deny the allegations of Paragraph  
23 68.

24 69. The allegations of Paragraph 69 are conclusions of law to  
25 which no responsive pleading is required. To the extent that a  
26 response is required, Defendants deny the allegations of Paragraph  
27 69.

28 70. Defendants deny the allegations of Paragraph 70.

1 71. Defendants deny the allegations of Paragraph 71 to the extent  
2 that it alleges that literature demonstrates that Defendants have  
3 released the film or intend to release the film at this time.

4 72. Defendants deny the allegations of Paragraph 72.

5 73. Defendants deny the allegations of Paragraph 73.

6 74. The allegations of Paragraph 74 are an incorporation of the  
7 preceding allegations of the Complaint to which no responsive  
8 pleading is required. To the extent that a response is required,  
9 Defendants deny the allegations of Paragraph 74.

10 75. The allegations of Paragraph 75 are conclusions of law to  
11 which no responsive pleading is required. To the extent that a  
12 response is required, Defendant deny the allegations of Paragraph 75.

13 76. Defendants deny the allegations of Paragraph 76.

14 77. Defendants deny the allegations of Paragraph 77.

15 78. Defendants deny the allegations of Paragraph 78.

16 79. Defendants deny the allegations of Paragraph 79.

17 80. Defendants deny the allegations of Paragraph 80 to the extent  
18 that it alleges that a full and complete release is necessarily  
19 required in order to release the film.

20 81. Defendants deny the allegations of Paragraph 81.

21 82. Defendants deny the allegations of Paragraph 82 to the extent  
22 that it alleges that the projections prove the financial worth of the  
23 film.

24 83. The allegations of Paragraph 83 are an incorporation of the  
25 preceding allegations of the Complaint to which no responsive  
26 pleading is required. To the extent that a response is required,  
27 Defendants deny the allegations of Paragraph 83.

28 84. The allegations of Paragraph 84 are conclusions of law to

1 which no responsive pleading is required. To the extent that a  
2 response is required, Defendants deny the allegations of Paragraph  
3 84.

4 85. Defendants deny the allegations of Paragraph 85.

5 86. Defendants deny the allegations of Paragraph 86.

6 87. Defendants deny the allegations of Paragraph 87 to the extent  
7 that it alleges that the paragraph is applicable to this case.

8 88. Defendants deny the allegations of Paragraph 88.

9 89. Defendants deny the allegations of Paragraph 89.

10 90. Defendants deny the allegations of Paragraph 90 to the extent  
11 that it alleges that the project is worth anything until the film is  
12 set for release, which it currently is not.

13 91. The allegations of Paragraph 91 are an incorporation of the  
14 preceding allegations of the Complaint to which no responsive  
15 pleading is required. To the extent that a response is required,  
16 Defendants deny the allegations of Paragraph 91.

17 92. Defendants deny the allegations of Paragraph 92.

18 93. Defendants deny the allegations of Paragraph 93.

19 94. Defendants deny the allegations of Paragraph 94.

20 95. Defendants deny the allegations of Paragraph 95.

21  
22 **AFFIRMATIVE DEFENSES**

23  
24 **First Affirmative Defense**

25 (Failure to State a Claim)

26 96. Plaintiff's Complaint fails to state a claim upon which relief  
27 may be granted.  
28



1 Therefore, Defendants respectfully requests the following:

2 1. That Plaintiff take nothing by her Complaint and that the  
3 Complaint be dismissed in its entirety with prejudice;

4 2. That Defendants be awarded their costs and attorneys' fees  
5 incurred herein; and

6 3. That Defendants be awarded such other and further relief as  
7 the Court may deem just and proper.

8

9 DATED: November 28, 2011

LAW OFFICES OF GEORGE M. RUSH

10

11

By:           /s/ George M. Rush          

12

13

Attorney for Defendants  
ALAN ELLIOTT, and AL'S RECORDS  
AND TAPES

14

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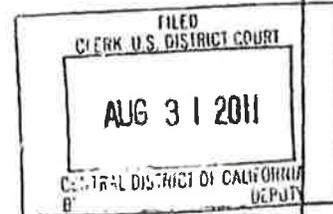
27

28

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10 Local Counsel Kendric V. Rollins  
11 California Bar #170564



12 UNITED STATES DISTRICT COURT  
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 ARETHA FRANKLIN, ) Case No.:  
15 ) Judge  
16 Plaintiff, )  
17 vs. ) EX PARTE APPLICATION FOR  
18 ALAN ELLIOTT, and, AL'S RECORDS ) PRELIMINARY INJUNCTION;  
19 & TAPES, ) MEMORANDUM OF POINTS AND  
20 Defendant ) AUTHORITIES IN SUPPORT

21 TO EACH OF THE ABOVE NAMED DEFENDANTS AND THEIR ATTORNEYS OF  
22 RECORD:

23 PLEASE TAKE NOTICE THAT at (time) on (date), or soon  
24 thereafter as counsel may be heard, in Courtroom 780 of the  
25 Honorable (Judge), located at (name of federal building)  
26 (address of federal building) Plaintiff Aretha Franklin (herein  
27 "Plaintiff") will move for an order for preliminary injunction  
28 prohibiting and restraining the above-captioned defendants from  
infringing upon Plaintiff's rights by releasing or offering for  
sale or publicity any film, documentary, movie or concert which

Amended  
Complaint  
Ex. 9

1 utilizes Plaintiff's image, likeness or voice without her  
2 written and express authorization.

3 This ex parte application is based upon this Notice of  
4 ex parte application, the attached Memorandum of Points and  
5 Authorities, the concurrently filed Declarations of Aretha  
6 Franklin and Rhonda Sturges (See Exhibits B and C, respectively)  
7 thereto, the concurrently filed proposed Order of Preliminary  
8 Injunction, all pleadings and papers on file in this action, and  
9 upon such other matters as may be presented to the Court at the  
10 time of the hearing.

11  
12 Immediately however, Plaintiff request this court issue the  
13 Temporary Restraining Order without written or oral notice  
14 because:

- 15 a. Counsel has reason to believe that the Defendant may  
16 immediately release the film to create a fait  
17 accompli;  
18 b. When counsel asked the Defendant the name of his  
19 attorney, the Defendant declined to answer but stated  
20 he was the best copyright attorney in the country  
without more. Thus, attempting to approach counsel  
prior to filing became impossible.

21 **I. INTRODUCTION**

22 Aretha Franklin, ("Plaintiff") is a legendary vocalist and  
23 musical artist whose fame and international recognition are  
24 arguably unequalled. She is the recipient of eighteen Grammy  
25 Awards, been named the ninth greatest singer of all times by  
26 Rolling Stones Magazine, is an inductee in the Rock & Roll Hall  
27 of Fame, and the solo performer at the inauguration of President  
28

1 Barack Obama.<sup>1</sup> She has been nicknamed the "Queen of Soul,"<sup>2</sup> but  
2 is also renown for her single rhythm & blues, jazz, and relevant  
3 to this suit -- gospel.

4  
5 In 1972, Plaintiff was recorded at New Missionary Baptist  
6 Church in Los Angeles, California, while performing various  
7 musical selections for her bestselling "Amazing Grace" album.  
8 This album is the best selling album in Plaintiff's fifty year  
9 musical recording career and has received the recording  
10 industry's prestigious "double platinum" status. Plaintiff  
11 (together with others) holds a copyright on this album. In  
12 1999, Plaintiff released the *Amazing Grace: The Complete*  
13 *Recordings* with additional material from that concert. This was  
14 also subject to a copyright.

15 The performance was also filmed with the Plaintiff's  
16 consent, but with her understanding that any commercial release  
17 of this recording would be subject to her consent. In fact, the  
18 Plaintiff originally contributed both money and time to an  
19 aborted project to release this concert in video format. Based  
20 on a variety of reasons not relevant to this dispute, Plaintiff  
21 decided not to go forward with that project.

22 The Defendant obtained the deeds to this footage from  
23 Warner Brothers Studios in 2007 through a Quitclaim Agreement  
24 (See Exhibit A) and has since then produced and released a film  
25 entitled "Amazing Grace" for release. The Quit Claim Agreement  
26

27 <sup>1</sup> [http://www.fox.com/celebrity/queen-of-soul/](#) (last visited  
28 August 14, 2011).  
<sup>2</sup> *Id.*

1 directly states that, "in connection to [Defendant's] use of the  
2 material" Defendant "will need to obtain authorization from  
3 [Plaintiff]."

4 The development and production of the Amazing Grace movie  
5 is unquestionably the kind of "use" for which Defendant must  
6 obtain Plaintiff's authorization before releasing. Yet to date,  
7 no such authorization has been granted by Plaintiff to the  
8 Defendant or anyone else and, as such, Plaintiff has not  
9 assigned her rights of publicity to the Defendant or anyone  
10 else.

11  
12 As is stated in the Declaration of Rhonda Sturges, Ms.  
13 Franklin's image and performance is continuously displayed in  
14 this work. Her appearance is central to the documentary.

15 The Defendants efforts to obtain this acknowledgement (See  
16 Exhibit D: Letter from Defendant to Plaintiff & Exhibit E:  
17 Unexecuted Option Contract between Defendant and Plaintiff)  
18 demonstrate awareness on part of the Defendant, that Plaintiff's  
19 authorization is indeed necessary. The Defendant's failure to  
20 obtain Plaintiff's authorization via mutual agreement does not  
21 relieve Defendant of his legal obligation to obtain such  
22 authorization prior to using the material.

23  
24 The Defendants currently have scheduled a private viewing  
25 of the film during the month of August and on information and  
26 belief intend to release the film shortly thereafter. Given  
27 Defendants insistence on producing the film and intending to  
28 release it without Plaintiff's authorization, Plaintiff has no

1 reasonable alternative but to seek a Court Order enjoining  
2 Plaintiff's infringing conduct.

3 Plaintiff can and will demonstrate the likelihood that it  
4 will prevail on its claim for violation of rights of publicity  
5 against Defendant. Plaintiff also faces irreparable harm unless  
6 Defendants are immediately restrained from engaging in the  
7 infringing conduct. Additionally, serious questions are raised  
8 and the balance of hardships tips in Plaintiff's favor.  
9 Plaintiff therefore respectfully requests that its Exparte  
10 Application for Preliminary Injunction be granted.  
11

12  
13 **II. STATEMENT OF FACTS**

14 Plaintiff is a world renowned vocalist and musical artist.  
15 Plaintiff was recorded in 1972 performing several songs from her  
16 album entitled "Amazing Grace." Plaintiff became aware that  
17 Warner Bros had obtained title to these recordings and that in  
18 2007 the Defendant obtained title. Plaintiff never authorized  
19 the 1972 recording of her performance. (See Exhibit B,  
20 Declaration of Aretha Franklin). Plaintiff also never authorized  
21 the use of this footage or the release of a movie based on said  
22 performance. (See Exhibit B).  
23

24 Plaintiff became aware that a movie entitled "Amazing  
25 Grace" was being produced, created, developed, and promoted for  
26 release by the Defendant. Plaintiff did not find the terms of  
27 the initial option contract offered by Defendant amenable and as  
28 a result did not agree to them. Thereafter, Plaintiff became

1 aware that Defendant intended to proceed with the project and  
2 with the release without her consent or authorization. (See  
3 Exhibit B). Plaintiff then filed this action asserting  
4 violation of Publicity Rights against Defendant.

5 **III. PLAINTIFF SATISFIES THE REQUIREMENTS FOR ISSUANCE OF A**  
6 **PRELIMINARY INJUNCTION AND ITS EXPARTE APPLICATION**  
7 **SHOULD BE GRANTED**

8 **A. Legal Standard for Preliminary Injunctions**

9 Plaintiff seeks to enjoin the Defendant from infringing upon  
10 her right of publicity by proceeding with the release of the  
11 unauthorized film "Amazing Grace." Indeed "the usual function of  
12 a preliminary injunction is to preserve the status quo ante  
13 litem pending a determination of the action on the merits."<sup>3</sup> The  
14 Court may grant preliminary injunctive relief to a party who can  
15 demonstrate by preponderance of evidence either: "(1) a  
16 combination of probable success on the merits and the  
17 possibility of irreparable harm; or (2) that serious questions  
18 are raised and the balance of hardships tips in its favor.  
19 [emphasis added] These two formulae represent two points on a  
20 sliding scale in which the required degree of irreparable harm  
21 increases as the probability of success decreases."<sup>4</sup> If then both  
22 of these formulae can be satisfied, then the Plaintiff's exparte  
23 application for injunctive relief should be very compelling. A  
24 "serious question" is one on which the movant "has a fair chance  
25

26 <sup>3</sup> *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 808 (9th  
27 Cir. 1963).

28 <sup>4</sup> *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th  
Cir. 2001) (internal quotation and citation omitted).

1 of success on the merits."<sup>5</sup>

2 In this instance, "the status quo is the last uncontested  
3 status which preceded the pending controversy." Id. Plaintiff  
4 therefore seeks to enjoin Defendant from releasing any film,  
5 documentary, movie or concert footage which involves Plaintiff's  
6 1972 performance at the New Missionary Baptist Church in Los  
7 Angeles California. California's law regarding the Right to  
8 Publicity is governed by its common law and statutory laws which  
9 protect the use of a person's "name, voice...or likeness" Cal.  
10 Civ. Code § 3344(a). Plaintiff can effectively show an  
11 exceedingly high probability of success on her Right of  
12 Publicity claim.

13  
14 **B. Plaintiff Can Establish a High Probability of Success for**  
15 **Violation of the Common Law Right of Publicity Claim.**

16 California common law recognizes this right of publicity in a  
17 person's name, likeness and identity.<sup>6</sup> While California also has  
18 a statutory provision to govern the right of publicity, the  
19 common law governs a broader range and more expansive scope of  
20 interests.<sup>7</sup> The elements of the right of publicity claim at  
21 common law are "(1) the defendant's use of Plaintiff's identity;  
22 (2) the appropriation of plaintiff's name or likeness to  
23 defendant's advantage, commercial or otherwise; (3) lack of  
24

25 <sup>5</sup> *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415,  
26 1421 (9th Cir. 1984).

27 <sup>6</sup> See *Midler v. Ford Motor Company*, 849 F.2d 460, 462 (9th Cir.  
1988).

28 <sup>7</sup> See *White v. Samsung Electronics America, Inc.*, 971 F.2d 1395,  
1397-99 (9th Cir. 1992).

1 consent; and (4) resulting injury."<sup>8</sup>

2  
3 There is no question that the Defendant "used" the Plaintiff's  
4 identity or likeness. Not only was the Plaintiffs identity used  
5 in the film which was released without authorization, but it was  
6 also used in promotional materials as well (See Exhibit F).  
7 Equally evident is the fact that the Defendant, a producer, has  
8 been and will continue to be advantaged from the appropriation,  
9 or more accurately, the misappropriation of the Defendant's name  
10 or likeness. Firstly, the Defendant will and indeed already has  
11 been economically advantaged by releasing the film itself. On  
12 information and belief the Plaintiff has gained hundreds of  
13 thousands of dollars and stands to gain tens of millions of  
14 dollars through the continued and unauthorized use of the  
15 Defendant's name and likeness. Even the Defendant's own modest  
16 projections which were provided to the Plaintiff during a failed  
17 negotiation attempt project revenues exceeding two million  
18 dollars. (See Exhibit A). These substantial economic gains  
19 represent a significant advantage that the Defendant has  
20 obtained through the misappropriation of the Plaintiff's name  
21 and likeness.

22  
23 Additionally, the advantages that the Defendant has gained and  
24 continues to gain exceed those strictly economic in nature and  
25 include the commercial advantages of enhancing the defendant's  
26 resume, professional repute and industry clout which in turn  
27 leads to further commercial opportunities. Indeed the

28 <sup>8</sup> Eastwood, 198 Cal. Rptr. at 347.

1 Defendant's own efforts to secure an agreement with the  
2 Plaintiff include furnishing a curriculum vitae listing his work  
3 with other celebrities, seemingly an effort to sell the  
4 Plaintiff on his prominence or status.<sup>9</sup> On information and  
5 belief, the Defendant's production and unauthorized release of  
6 *Amazing Grace* has and will continue to serve this same purpose  
7 of bolstering the Defendant's resume, repute and clout for  
8 commercial purposes. Accordingly, the defendant is benefiting  
9 from the misappropriation of the Plaintiff's name and likeness  
10 indirectly as well as in ways not limited to economics at all.

11  
12 The third element at common law is satisfied by the clear and  
13 undeniable fact that the Defendant never obtained the  
14 Plaintiff's consent to release the movie. The Defendant's quick  
15 claim agreement with Warner Bros wherein he purchased the deeds  
16 of the footage originally owned by the late Sidney Pollack,  
17 clearly indicates that the Defendant must obtain consent from  
18 the Plaintiff before he uses the material (See Exhibit H: Quick  
19 Claim Agreement include Paragraph reference). Initially, the  
20 Defendant seemed to recognize the need to obtain the Plaintiff's  
21 authorization because he made efforts—albeit unsuccessful—to  
22 obtain the Plaintiff's consent. (See Exhibit E: Proposed Option  
23 Contract offered to Plaintiff). Notwithstanding these efforts,  
24 a fair and mutually beneficial agreement was never established.  
25 Hence, the Defendant is not able to abandon negotiations and  
26 violate the Plaintiff's rights of publicity merely because the

27  
28 <sup>9</sup>See Exhibit G: Curriculum Vitae/Bio.

1 Defendant was unable to offer terms that the Plaintiff was  
2 amenable to.

3  
4 The fourth element, injury, is satisfied because Plaintiff's  
5 revenue resulting from the use of the name, voice and likeness  
6 of Plaintiff deprives Plaintiff of money she could make by  
7 exploiting her own right to publicity independently or through  
8 licenses. Additionally, the substantial revenues which the  
9 Plaintiff has received as a result of releasing this film amount  
10 to injury to the Plaintiff which demonstrates a likelihood of  
11 success on the merits of its claim for violation of the  
12 California common law and statutory right to publicity.

13 **\*. Plaintiff Can Prevail on Her Anti-Bootlegging Claim.**

14 In addition to standard common law copyright protections,  
15 the United States Congress has passed a specific statute  
16 protecting against the distribution of bootleg concert videos.

17 17 U.S.C. Sec. 1101(1) provides in pertinent part:

19 (a) Unauthorized Acts.--Anyone who, without  
20 the consent of the performer or performers  
involved--

21 (1) fixes the sounds or sounds and images of  
22 a live musical performance in a copy or  
23 phonorecord, or reproduces copies or  
24 phonorecords of such a performance from an  
unauthorized fixation,

25 (2) transmits or otherwise communicates to  
26 the public the sounds or sounds and images  
of a live musical performance, or

27 (3) distributes or offers to distribute,  
28 sells or offers to sell, rents or offers to

1           rent, or traffics in any copy or phono  
2           record fixed as described in paragraph (1),  
3           regardless of whether the fixations occurred  
4           in the United States, shall be subject to the  
5           remedies provided in sections 502 through  
6           505, to the same extent as an infringer of  
7           copyright.

8           This Court in *Kiss Collection, LTD v. Passport International*  
9           *Productions*, 405 F. Supp. 2d 1169 (C.D. Cal. 2005) ruled that  
10          this law protects recordings of broadcast which may have been  
11          lawfully made in the first instance, but then distribution in  
12          violation of the performer's permission. The Court further held  
13          that the statute protects the artist even where the recording  
14          predates the effective date of the act, but was distributed  
15          afterwards. The Court also turned back a constitutional  
16          challenge to the statute.

17          This case is local precedent and directly on point. Ms.  
18          Franklin has an excellent chance of prevailing.

19          **\*. Plaintiff Can Establish a High Probability of Success on**  
20          **Her Breach of Contract Claim.**

21          Ms. Franklin has a highly viable breach of third-party  
22          beneficiary contract claim.<sup>10</sup> California state law recognizes  
23          that a party can be a third party beneficiary to a contract and

24  
25          <sup>10</sup> 'A cause of action for damages for breach of contract is  
26          comprised of the following elements: (1) the contract, (2)  
27          plaintiff's performance or excuse for nonperformance, (3)  
28          defendant's breach, and (4) resulting damages to plaintiff.'  
        "(Durell v. Sharp Healthcare , 183 Cal.App.4th 1350, 1367,  
        italics omitted.)

1 could have standing to sue. <sup>11</sup> Here the contract provided that  
2 Ms. Franklin's consent was required for the Defendant to  
3 proceed. Defendant ignored this requirement, constructed a  
4 flawed theory why Ms. Franklin's interest in her performance  
5 were unprotectable and decided to proceed without her consent.

6  
7 Mr. Elliott took the performance subject to a Quit Claim  
8 Agreement from Warner Brothers. Whatever interest they may have  
9 had in the performance was being relinquished. The clause  
10 requiring Ms. Franklin's consent was not a proxy for saying that  
11 it was Mr. Elliott's problem to find a way to deal with the  
12 issue in any legal way he saw fit. It was saying that he needed  
13 to get Aretha Franklin on board with the agreement. If Warner  
14 Brothers was happy with allowing Mr. Elliott to go around Ms.  
15 Franklin, there would have been no need for this clause.

16  
17 This Court must enforce the contract as written.<sup>12</sup> Here,  
18 Warner Brothers was concerned with protecting both the rights of  
19 Ms. Franklin and her good will. It correctly made a decision to  
20 grant her contractual power to refuse this agreement. She has  
21 done so and her wishes should be honored.

22  
23 This Court cannot "unring the bell." Ms. Franklin has made  
24 the decision that she does not wish this performance being  
25

26 <sup>11</sup> *RGIS LLC v Bank of America, NA*, 20LL 1991989 (Cal App 2d Dist,  
2011)

27 <sup>12</sup> *Founding Members of the Newport Beach Country Club v. Newport*  
28 *Beach Country Club, Inc.*, 109 Cal.App.4th 944, 955, 135  
Cal.Rptr.2d 505 (2003).

1 introduced into the public stream at this time. Without an  
2 injunction, the damage will be done.

3  
4 **C. Plaintiff Can Establish a High Probability of Success for**  
5 **the Violation of the Statutory Right of Publicity Claim**  
6 **Pursuant to Cal Civ. Code § 3344**

7 The California legislature has created a statutory right of  
8 publicity in a person's "name, voice, signature, photograph, or  
9 likeness." Cal. Civ. Code § 3344(a). California law not only  
10 provides for the protection of publicity rights through an  
11 action for damages but Plaintiff may also seek enjoinder from  
12 the exploitation of her rights of publicity.<sup>13</sup> In addition to the  
13 four elements required under common law the statutory law  
14 imposes two additional requirements, (5) a *knowing* use of the  
15 Plaintiff's name, photograph or likeness and (6) a direct  
16 connection between the use and the commercial purpose. *Id.*

17 There is absolutely no question that the Defendant's use of  
18 the Plaintiff's name or likeness was "knowing." In fact, the  
19 appropriation of the Plaintiff's name, likeness and voice in  
20 *Amazing Grace* constitute the very basis of the movie and  
21 producing it was a project years in the making that required  
22 conscious and deliberate intent. The Plaintiff's *Amazing Grace*  
23 album is her bestselling album of all time hence the use of her  
24 name, voice and likeness on the *Amazing Grace* movie represents  
25 an extremely lucrative opportunity, and one which was sought  
26 after with intent. It is not only unreasonable to believe that

27 <sup>13</sup> See *Lugosi v. Universal Pictures*, 25 Cal. 3d 813, 160 Cal.  
28 Rptr. 323, 328, 603 P.2d 425 (Cal. 1979); *Eastwood*, 198 Cal.  
Rptr. at 348.

1 the Defendant could have used the Plaintiff's name or likeness  
2 unknowingly but it is practically impossible. Here again the  
3 Defendant's efforts to negotiate a deal with the Plaintiff to  
4 release her rights demonstrate his knowledge that he would in  
5 fact be using her name and likeness. (Exhibit D).

6  
7 Satisfying this last element of rights of publicity under  
8 statutory law requires a brief look at the connection between  
9 the use of the name or likeness and the commercial purpose. As  
10 elsewhere stated, the appropriation of the Plaintiff's name,  
11 likeness and voice constitute the very basis of the movie. The  
12 Plaintiff's world renown fame and international recognition as  
13 the "Queen of Soul" solidify the connection between the use and  
14 the commercial purpose. The Defendant utilized the name, the  
15 likeness and the voice of the Plaintiff to create and offer for  
16 sale a movie which is about the Plaintiff and one of her  
17 critically acclaimed performances. The connection between the  
18 use and the commercial purpose is not only direct but immediate.  
19 No stretch of proximity is required to establish the connection  
20 between using the Plaintiff's name, likeness and voice to sell a  
21 movie which is itself based on the Plaintiff's name, likeness  
22 and voice. Furthermore, by offering for sale a movie based on  
23 Plaintiff's recorded performances without authorization  
24 Defendant is "using" the likenesses for commercial purposes.  
25 Accordingly, the Plaintiff has satisfied all of the elements for  
26 the statutory law governing right of publicity.

27 The fourth element, injury, is satisfied because Plaintiff's  
28 revenue resulting from the use of the name, voice and likeness

1 of Plaintiff deprives Plaintiff of money she could make by  
2 exploiting her own right to publicity independently or through  
3 licenses. Hence the statutory elements are satisfied. Defendant  
4 knew that he was using Plaintiff's name and likeness in a manner  
5 central to commercial purposes as evidenced by, inter alia, his  
6 attempt to enter into a contractual agreement with Plaintiff to  
7 that very end. Plaintiff has demonstrated a likelihood of  
8 success on the merits of its claim for violation of the  
9 California common law and statutory right to publicity.

10 **D. Plaintiff Can Establish a High Probability of Success for**  
11 **the Unjust Enrichment Claim**

12 California courts have long recognized a cause of action based  
13 on unjust enrichment.<sup>14</sup>

14 By Defendant's wrongful acts and omissions, Defendant has  
15 unjustly enriched himself at the expense, and to the detriment,  
16 of the Plaintiff. The Defendant has violated and continues to  
17 violate the Plaintiff's rights of publicity through his release  
18 and continued promotion of *Amazing Grace*. The release of this  
19 film has lead to substantial economic gains by the Defendant  
20 (See Exhibit A: Revenue Projections) which Defendant is not  
21 entitled to receive. Additionally, by presenting the film as if  
22 it was authorized by the Plaintiff and by promoting and  
23 releasing said film, Defendant has also boosted his reputation  
24 and recognition in the industry which invariably leads to  
25 further opportunities to be unjustly enriched and to exploit the  
26

27 <sup>14</sup> *Western Pac. R. Corp. v. Western Pac. R. Co.*, 206 F.2d 495,  
28 498 (9th Cir. 1953); *Lectrodryer v. SeoulBank*, 77 Cal.App.4th  
723, 726 (2000).

1 name, image and voice of the Plaintiff without her  
2 authorization. Although, Defendant may own the deeds to the  
3 footage, he has not obtained Plaintiffs full and complete  
4 release and authorization to use the material.

5 By releasing Amazing Grace without authorization and using it  
6 for commercial purposes, the Defendant has gained hundreds of  
7 thousands of dollars to date and has also led to an amount in  
8 controversy which far exceeds \$75,000.00.

9  
10 **E. Plaintiff Can Establish Irreparable Harm for relief for**  
11 **Violation of Right of Publicity at Common Law and per State**  
**Statute**

12 Several courts have held that a celebrity's property interest  
13 in his or her name and likeness is unique, and cannot reasonably  
14 be compensated by money damages.<sup>15</sup> Thus Defendant's unauthorized  
15 use of Plaintiff's name, voice and likeness is per se causing  
16 irreparable harm. Additionally, Defendant's disregard to  
17 Plaintiffs rights of publicity and insistence on releasing a  
18 movie without authorization undermine the value of a celebrity's  
19 property interest in his or her name or likeness. The market for  
20 the publicity rights would collapse and the rights themselves  
21 would be rendered valueless without the ability of the law to  
22 adequately protect them through injunctions. Punishing  
23 violations of publicity rights after the fact through damages  
24 cannot effectively enforce the law in this respect to the same  
25 degree that issuing an injunction can and often does.

26  
27 <sup>15</sup> See *Ali v. Playgirl, Inc.*, 447 F. Supp. 723, 729 (S.D.N.Y.  
28 1978); *Uhlaender v. Henricksen*, 316 F. Supp. 1277, 1283 (D.  
Minn. 1970); see generally 1 J. Thomas McCarthy, *Rights of*  
*Publicity & Privacy* § 11.6[B] (1997).

1           **F. Plaintiff Can Establish Irreparable Harm regarding Unjust**  
2           **Enrichment claim**

3           The Plaintiff brought this cause of action before the court  
4 because the Defendant completely disregarding her rights of  
5 publicity after failing to come to an agreement regarding her  
6 release. Because the Defendant moved full speed ahead without  
7 regard to the rights or the interest of the Plaintiff and  
8 unlawfully and illegally released "Amazing Grace", all proceeds  
9 directly or indirectly attributable to the release have been  
10 obtained unjustly. The enrichment that the Defendant has  
11 received has caused irreparable harm to the Plaintiff in that  
12 they preclude the Plaintiff from receiving such funds under a  
13 legal agreement should one have been entered. The Defendant has  
14 no right to the proceeds from a movie which was released without  
15 the full and complete authorization of the Plaintiff and hence  
16 any and all revenues, particularly those which constitute a  
17 profit represent irreparable harm to the Plaintiff.

18           **G. Plaintiff Can Demonstrate That Serious Questions Are Raised**  
19           **and the Balance of Hardships Tips in Plaintiff's Favor**

20  
21           A preliminary injunction may be granted if serious questions  
22 are raised sufficient to require litigation and the balance of  
23 hardships tips in favor of Plaintiff.<sup>16</sup> A "serious question" is  
24 one on which the moving party "has a fair chance of success on  
25 the merits."<sup>17</sup> Even from a cursory review it is evident that

26  
27 <sup>16</sup> *Miss Universe, Inc. v. Flesher*, 605 F.2d 1130, 1134, 204 USPQ  
354, 357-358 (9th Cir. 1979).

28 <sup>17</sup> *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415,  
1421 (9th Cir. 1984).

1 Plaintiff has raised serious questions in this lawsuit and by  
2 this motion which have a substantial probability of success.  
3 Plaintiff can also demonstrate that the balance of hardships  
4 sharply favor the Plaintiff.

5 If the exparte application for preliminary injunction is not  
6 granted the rights of publicity which are currently being  
7 ignored and disregarded will lose further commercial value.  
8 Without the court enjoining the Defendant from his injurious  
9 conduct, the very scope and purpose of publicity rights would be  
10 further undermined. Specifically, in a market where supply and  
11 demand dictate value, failing to protect the rights of publicity  
12 leads to oversaturation of publicity and undermines the value of  
13 the rights to the publicity itself.

14  
15 On the other hand, if the preliminary injunction exparte  
16 application is granted, there will be little to no material harm  
17 to Defendant, other than forgoing the opportunity for revenues  
18 which he was never entitled to receive. The balance of hardships  
19 weighs in Plaintiff's favor and accordingly, this Motion for  
20 Preliminary Injunction must be granted.

21 Defendants' took what little interest they pay possess in  
22 the videos in question by virtue of a "quit claim" agreement  
23 which purported to convey only what interest Warner Brother  
24 Studios might possess. The agreement also expressly placed them  
25 on notice that Warner Brothers was not warranting any interest  
26 it might have in the agreement. More importantly in Paragraph 2  
27 of the agreement Defendant expressly agreed to obtain Ms.  
28

1 Franklin's consent. Defendants tried to obtain this agreement  
2 and failed. They cannot claim that there was detrimental  
3 reliance on this agreement. In fact, there failure to comply  
4 with this condition may operate as a forfeiture of any rights  
5 they may have under the agreement.

6  
7 **H. Defendants' Probable "Fair Use" Defense Is Unlikely to**  
8 **Prevail.**

9 During prefiling communication with Defendant Elliot, he  
10 told counsel that he believed that his production fell within  
11 the fair use exception.<sup>18</sup>

12  
13 <sup>18</sup> The fair usage exception to federal copyright law is contained  
14 in 17 U.S.C. Sec. 107 which provides:

15 Notwithstanding the provisions of sections  
16 106 and 106A, the fair use of a copyrighted  
17 work, including such use by reproduction in  
18 copies or phonorecords or by any other means  
19 specified by that section, for purposes such  
20 as criticism, comment, news reporting,  
21 teaching (including multiple copies for  
22 classroom use), scholarship, or research, is  
23 not an infringement of copyright. In  
24 determining whether the use made of a work  
25 in any particular case is a fair use the  
26 factors to be considered shall include--

27 (1) the purpose and character of the  
28 use, including whether such use is of a  
commercial nature or is for nonprofit  
educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of  
the portion used in relation to the  
copyrighted work as a whole; and

1 It is important to stress that the use at issue is not the  
2 use of a few seconds or even minutes of the Plaintiff's  
3 performance. Plaintiff was provided a prerelease copy of the  
4 DVD and the same has been viewed by the undersigned counsel.  
5 The overwhelming percentage of this production consists of  
6 video of the Plaintiff's award winning performance.

7 The Ninth Circuit enjoined a video-graphic unauthorized  
8 biography of the recording artist Elvis Presley in a case very  
9 similar to the instant case. In *Elvis Presley Enterprises v*  
10 *Passport Video*, 349 F3d 622 (9<sup>th</sup> Cir. 2003), the Court heard an  
11 appeal from the grant of a preliminary injunction on this video.  
12

13 Defendants produced an unlicensed 16 hour video documentary  
14 about the life of Elvis Presley. The biography was extensive.  
15 It included over 200 interviews with various individuals about  
16 Elvis' life and went through his life in chronological order.  
17 The video also used numerous hours of copyrighted video in a  
18 variety of ways. Some of the usages were voiced over video  
19 images of Elvis speaking on TV while the commentator provided  
20 narration. The Court also noted that 5% to 10% of the album  
21 used copyrighted materials. In that footage, however, was a  
22 nearly one minute uninterrupted clip of Elvis Presley performing  
23 "Hound Dog" on the Steve Allen Show. *Id.* at 625-626.

24 (4) the effect of the use upon the  
25 potential market for or value of the  
26 copyrighted work.

27 The fact that a work is unpublished shall  
28 not itself bar a finding of fair use if such  
finding is made upon consideration of all  
the above factors.

1           The Ninth Circuit first rejected that defendant's claims  
2 that a preliminary injunction would be a First Amendment  
3 violation. The Court found that the First Amendment arguments  
4 are "subsumed in the within the fair usage inquiry." *Id.* at  
5 626. The Court then held that the Plaintiff did not wait too  
6 long to file the suit when they filed the same within two months  
7 of release of the video. *Id.* at 626. Here, the documentary has  
8 not been officially released. On information and belief, there  
9 may have been one showing and several "screener copies" of the  
10 video released to critic. It has not been released to the  
11 general public.

12           The Ninth Circuit distinguished this Court's prior ruling  
13 in *Trust Co. Bank v. Putnam Publishing Group*, 5 U.S.P.Q.2d 1874  
14 (C.D. Cal, 1988). There, the Court held that the Defendant may  
15 have waited too long where it had full knowledge of the content  
16 of the infringing book for over two years before they brought  
17 suit. While Plaintiff had some knowledge that Defendant Elliot  
18 was producing this video, she was not aware that was little more  
19 than a verbatim broadcast of the original event until she saw  
20 the same. By definition, it is almost impossible to tell if  
21 someone has exceeded the fair use doctrine until he/she has seen  
22 the video.

23  
24           The Court also considered the non-dispositive factor that  
25 the Defendant was using the material for profit. The Court  
26 stated that the factor is "not controlling," but weighs against  
27 a finding of fair use. The Court also said that degree which  
28 the new user exploits copyright for commercial gain-as-opposed

1 to incidental use as part of a commercial enterprise-affects the  
2 weight we afford commercial nature as a factor.<sup>19</sup> Here the  
3 venture is entirely commercial.

4       The work is not transformative. The work is little more  
5 than a video recording of the Plaintiff's long released  
6 performance. The Court distinguished a New York Court's ruling  
7 in *Monster Communications, Inc. v. Turner Broadcasting System*,  
8 935 F. Supp. 490, 491 (S.D. N.Y. 1996) where the Court upheld  
9 two minutes worth of copywritten video as part of a biography on  
10 the life of boxer Muhammad Ali.

11  
12       The *Elvis Presley Enterprises* Court also asked the question  
13 whether the purpose of the film was to "recreate the creative  
14 expression reposing in [the original work]." That is precisely  
15 the purpose of the film. At trial, Plaintiff intends to  
16 demonstrate that some purchasers of this film may do so as an  
17 alternative to purchasing her copywritten *Amazing Grace* albums.

18       It should be noted that the Plaintiff ultimately obtained  
19 summary judgment in the *Elvis Presley* suit. A copy of Judge  
20 Lew's order is attached Exhibit I. Judge Lew stated that when  
21 viewed as a whole, the production of the video "drastically"  
22 diluted the value of the Plaintiff's copyright. Here, this  
23 video will do precisely the same thing.

24  
25       The fact that the Plaintiff chose to record her album  
26 before a large audience does not constitute an abandonment of

27  
28 <sup>19</sup> *Id.* at 627 (quoting *Harper & Row Publishers v Nation Enter.*,  
471 U.S. 539, 562, 105 S Ct 2218, 85 Led 2d 588 (1985)).

1 her copyright in this performance. As the United States Supreme  
2 Court recognized in *Ferris v Frohoman*, 223 U.S. 424 (1912):  
3 "the public representation of a dramatic composition, not  
4 printed and published, does not deprive the owner of his common-  
5 law right... The public performance of the play is not an  
6 abandonment of it to the public."

7 This Court should grant the preliminary injunction at  
8 issue.

9  
10 **I. Only a Pro Forma Bond Should be Required for Security.  
11 The Two Week Delay of a Movie of a Forty Year Old  
12 Event is Not Likely to Create Substantial Damages.**

13 This Exparte Application seeks to enjoin by two weeks the  
14 release of a movie of a forty year old event. At that time,  
15 there will be a hearing and there will be presumably more  
16 exposure to the possible damages that the Defendant may suffer.  
17 As of today, Plaintiff can only speculate about the damages  
18 because  
19 the film about the Plaintiff and her concert was produced  
20 without any input from her.

21 Counsel requested information from the Defendant, but they  
22 have been guarded in the information they released. Defendants  
23 would provide counsel with the name of their counsel so he has  
24 not been able to talk to counsel. Defendants provided counsel  
25 with a copy of their Quit Claim agreement with Warner Brothers,  
26 but redacted critical passages from the agreement. Counsel  
27  
28

1 cannot tell at this time whether the Defendants have booked  
2 theaters, whether they have contracts with liquidated damages,  
3 or many of the other factors associated with determining the  
4 amount of damages.

5 Counsel has looked through the various movie database and  
6 does not see any release dates for the movie. Defendant Eliot's  
7 blog entries are also not up to date. If they are planning an  
8 October release, the injunction will cost them no damages. If  
9 there are real and substantial damages, counsel for the  
10 Defendants can provide the Plaintiff with this evidence prior to  
11 the hearing date and the matter can be addressed at the  
12 preliminary injunction hearing. A Declaration from Counsel about  
13 this is attached.  
14  
15

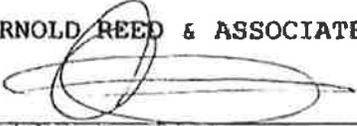
16 The purpose of a bond is to protect the Defendant from the  
17 harm associated with  
18 a wrongfully issued TRO. *Commerce Tankers Corp v Nat'l Mar*  
19 *Union of Am, AFL-CIO*, 553 F2d 793 (2d Cir 1977). Since it is  
20 unlikely that the Defendant will suffer a real or appreciable  
21 harm, this Court should set a pro forma bond. If the Defendants  
22 produce evidence proof of clear damages relating to the delay in  
23 releasing their film, this Court can adjust it. Counsel,  
24 however, suspects that there will not be clear damages. Again,  
25 we are talking about footage which is nearly forty years old.  
26  
27  
28

1 **IV. CONCLUSION**

2  
3 Although the crux of Plaintiff's concerns hinges on the  
4 violation of her rights of publicity both at common law and  
5 statutorily, the Defendant has also been unjustly enriched at  
6 the expense of the Plaintiff and has violated contractual  
7 obligations to which Ms. Franklin is a third party beneficiary.  
8 It is also noteworthy to consider that Plaintiff never  
9 authorized the recordings to begin with. As such this exparte  
10 application for a preliminary injunction seeks to preclude the  
11 Defendant from exploiting rights which have already been  
12 disregarded. Plaintiff therefore seeks an order of preliminary  
13 injunction requiring Defendant to refrain from releasing the  
14 film "Amazing Grace" without Plaintiff's full and complete  
15 release and authorization.

16 Dated this August 30, 2011

Respectfully submitted,  
ARNOLD REED & ASSOCIATES

17  
18   
19 \_\_\_\_\_  
20 ARNOLD E. REED  
21 Attorney for Plaintiff  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT A**

**Amazing Grace Gross Revenue Projections**

Source	Amount	Details
Theatrical		
HBO Domestic Television Broadcast	\$ 200,000.00	Based on similar projects
PBS Domestic Television Broadcast	\$ 125,000.00	
Foreign Television Broadcast	\$ 992,500.00	TBD
Domestic DVD Release	\$ 1,089,630.00	\$6 Wholesale Per Unit. 181,605 Units
International DVD Release	\$ 454,010.00	\$5 Wholesale Per Unit 90,802 Units (50% of Domestic Units)
Broadband Distribution	\$ 32,375.00	
<b>TOTAL PROJECTED GROSS REVENUE</b>	<b>\$ 2,893,515.00</b>	

**Foreign Television Broadcast Projection Details:**

Major Foreign Territories	Documentary Release
Germany	\$ 25,000.00
United Kingdom	\$ 700,000.00
France	\$ 25,000.00
Italy	\$ 20,000.00
Spain	\$ 20,000.00
Netherlands	\$ 15,000.00
Scandinavia	\$ 20,000.00
Belgium	\$ 15,000.00
Austria	\$ 15,000.00
Russia	\$ 25,000.00
Poland	\$ 15,000.00
Czech Republic	\$ 5,000.00
Hungary	\$ 7,500.00
Canada	\$ 25,000.00
Japan	\$ 20,000.00
Australia	\$ 20,000.00

Mexico	\$ 10,000.00
Brazil	\$ 10,000.00
<b>TOTAL</b>	<b>\$ 992,500.00</b>

<b>Domestic DVD Release</b>		
<b>2006 LONGFORM MUSIC DVD UNIT SALES DISTRIBUTION (U.S. AND CANADA)</b>		
<b>Title</b>	<b>Tracked Units</b>	<b>Total Estimated Units</b>
Farewell Tour Live From Melbourne - Eagles	570,788	1,038,834
Under The Desert Sky - Andrea Bocelli	458,913	835,222
Greatest Hits - Creed	423,264	770,340
Pulse - Pink Floyd	355,930	647,793
We Are the Laurie Berkner Band - Laurie Berkner	285,439	519,499
Information - Beck	282,380	513,932
Past, Present & Future - Zombie Rob	231,646	421,596
Kissology 1974-1977 V1 - Kiss	166,330	302,721
Live at Donington - AC/DC	156,034	283,982
Caught In the Act - Michael Buble	146,959	267,465
Best of Pantera Far Beyond - Pantera	146,935	267,422
Silence in Black and White - Hawthorne Heights	145,318	264,479

Encore - Il Divo	141,777	258,034
Live in Atlanta - Destiny's Child	139,451	253,801
Live at the Greek - Il Divo	124,036	225,746
Family Jewels - AC/DC	123,471	224,717
Bullet in a Bible - Green Day	123,258	224,330
Live at Woodstock - Jimi Hendrix	121,789	221,656
Long Road Home - John Fogerty	120,519	219,345
Number Ones - Michael Jackson	120,216	218,793
Rock of Ages - Def Leppard	115,877	210,896
Greatest Hits 1978-1997 - Journey	109,353	199,022
Vertigo/2005: Live From Chicago - U2	106,418	193,681
Tour Generacion en Vivo - RBD	102,254	186,102
Music & Passion Live From Las Vegas - Barry Manilow	100,452	182,823
Live at Montreux 1994 - Johnny Cash	99,114	180,387
Live at the Rainbow - Bob Marley & the Wailers	98,339	178,977
Elvis: '68 Comeback - Elvis Presley	98,220	178,760
Led Zeppelin DVD - Led Zeppelin	95,550	173,901
Live at Wembley '86 - Queen	86,094	156,691
Live at Wrigley Field - Jimmy Buffet	85,219	155,099
Videos 1989-2004 - Metallica	85,022	154,740
Elvis Aloha From Hawaii - Elvis Presley	84,934	154,580
Anywhere But Home - Evanescence	84,672	154,103
R30 - Rush	82,093	149,409
Space Within US - Paul McCartney	78,910	143,616
Collision Course - JayZ/Linkin Park	75,855	138,056
I'm Going to Tell You a Secret - Madonna	72,929	132,731
American Classic - Tony Bennett	72,789	132,476

Eric Clapton Crossroads Guitar - Eric Clapton	69,645	126,754
Replay X3 - Rush	66,845	121,658
Live in Bucharest - Michael Jackson	66,308	120,681
Livin' Right Now - Keith Urban	65,460	119,137
Celtic Woman - Celtic Woman	65,011	118,320
Trapped in the Closet Chapters - Kelly R. Live by Request - Santana	62,555	113,850
Live From Austin Texas - Johnny Cash	62,277	113,344
Life on the Murder Scene - My Chemical Romance	59,987	109,176
Whiskey on a Sunday - Flogging Molly	59,248	107,831
Freak 'n Roll Into the Fog - Black Crowes	58,760	106,943
	57,868	105,320
<b>Total Top 50 Titles</b>		<b>12,398,770</b>
<b>Average</b>		<b>247,975</b>
<b>Median</b>		<b>181,605</b>

(1) Nielsen VideoScan data does not track sales at several major retailers including Wal-Mart, Target and Toys-R-Us. It is estimated that these omitted retailers account for 40% - 50% of the DVD sell-through market. Raw units were therefore multiplied by a factor of 1.82 to approximate total estimated units sold in the U.S. and Canada.

<b>Broadband Distribution</b>	
Encoding Costs	\$ 5,000.00
Estimated Retail Price Per Download	\$ 2.99
Retailer Split	\$ 0.49
Wholesale Price	\$ 1.50
Number of Downloads	\$ 25,000.00
<b>TOTAL</b>	<b>\$ 32,375.00</b>

<b>Theatrical Revenue</b>	
<i>Similar Films:</i>	
<b>Film</b>	<b>Domestic Gross Year Released</b>
Lightning In A Bottle	2004
A Great Day In Harlem	1994
The Last Waltz (2nd release)	1978
End of the Century: the Ramones	2003
Sketches of Frank Gehry	2005
Shut Up and Sing	2006
Standing in the Shadows of Motown	2002
Woodstock	1970
Buena Vista Social Club	1999
	\$ 201,000.00
	\$ 527,000.00
	\$ 325,000.00
	\$ 392,000.00
	\$ 435,000.00
	\$ 1,210,000.00
	\$ 1,600,000.00
	\$13,300,000.00
	\$18,000,000.00

**Amazing Grace Budget**

**4.25.8**

Laser Pacific HD dailies transfers,conforms	\$	175,832.00	
Technicolor Sound services	\$	104,384.00	
Potential costs for Synch Licenses	\$	100,000.00	
Royalty advances for DVD			TBD
Legal fees, clearances, ETC	\$	40,000.00	
Film and finish interviews	\$	80,000.00	
Film Editor	\$	80,000.00	
Film Editor assistant	\$	28,128.00	
line producer	\$	50,000.00	
avid/labor/	\$	24,000.00	
petty cash/rentals (all)/ tape stock/ incidentals	\$	10,000.00	
Directorial Costs			TBD
Screenings			TBD
Production assistants	\$	52,000.00	
office space	\$	24,000.00	
Continuity (spotting script)	\$	12,500.00	
Sound License Fees	\$	12,500.00	
Trailer or marketing Materials			TBD
Optical Soundtrack			TBD
Producer Fees- Herb Jordan/Alan Elliott	\$	200,000.00	
subtotal	\$	993,344.00	
10% overage	\$	99,334.40	
<b>total</b>	<b>\$</b>	<b>1,092,678.40</b>	

**Film Editor (16 weeks at \$5000/ week)**

**Film Editor assistant (16 weeks at \$1758/ week)**

**And this does not include theatrical -**

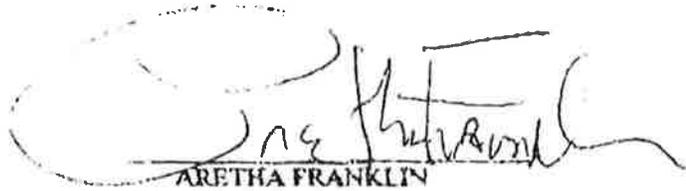
## **EXHIBIT B**

**Declaration**

I, Aretha Franklin, do hereby swear and affirm that if called upon to testify, I would testify to the following including but not limited to:

- a. That in 1972, I did a live recording of my album Amazing Grace at the New Missionary Baptist Church in Los Angeles, California.
- b. That the recording of this album was videotaped.
- c. That Mr. Alan Elliott, owner of Al's Tapes and Records claims to have purchased the rights to the film or footage of my 1972 performance at the New Missionary Baptist Church in Los Angeles, California.
- d. That I have never given permission or entered into any agreement, verbal, written or otherwise with Alan Elliott, Al's Tapes & Records or any entity to exploit my name and or likeness for commercial purposes with regards to the "Amazing Grace" movie, or any film or footage of my 1972 performance at the New Missionary Baptist Church in Los Angeles, California.
- e. That in spite of not having prior authorization, as referenced above, Mr. Alan Elliott has plans to release a movie based on my 1972 performance as mentioned above which exploits my name and likeness solely for commercial purposes.

Further affiant sayeth not



ARETHA FRANKLIN

**EXHIBIT C**

Declaration

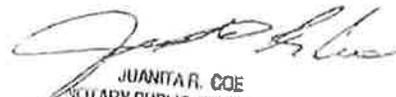
I, Rhonda Jacobs-Sturges do hereby swear and affirm that if called upon to testify, I would testify to the following including but not limited to:

1. That I have watched a live video recorded performance of Aretha Franklin singing at the New Missionary Baptist Church in Los Angeles, California.
2. That the video is more than 128 minutes long with more than 80% directly focused on Aretha Franklin performing her songs.

Further affiant sayeth not.



RHONDA JACOBS



JUANITA R. COE  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF WAYNE  
MY COMMISSION EXPIRES May 27, 2012  
CITY IN COUNTY OF *Dearborn* *8/24/11*

**EXHIBIT D**



alan elliot

1633 north stanley avenue  
los angeles, ca 90046  
323.988.9692  
fax: 866.245.2939  
e-mail: alan@alanelliott.net

November 12, 2008

Ms. Aretha Franklin  
c/o Rick Levy  
ICM

Dear Ms. Franklin,

Please let me introduce myself. I am the gentleman who on the recommendation of our late mutual friend Mr. Jerry Wexler bought the film of the "Amazing Grace" sessions from Warner Brothers.

As Mr. Wexler may have told you, I used to work as a staff producer at Atlantic Records and I believe "Amazing Grace" is the most important document of gospel music ever recorded- and filmed.

It was a great honor to work with Mr. Wexler. He was, as he liked to say, a "true believer" and his insistence- his belief was rare (and infectious) and for those who knew and loved him, he and that belief are missed.

As you know, I have been working with Mr. Rick Levy to make sure a finished "Amazing Grace" movie will receive the special attention it commands, starting with a screening at the White House.

I would be honored if you would meet with me- even if only for a few minutes- so you can see my passion, my ability and my belief that will help make this project something you will be proud to have me associated with.

Thank you.

With all respect, I am

Mr. Alan Elliott

## EXHIBIT E

RICHARD B. LEVY  
CHIEF BUSINESS DEVELOPMENT OFFICER  
AND GENERAL COUNSEL  
Office of the Chairman

September 10, 2008

VIA FEDERAL EXPRESS

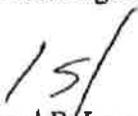
Ms. Aretha Franklin  
C/O Trump International NYC  
One Central Park West  
New York, NY 10023

*Re: Option Agreement for Al's Records and Tapes and Aretha Franklin regarding  
Amazing Grace*

Dear Ms. Franklin,

Enclosed please a formal proposed contract to option your rights for the "Amazing Grace" film project. Once you have had an opportunity to review the document, please call me to discuss.

Warmest Regards,

  
Richard B/Levy

RBL:drc

Enclosure

OPTION AGREEMENT

THIS OPTION AGREEMENT is effective as of August \_\_, 2008, by and between AI's Records and Tapes, c/o Endeavor, 9601 Wilshire Blvd., Third Floor, Beverly Hills, CA 90210, Attn: Ariel Emanuel ("Producer") and Aretha Franklin, c/o ICM, 10250 Constellation Blvd., Los Angeles, CA 90067, Attn: Rick Levy ("Artist") and is based on the following facts:

A. Artist permitted a film crew, directed by the late Sydney Pollack, to film her recording sessions for her record album entitled "Amazing Grace" and other related material (the "Materials") for a motion picture that was unfinished (the "Original Picture").

B. Producer has advised Artist that Producer controls the rights to utilize the Materials for the purposes of completing the Original Picture, which may include both the Materials and additional materials. The Original Picture, when completed by Producer, is referred to herein as the "New Picture".

C. Artist is willing to grant Producer the right to utilize her performance or appearance as embodied in the Materials, as well as in any additional materials that Producer may acquire for inclusion in the New Picture ("Additional Materials"), as part of the New Picture on the terms set forth herein.

Based on the foregoing facts (which comprise part of this Agreement), Producer and Artist hereby agree as follows:

1. Option.

(a) For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, including but not limited to, Producer's commercially reasonable efforts to develop and raise financing for the New Picture, Artist hereby grants Producer the exclusive and irrevocable right and option (the "Option") to acquire the exclusive rights (the "Rights") in and to the Materials and the Additional Materials as set forth herein. The term of the Option ("Option Period") shall commence on the date hereof and shall terminate on the date six (6) months following execution of this Agreement by Artist unless the Option has been exercised as provided herein. If at the end of the Option Period, Producer is engaged in bona fide negotiations with one or more qualified financiers, the Option Period shall be extended for a period of time not to exceed forty-five (45) days within which to conclude such negotiations.

(b) During the Option Period, Producer may engage in development, financing, preproduction and marketing activities with respect to the New Picture. Any materials created by or on behalf of Producer during the Option Period shall be Producer's property, whether or not the Option is exercised. Any materials created by Artist on behalf of Producer during the Option Period shall be Artist's property, whether or not the Option is exercised.

2. Exercise of Option. Company may exercise the Option by payment to Artist of the sum of One Million Dollars (\$1,000,000) as follows:

(a) Five Hundred Thousand Dollars (\$500,000) shall be payable prior to the expiration of the Option Period, as it may be extended, or on commencement of EDITING of the New Picture, if earlier; and

(b) Five Hundred Thousand Dollars (\$500,000) shall be payable upon the earlier of theatrical release of the New Picture, the date of initial television exhibition, or the date of home video release, but in no event more than eighteen (18) months after the initial payment in 2(a) is made. "Theatrical release" shall not include screenings at festivals or for sales purposes.

(c) Notwithstanding the foregoing, if the production budget for the New Picture exceeds \$3,000,000, the parties hereto agree to negotiate a new higher option exercise price.

3. Additional Compensation. Artist shall be entitled to receive an amount equal to 50% of 100% of all gross receipts received by Producer from all sources of exhibition and exploitation of the New Picture, after Producer has recouped the option payments and its direct costs of development, production and distribution of the New Picture without interest and overhead. In the event that Producer grants any "back end" profit participations to any third party, the amount of such participations shall be deducted "off the top." Producer shall account to Artist and pay to Artist her share of such additional compensation within thirty (30) days following the end of each calendar quarter in which Producer receives any such gross receipts following the initial release of the New Picture. Artist shall have the right to audit Producer's books and records in connection with such receipts and payments once per each twelve (12) month period. Producer's accounting statements shall become final and conclusive and not subject to legal action on the date twenty-four (24) months following the delivery of the applicable accounting statement to Artist, unless Artist has commenced legal proceedings prior to such date. For purposes hereof, the term "Producer" includes Alan Elliott, Herb Jordan and any loanout or other entities affiliated with either of them.

4. Credit. Producer shall accord Artist with credit on screen as the star performer of the New Picture, in a separate card in the main titles in first position with respect to any other performers. Additionally, Producer shall accord Artist credit on screen in the form of "Producer" on a separate card in either the main titles or end titles, in the same grouping of credits as all other "Producer" or "Produced by" credits. Producer shall also accord Artist the foregoing credits in all paid advertisements under the control of Producer, subject to customary exclusions. All other matters concerning credit shall be determined by Producer in its sole discretion after meaningful good-faith consultation with Artist. No casual or inadvertent failure to accord any such credit or failure by third parties to accord such credit shall constitute a breach hereof by Producer, provided that

Producer shall use commercially reasonable good faith efforts to prospectively cure any such breach promptly following receipt of written notice thereof from Artist.

5. Clearances. If requested by Producer, Artist shall assist Producer in contacting family members, business associates and others whom Producer may wish to appear in the New Picture so that Producer may obtain the necessary rights. Artist makes no representation or warranty that any third parties will agree to appear in the New Picture.

6. Consultation With Artist and Controls.

(a) Producer shall meaningfully consult with Artist's representatives regarding the sales and distribution strategy, negotiations, and agreements for the New Picture.

(b) Producer shall not alter Artist's performance in any way other than cutting for time or intercutting with other material.

7. Grant of Rights. If the Option is exercised, Artist hereby grants, sells and assigns to Producer, exclusively and irrevocably, in perpetuity and throughout the universe, all of the following (collectively, the "Property"):

(a) All of Artist's right, title and interest in and to the appearance by Artist in the Materials and the Additional Materials (if any) for the purpose of including same in the New Picture, including but not limited to Artist's musical performances, interview segments and "behind the scenes" footage, and each and every element thereof, and any and all rights therein and thereto; and

(b) All contracts, agreements, assignments and instruments of every kind and character under which Artist may have heretofore acquired or may hereafter acquire any right, title and interest in or to the Picture (collectively, the "Underlying Agreements"), if any, excluding any album rights.

8. Exploitation of the Property. If the Option is exercised, Producer shall have the right to exploit the Property hereunder in any and all media now known or hereafter devised in perpetuity including, without limitation, in all forms of television (including, without limitation, free, pay, cable, pay-per-view, video-on-demand, digital, satellite, subscription, and any other analogous delivery systems), internet and all digital media systems, print publication, theatrical, non-theatrical, all forms of home video devices including but not limited to DVD and Blu-Ray, computer and electronic media, wireless devices, and all ancillary and derivative rights of every kind, whether or not now known or invented; provided, however, that Artist reserves any and all audio-only soundtrack rights.

9. Name and Likeness. Producer shall have the right in perpetuity to use, and authorize others to use, Artist's image, voice and likeness and reproductions of Artist's image, voice and likeness in the New Picture and Artist's name and Artist's biographical

data, in connection with the advertising, publicizing, promotion and exploitation of the New Picture and all ancillary and subsidiary rights therein (including, without limitation, in promotional films, with respect to both "behind-the-scenes" footage and interviews and excerpts from the New Picture, recordings on home video devices and the packages thereof); provided, however, that Artist shall not be depicted as using, consuming or endorsing any product or service without Artist's prior written consent. Producer shall also have the right to use film clips and excerpts from the New Picture involving Artist in all promotional materials relating to the New Picture.

10. Representations and Warranties. Artist represents, warrants and agrees that: (a) Artist is free to enter into this Agreement and is not subject to any conflicting obligations which will prevent Artist from, or interfere with, the execution and performance of this Agreement, or which will or might conflict with or impair the complete enjoyment of the rights granted to Producer hereunder; (b) Artist has not sold, transferred, assigned, disposed of or otherwise encumbered any of Artist's right, title or interest in and to any of the Property [other than to WBs]; (c) to the best of Artist's knowledge, there are no liens or encumbrances on the Property and no claims have been made or litigation instituted or, to its knowledge, threatened with respect thereto; (d) Artist has duly performed all of her obligations, if any, contained in the Underlying Agreements prior to the date of execution hereof, including, but not limited to, all payment obligations thereunder, if any; and (e) Artist has not produced or authorized the production of any motion picture, television or dramatic presentation based on the Property other than the Picture.

11. Indemnification.

(a) Artist shall indemnify, defend and hold harmless Producer, its officers, directors, members, employees, licensees, agents, representatives, successors and assigns from and against any and all damages, judgment, liabilities, costs, losses, fees and expenses (including reasonable outside attorneys' fees and court costs) arising or resulting from any breach of any of Artist's representations, warranties, or agreements contained herein.

(b) Producer shall indemnify, defend and hold harmless Artist, its officers, directors, members, employees, licensees, agents, representatives, successors and assigns from and against any and all damages, judgment, liabilities, costs, losses, fees and expenses (including reasonable outside attorneys' fees and court costs) (collectively, "Claims") arising or resulting from any breach of any of Producer's representations, warranties, or agreements contained herein and/or any Claims arising or resulting from the production, distribution and exploitation of the Property and the New Picture which does not result from a breach of Artist's representations, warranties or agreements contained herein.

12. Remedies. If Producer breaches (or allegedly breaches) this Agreement, Artist will be limited to her remedy at law for damages, if any, and Artist hereby waives Artist's right to any and all claims for rescission, termination, or any other kind of injunctive or equitable relief pertaining to the Property, the Picture, the New Picture or any rights

therein. Producer's remedies in the event of any breach of this Assignment Agreement shall be cumulative and the exercise of one shall not preclude the exercise of any other remedy. Artist acknowledges and agrees that the rights and privileges granted and agreed to be granted to Producer hereunder are of a special, unique, unusual, extraordinary and intellectual character, making them difficult to replace and giving them a peculiar value, the loss of which cannot be reasonably compensated in damages in an action at law and that Artist's breach of any provision hereof will cause Producer irreparable damage; therefore, Producer shall be entitled as a matter of right, at its election, to enforce this Agreement and all of the provisions hereof by injunction or other equitable relief.

13. Notices and Payments. All notices which Producer is required or may desire to serve upon Artist in connection with this Agreement may be served by delivery to Artist in writing by air courier, electronic mail or facsimile to:

ICM  
10250 Constellation Blvd.  
Los Angeles, CA 90067  
Attn: Rick Levy  
Email: [rlevy@icmtalent.com](mailto:rlevy@icmtalent.com)  
Facsimile: 310-248-4592

Payments due to Artist shall be delivered to the above address. Artist may change the address for delivery of notices and payments to Artist by written notice to Producer.

All notices which Artist is required or may desire to serve upon Producer may be served by delivery to Company in writing by air courier, electronic mail or facsimile to:

Al's Records and Tapes  
c/o Endeavor  
9601 Wilshire Blvd., Third Floor  
Beverly Hills, CA 90210  
Attn: Ariel Emanuel  
Email: [aemanuel@endeavorla.com](mailto:aemanuel@endeavorla.com)  
Facsimile: 310-248-5022

With a copies to:

Greenberg Traurig LLP  
2450 Colorado Ave., Suite 400E  
Santa Monica, CA 90404  
Attn: Steven Katleman  
Email: [katlemans@gtlaw.com](mailto:katlemans@gtlaw.com)  
Facsimile No: (310) 586-0276

Company may change the addresses for delivery of notices and payments to Company by written notice.

The date two (2) business days after transmission of any notice hereunder by overnight air courier or the date such notice is sent by email or facsimile (with written confirmation of complete delivery), as the case may be, shall be deemed the date of service of such notice. If the date by which any such notice is to be made occurs on a Saturday, Sunday, national holiday or a day on which the business operations of the party serving the notice are not open for a full business day ("Closed Day"), then such date shall be extended without notice until the end of business on the first day thereafter which is not a Saturday, Sunday, national holiday or Closed Day.

14. Assignment. Producer shall have the unrestricted and unlimited right to sell, assign or otherwise dispose of this Agreement, and/or any or all of the rights granted hereunder, in whole or in part. Artist shall have no right to assign this Agreement without the prior written consent of Producer (which consent may be withheld in Producer's sole discretion), and any attempted assignment without such consent shall be void.

15. Miscellaneous. This Agreement shall be governed by the laws of the State of California (exclusive of its conflict of laws provisions) applicable to agreements executed and to be wholly performed therein; and the parties hereto hereby submit to the exclusive jurisdiction of the courts located in Los Angeles County, California. This Agreement shall not be modified except by a written document executed by both parties hereto. This Agreement may be executed in any number of counterparts, by manual or facsimile signatures, each of which will be an original, but all of which together will constitute one and the same agreement. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall remain in full force and effect.

IN WITNESS WHEREOF, the parties executed this Assignment Agreement effective as of the day and year first above written.

AL'S RECORDS AND TAPES

By: \_\_\_\_\_  
Its Authorized Signatory

\_\_\_\_\_  
ARETHA FRANKLIN

**EXHIBIT F**



DIRECTED BY SYDNEY POLLACK

**SYNOPSIS:**

IN JANUARY OF 1972, ACADEMY AWARD WINNING DIRECTOR SYDNEY POLLACK DOCUMENTED THE RECORDING OF A LIVE ALBUM AT THE NEW TEMPLE MISSIONARY CHURCH IN LOS ANGELES, CA.

THE ALBUM SOLD OVER 2 MILLION COPIES, AND BROUGHT BACK TO THE CHURCH...

**ARETHA FRANKLIN - THE QUEEN OF SOUL.**

WHILE THE ALBUM BECAME HER BEST SELLING RECORD OF ALL TIME, THE FILM HAS NEVER BEEN SEEN.

UNTIL NOW....

**AMAZING GRACE**  
A FILM BY SYDNEY POLLACK

This never-before-seen 1972 concert of Aretha Franklin's "Amazing Grace" album includes behind the scenes footage of Sydney Pollack, as well as the legendary Rev. James Cleveland, Rev. C.L. Franklin, and Mick Jagger.

*"Watching this is like seeing the Sistine Chapel as it was being painted."*  
- David Ritz, Award-winning Music Author "Rhythm and the Blues"

**FEATURE DOCUMENTARY IN POST-PRODUCTION:**

80 Minutes, English, Directed by Sydney Pollack

**PRODUCER, EXECUTIVE : ALAN ELLIOTT**

In 2007, after learning of the original documentary filming through Jerry Wexler and Sydney Pollack, Alan Elliott acquired the rights to Pollack's 1972 footage of Aretha Franklin's live concert recording of "Amazing Grace" from Warner Bros. The album "Amazing Grace" went double platinum and remains the best-selling record of Ms. Franklin's career. The concert film will be completed posthumously in Pollack's honor in 2011.

As a composer and producer, Mr. Elliott has worked Warner Bros., Atlantic and Dreamworks Records with artists such as Prince, Miles Davis, George Clinton, and Paul Simon. Elliott has composed, orchestrated and arranged scores for the films "Secret Window", "Hitch", "Let's Go To Prison", as well as for recording artists Beck, Jamiroquai, and Supergrass, and numerous works for television. For the theatre, Mr. Elliot has been a creative consultant for Paul Simon's "The Capeman", Randy Newman's "Faust" and Larry Gelbart's Tony Award Winning "City of Angels"

**CONTACT:**

Alan Elliot                      Chiemi Karasawa  
alan@alanelliot.net        chiemi@isotopefilms.com  
(323) 988-9692                (212) 941-4090

**PRODUCER : CHIEMI KARASAWA**

Ms. Karasawa began Isotope Films in 2005 to produce content based on true stories. Since, she has produced and co-produced several award-winning documentaries, most notably Ellen Kuras' Emmy Award winning film "The Betrayal", Jennifer Venditti's "Billy The Kid", and Spike Jonze's "Tell Them Anything You Want: A Portrait of Maurice Sendak" for HBO. With a career in feature film, commercial and television production that spans 20 years, she has worked alongside such filmmakers as: Jim Jarmusch, Steven Frears, Spike Jonze, and Martin Scorsese. Most recently she has completed feature documentaries, "Elevate", and "Love Etc" which will be released theatrically in July 2011.

**FILMMAKERS' CUMULATIVE AWARDS:**

Emmy Award 2009 "Exceptional Merit in Non-Fiction Filmmaking",  
Oscar Nominee 2008 "Best Documentary" 2008,  
Winner Best Documentary 2008: SXSW,  
Los Angeles FF, Edinburgh Int'l Film Festival.  
Audience Award 2010 - Hoptons Int'l Film Festival,  
Audience Award 2008 - Melbourne Int'l FF

## **EXHIBIT G**

Alan Elliott

Mr. Elliott's film/television production includes the upcoming miniseries of the PEN/Falkner award winning book, "The Bear Comes Home," producing the upcoming 40th Anniversary Woodstock DVD (executive produced by Martin Scorsese). For television, Mr. Elliott created and produced "The Jeanie Buss Show," (about the Los Angeles Lakers) and is also developing "The Paul McCartney Show".

Upon graduation from University, Mr. Elliott was signed to a recording contract by Warner Bros. Records.

Mr. Elliott was the first musical writer hired by Steven Bochco (the creator of "NYPD Blue") for the now infamous television musical series "Cop Rock."

Mr. Elliott worked as a staff producer/Artists and Repertoire representative at Atlantic Records, Warner Brothers Records (where he served as an "a & r man" for Prince, Miles Davis, George Clinton and Paul Simon) and Dreamworks Records.

In 1994, Mr. Elliott and Ariel Emanuel started Matter, Inc., one of the first companies to focus on entertainment programming for the internet. The company produced the first celebrity "chat show" on line for America Online in 1995 with "The Oldsmobile Hour" which featured a different celebrity answering and interacting with America Online subscribers five nights a week.

Mr. Elliott composed, orchestrated and arranged scores for such television shows as "Here and Now," and "The Naked Truth" for NBC, "The NFL on Fox" for FBC, in addition to twice composing the opening and closing themes for the Grammy Awards.

Mr. Elliott has written orchestrations, arrangements and conducted for acts such as Beck, V.A.S.T., Jamiroquai and Supergrass in addition to Varese Sarabande's tribute to Burt Bacharach. Mr. Elliott's remix work has been featured on Jamiroquai's multi-platinum "Virtual Insanity" and eel's "Susan's House." Mr. Elliott continues to find talent for record companies and was responsible for signing the band "eels" to Dreamworks Records.

Mr. Elliott produced comedian Brandon Bowlin's one man show, "Return from the Underground." As a result, Mr. Bowlin was featured as "the new voice in comedy" in the preview issue of the Sunday Los Angeles Times Calendar section.

Mr. Elliott started "Al's Records & Tapes" with funding from Interscope Records. This led to the debut release from the band Woven and the subsequent "8 Bit Monk" album, which Mr. Elliott produced.

**Mr. Elliott has studied composition and orchestration with John Neufeld and Jack Smalley, theory and harmony with Jack Scalse and Kenneth Klaus as well as working and/or studying with Johnny Mandel, Quincy Jones, Dave Grusin, Henry Mancini, Wah Wah Watson, Phil Ramone, the Dust Brothers and his father, Jack Elliott.**

## **EXHIBIT H**

"ARETHA FRANKLIN CONCERT FOOTAGE (1972)"

QUITCLAIM AGREEMENT

THIS QUITCLAIM AGREEMENT ("Agreement") dated December 11, 2007 between, on the one hand, WARNER BROS. PICTURES, a division of WB Studio Enterprises, Inc. ("Assignor") and, on the other hand, A's Records and Tapes and Alan Elliott (collectively, "Elliott"), whose address is c/o Steve Kattelman, Esq., Greenberg, Traurig, 2450 Colorado Avenue, Suite 400 East, Santa Monica, CA 90404 ("Assignee");

WITNESSETH

In consideration of the mutual covenants and agreements herein set forth, the parties hereto agree as follows:

1. Quitclaim:

Assignor does hereby quitclaim to Assignee, without representations or warranties of any kind, all of Assignor's right, title and interest in and to the film elements and documents (collectively, "Material") set forth in Exhibit "A" attached hereto and related to the concert performance by Aretha Franklin at the New Temple Missionary Church of Los Angeles in January of 1972 ("Project"). Assignor will, upon execution of this Agreement, deliver to Assignee a copy of the documents listed in Exhibit "A".

2. Representations and Warranties:

Assignee represents, warrants and agrees that in connection with Assignee's use of the Material, Assignee will obtain all other authorizations, consents and releases and pay all re-use fees and other compensation required by applicable collective bargaining or individual contracts or otherwise required by law. Assignee specifically understands that Assignee will need to obtain authorization from Aretha Franklin. Without limiting the foregoing, with respect to any music included in the Material as exhibited, Assignee will obtain all necessary music synchronization and performance rights (particularly from Ms. Franklin) from the copyright proprietors of such music and such other persons or entities, including performing rights societies, as may own or control the rights thereto, and will obtain all necessary master recording licenses required in connection with any music included in any audio or visual recordings of the Material.

3. Additional Consideration:

---

In addition to the above compensation, Assignee shall reimburse Assignor for all laboratory and shipping charges and all other direct costs and expenses incurred by Assignor in making the Material available, including, but not limited to, the cost of replacing any material that may be damaged in the process of making the Material available hereunder. Such reimbursement shall be made promptly on receipt of Licensor's invoice therefor. Assignee shall have the right to approve lab, shipping and other charges in connection with the Material prior to such charges being incurred.

4. Executory Obligations/Assumption Agreement: Assignee assumes and agrees to be bound by and to perform all executory obligations of Assignor in connection with the Project including under and pursuant to the documents referred to in said Exhibit "A" and under any applicable collective bargaining agreements which are binding on Assignor.

5. Quitclaim Contingency: If Assignee fails to finalize and execute this Agreement within ten (10) business days of Assignee's receipt of the Agreement, then this Agreement shall be automatically rescinded and all rights in the Project shall remain with Assignor.

6. Rights Personal to Assignee: The rights quitclaimed hereunder by Assignor are personal to Assignee and as such, may not be sold, assigned, hypothecated, bequeathed or transferred by Assignee without the express prior written consent of Assignor. In the event Assignee fails to obtain such consent, the rights quitclaimed hereunder shall immediately revert to Assignor. This restriction on transfer applies to the right to produce and complete a production based on the Project, as opposed to the transfer of rights to distribute or exhibit such completed production.

---

8. First Negotiation/First Refusal: If and when Assignee elects to sell available distribution rights in the Project, Assignee shall submit to Assignor in writing all distribution rights in the Project and Assignor shall have an opportunity to negotiate to acquire any or all such distribution rights (collectively, the "Rights") prior to Assignee negotiating with any third party.

If Assignor elects to so negotiate, Assignee and Assignor shall negotiate for a period of not less than fifteen (15) business days the terms under which Assignor would acquire the Rights. If an agreement is not reached during said 15 business day period, Assignee may thereafter enter into an agreement with any third party on principal financial terms which are not materially less favorable to Assignee than those principal financial terms last submitted by Assignee (or those last offered by Assignor, if applicable) with the same basic elements as submitted to Assignor. If Assignee desires to enter into an agreement with a third party on principal financial terms which are materially less favorable to Assignee than those last submitted by Assignee (or those last offered by Assignor, if applicable), or if the basic elements change (e.g., new narrator, new content, star involvement, etc.) or if the material Rights (e.g., media offered, territory offered, etc.) change from those last submitted by Assignee, or those last offered by Assignor, if applicable, then Assignor shall have a first refusal to acquire the applicable Rights on such less favorable terms and/or changed basic elements, which first refusal must be exercised within five (5) business days. The first refusal procedure set forth herein shall be repeated each time such principal financial terms and/or basic elements changes.

If Assignor elects at any time not to acquire Rights or if the parties fail to reach an agreement for Rights, but said Rights are still available when the picture based upon the Project is completed, Assignee shall immediately arrange for a viewing of such picture by Assignor and, upon viewing the completed picture, Assignor shall be given the first opportunity to acquire Rights on the terms set forth above for a period of five (5) business days. Assignor's rights under this paragraph 6 shall apply regardless of whether Assignee is selling distribution rights on a territory-by-territory basis or as a package.

9. Assignee Indemnification: Assignee will indemnify Assignor and save and hold Assignor harmless from and against any and all claims, demands, actions and liabilities of every kind and character whatsoever, including reasonable attorneys' fees, arising out of any breach by Assignee of its obligations and/or representations contained herein or arising out of or resulting from any use made by Assignee of the Project.

10. Further Documents: Each party hereto agrees to execute and deliver, or cause to be executed and delivered, all such documents, and do all such things as may be reasonably necessary and proper to carry out and effectuate the intents and purposes of this Agreement, and particularly, without limiting the generality of the foregoing, Assignor will execute and deliver, or cause to be executed and delivered, to Assignee such instruments as may be necessary and proper to vest in Assignee the rights herein assigned to Assignee as a matter of record in the United States Copyright Office, all without any further payment by or cost or expense to Assignee other than customary recording charges.

11. Parties Bound: This Agreement shall be binding upon and [except as specified otherwise herein] shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, trustees, successors and assigns.

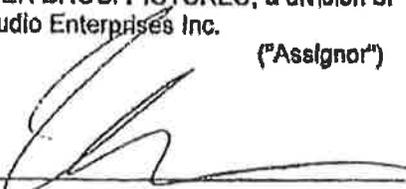
12. Governing Law: This Agreement shall be construed in accordance with the laws of the State of California applicable to agreements which are executed and fully performed within the State of California.

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

WARNER BROS. PICTURES, a division of  
WB Studio Enterprises Inc.  
("Assignor")

By:

Its:

  
CLARA A. "ZAZI" POPE  
SENIOR VICE PRESIDENT &  
DEPUTY GENERAL COUNSEL

  
ALAN ELLIOTT AND AL'S RECORDS AND TAPES ("Assignee")

Warner Bros. Entertainment Inc. hereby joins in the foregoing quitclaim agreement to the extent of its interests and agrees to be bound by the terms thereof.

WARNER BROS. ENTERTAINMENT INC.

By:

Its:

  
CLARA A. "ZAZI" POPE  
SENIOR VICE PRESIDENT &  
DEPUTY GENERAL COUNSEL

## EXHIBIT I

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ELVIS PRESLEY  
ENTERPRISES, et. al.

Plaintiffs,

v.

PASSPORT ENTERTAINMENT,  
et. al.

Defendants.

CV 02-7042 RSWL (RZx)

ORDER GRANTING  
PARTIAL  
SUMMARY JUDGMENT

Plaintiffs' Motion for Summary Judgment came on  
regularly for hearing on November 7, 2005. After having  
considered all of the papers and argument in the matter and

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1 THE COURT NOW FINDS AND RULES AS FOLLOWS:

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3 This Court GRANTS Plaintiffs Motion for Summary  
4 Judgment as to the issue of liability for copyright  
5 infringement. The Court finds that there is no genuine  
6 issue of material fact precluding the entry of Summary  
7 Judgment in favor of Elvis Presley Enterprises, Inc.,  
8 National Bank of Commerce, SOFA Entertainment, Inc., Allen  
9 Family Revocable Living Trust, Jerry Leiber dba Jerry Leiber  
10 Music, Mike Stoller dba Mike Stoller Music, Julian J.  
11 Aberbach, and Alfred Wertheimer as they are each  
12 respectively holders of the copyrights in question in this  
13 action.

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16 This Court finds that Defendant did not establish an  
17 affirmative defense for fair use. Instead, the Court finds  
18 that the balance of the four factors used to evaluate the  
19 existence of a fair use affirmative defense tip in  
20 Plaintiffs' favor.

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23 As to the "purpose and character" factor, the Court  
24 balanced the issues of (1)transformative use and (2)  
25 commercial purpose. The Court finds that infringing uses  
26 are not transformative. But even those that could be

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1 considered potentially transformative, are still used in a  
2 purely commercial setting. It is clear from Defendants'  
3 packaging that Defendants' product is a commercial work  
4 seeking to profit directly from Plaintiffs' copyrighted  
5 works. Any potential showing of transformation is  
6 outweighed by the wholly commercial nature of the product.  
7 These two factors combined tip this factor Plaintiff's  
8 favor.

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11 As to the "nature of the copyrighted work" factor, the  
12 Court looked to the creative and newsworthiness of the  
13 copyrighted works. Here, the works in question are creative  
14 works. Even though some of the television appearances can  
15 be characterized as also being "newsworthy," their  
16 newsworthy status is grounded in the creative performance  
17 that takes place. Any newsworthiness to these appearances  
18 cannot be divorced from the creative nature of Elvis'  
19 performance. As to the music and still photographs, these  
20 are wholly creative products protected by copyright. This  
21 then weighs in favor of Plaintiffs and against a finding of  
22 fair use.

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25 As to the "amount and substantiality" factor, the video  
26 clips in question contain either the most valuable "heart"

1 of the performance or a rebroadcast the copyrighted work in  
2 its entirety. By providing the viewer with the best parts  
3 of each copyrighted work or the work in its entirety,  
4 Defendants have extracted the most valuable part of  
5 Plaintiffs' copyrights. This factor also falls squarely in  
6 Plaintiffs' favor.

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9 As to the "effect on the market" factor, the commercial  
10 nature of Defendants' product allows the Court to find that  
11 the effect on the market is presumed. While, the songs and  
12 still pictures copyrights likely are not as effected as the  
13 video clip copyrights, the compilation of all of these  
14 together drastically reduce the value of Plaintiffs'  
15 copyrights and significantly reduces any value of these  
16 licenses. Even if this factor is considered neutral to both  
17 sides, the commercial nature cannot be ignored.

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20 In weighing the four factors the balance tips in favor  
21 of Plaintiffs. Therefore, this Court finds that Defendants  
22 have failed to establish the affirmative defense for fair  
23 use pursuant to 17 U.S.C. § 107.

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25  
26 Regarding the issue of damages, Plaintiffs request

1 actual damages. A grant of Summary Judgment on this issue  
2 is inappropriate. This Court finds that Defendants have  
3 raised a genuine issue of material fact regarding the  
4 appropriate calculation and measure of actual damages, which  
5 precludes the Court from resolving this on Summary Judgment.  
6 Therefore, as to damages, this Court **DENIES** Plaintiffs'  
7 Motion for Summary Judgment.

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10 In cases like this for copyright infringement,  
11 irreparable harm is presumed on a showing of reasonable  
12 likelihood of success on the merits. See Mircro Star v.  
13 Formgen, Inc., 154 F.3d 1107, 1109 (9th Cir. 1998). Here,  
14 the Court has established that Defendants are liable for  
15 copyright infringement.

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18 Therefore, this Court **GRANTS** the following permanent  
19 injunction pursuant to 17 U.S.C. § 502 in order to prevent  
20 and restrain further copyright infringement:

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22 Defendants are hereby enjoined from marketing,  
23 distributing, advertising, transferring,  
24 circulating, offering for sale, or selling the  
25 product known as "25th Anniversary Elvis: The  
26 Definitive Collection August 16, 1977-August 16,

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2002" or "The Definitive Elvis" or any portion thereof; or any other similar product or portion thereof that contains material subject to Plaintiff's copyrights.

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Defendants are also enjoined from engaging in any other activity infringing Plaintiffs' copyrights, and assisting, aiding or abetting any other person or business entity in engaging in or performing any of the activities referred to above.

The Court adopts the findings of fact and conclusions of law proposed by Plaintiff and modified by the Court.

IT IS SO ORDERED.

**RONALD S.W. LEW**

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RONALD S.W. LEW

United States District Judge

DATED: November 22, 2005