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8 UNITED STATES DISTRICT COURT
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10 CENTRAL DISTRICT OF CALIFORNIA
11
12 WESTERN DIVISION

13 SONNY BARGER PRODUCTIONS,
14 a California corporation,

15 Plaintiff,

16 v.

17 MICHAEL TOLKIN, an individual,
18 THE WHITE MOUNTAIN COMPANY,
19 a California corporation, and
20 HOME BOX OFFICE, INC.,
21 a Delaware corporation,

22 Defendants.

CASE NO. _____

CV08-02541

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COMPLAINT FOR
DECLARATORY RELIEF,
INJUNCTION AND DAMAGES;
JURY DEMANDED

23 Plaintiff, SONNY BARGER PRODUCTIONS, a California corporation, by
24 and through its undersigned attorney, brings this action and alleges as follows:

25 JURISDICTION AND VENUE

26 1. This civil action seeks declaratory relief under the Declaratory
27 Judgments Act, 28 U.S.C. §§ 2201 and 2202, and injunctive relief involving claims
28 under the Copyright Act, 17 U.S.C. § 101 et seq. and the Lanham Act, 15 U.S.C. §
1051 et seq. Accordingly, this Court has subject matter jurisdiction over the

1 foregoing claims pursuant to 28 U.S.C. § 1331, as well as exclusive subject matter
2 jurisdiction over interpretations of the Copyright Act in connection with Plaintiff's
3 request for declaratory judgment pursuant to 17 U.S.C. § 101 et seq. and 28 U.S.C. §
4 1338(a).

5 2. This Court also has subject matter jurisdiction under 28 U.S.C. §
6 1367(a) over Plaintiff's claims seeking injunctive relief and damages for violations
7 of state law because said claims arise out of the same case or controversy for which,
8 as set forth below, this Court already has proper subject matter jurisdiction.

9 3. This court has personal jurisdiction over Defendants because each
10 resides in, and is thus physically present in this judicial district and does business
11 within this judicial district.

12 4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§
13 1391(b)(1) and 1391(b)(2) because each Defendant resides within this judicial
14 district, and because a substantial part of the events and omissions giving rise to the
15 claims occurred within this judicial district.

16 NATURE OF THE ACTION

17 5. This is a civil action for declaratory judgment and injunctive relief
18 under the copyright and trademark laws, and for breach of contract, unjust
19 enrichment, unfair competition and misappropriation of personality rights. These
20 claims arise from the development, production and promotion of a television pilot
21 entitled "1%" by Defendants Tolkin and HBO.

22 PARTIES

23 6. Plaintiff, SONNY BARGER PRODUCTIONS ("SBP"), is a California
24 corporation in good standing, with its executive office on Carefree Highway in
25 Maricopa County, Arizona. Ralph "Sonny" Barger ("Sonny Barger") is owner of all
26 shares in the corporation and is its chief executive and financial officer. Plaintiff
27 SBP is the personal holding company of Sonny Barger, which serves as the
28 "loanout" company for his personal services and appearances, and which develops

1 and manages entertainment assets including books, films and television.

2 7. Defendant, MICHAEL TOLKIN (“Tolkin”), is an individual residing
3 in Los Angeles, California. Defendant Tolkin is a writer, director and producer with
4 credits in major motion pictures and television.

5 8. Defendant, THE WHITE MOUNTAIN COMPANY (“White
6 Mountain”), is a California corporation with executive offices in Los Angeles,
7 California, which, on information and belief, is solely owned and controlled by
8 Defendant Tolkin as his “loanout” company through which he renders professional
9 services, and is therefore named herein as the alter ego of Defendant Tolkin.
10 Accordingly all references to Defendant Tolkin shall include, when appropriate,
11 Defendant White Mountain.

12 9. Defendant, HOME BOX OFFICE, INC. (“HBO”), is a Delaware
13 corporation with offices in Santa Monica, California. Defendant HBO produces and
14 distributes television programs.

15 FACTUAL ALLEGATIONS

16 10. Sonny Barger has been a famous personality for more than forty years,
17 as a founder and conspicuous spokesman of the Oakland Hells Angels motorcycle
18 club. He has film credits as an actor and consultant beginning in 1965. His rights of
19 personality have been assigned to Plaintiff SBP, which administers their licensing.

20 11. Plaintiff SBP developed and published in book form the autobiography
21 of Sonny Barger, which became a New York Times bestseller in 2000. The book
22 (the “Barger autobiography”) is entitled “*Hell’s Angel: The Life and Times of Sonny*
23 *Barger and the Hells Angels Motorcycle Club*” and its copyright (TX-5-236-633) is
24 owned by Plaintiff SBP.

25 12. Plaintiff SBP has optioned the Barger autobiography, together with the
26 Barger life rights, exclusively to Twentieth Century Fox Film Corporation (“Fox”) for
27 adaptation as a major motion picture (“Hells Angel movie”). Plaintiff SBP is a
28 producer of the Hells Angel movie, through its representative Fritz Clapp (“Clapp”).

1 The Hells Angel movie is in development at Fox as of the filing of this complaint.

2 13. Defendant Tolkin was engaged by Fox in 2003 to write a screenplay for
3 the Hells Angel movie project. After delivering a draft screenplay in 2004 his
4 engagement on that project was terminated.

5 14. Beginning in 2002, Plaintiff SBP has developed a fiction franchise first
6 introduced as a prospective series of books and intended for adaptation in film
7 and/or television, featuring a fictional motorcycle club called the Infidelz MC and a
8 main character named Patch Kinkade. The first book in this series is entitled "*Dead*
9 *in 5 Heartbeats*" and was published in 2003 (copyright registration TX-5-950-613).
10 The second book in the series is entitled "*6 Chambers 1 Bullet*" and was published
11 in 2006 (copyright registration TX-6-372-713). A third book in the series has been
12 proposed but not yet published, entitled "*Incident at 4 Corners.*" The fiction
13 franchise is described by an internal unpublished document entitled "Patch Rules."
14 Plaintiff SBP owns the copyrights and retains all adaptation rights in these
15 properties, referred to herein as the "Barger fiction" works.

16 15. The Barger autobiography and the Barger fiction works were produced
17 with the writing services of Keith Zimmerman and Kent Zimmerman (the
18 "Zimmerman brothers") pursuant to written collaboration agreements which vest all
19 ownership in Plaintiff SBP as works for hire or alternatively by assignment.

20 16. Before the end of his engagement on the Hells Angels movie project,
21 Defendant Tolkin became aware of the Barger fiction works and expressed interest
22 to the Zimmerman brothers and to Clapp regarding their eventual adaptation for film
23 and/or television.

24 17. In early 2005, after his engagement on the Hells Angel movie project
25 ended, Defendant Tolkin proposed to Di Bonaventura Pictures and Plaintiff SBP
26 that he write a "spec script" (a speculative feature script not commissioned but
27 available for purchase) adapting the Barger fiction work "*Dead in 5 Heartbeats*" as
28 a motion picture. From his prior association with Plaintiff SBP, Defendant Tolkin

1 was aware of the policy of Plaintiff SBP that it be a producer on any project
2 involving its properties, so that it maintains sufficient control over the result.
3 Consistent with that policy, Defendant Tolkin and Di Bonaventura Pictures
4 acknowledged in a meeting with Clapp on February 17, 2005 that Plaintiff SBP
5 would co-produce the contemplated motion picture adaptation of "*Dead in 5*
6 *Heartbeats.*"

7 18. During 2005, while he was adapting "*Dead in 5 Heartbeats*"
8 Defendant Tolkin was provided with copies of the second novel "*6 Chambers 1*
9 *Bullet,*" the unpublished novel proposal for "*Incident at 4 Corners,*" and the
10 unpublished confidential franchise description "Patch Rules."

11 19. In partial performance of the aforementioned agreement to develop
12 "*Dead in 5 Heartbeats*" as a motion picture, Defendant Tolkin completed 45 pages
13 of a draft screenplay which he delivered to Di Bonaventura Pictures and Plaintiff
14 SBP on or about January 13, 2006.

15 20. After said partial completion of the draft screenplay, on information
16 and belief, Defendant Tolkin turned his attention to other matters and the tentative
17 agreement with Di Bonaventura Pictures was never formalized or completed, and
18 the contemplated project was abandoned.

19 21. On or about December 1, 2006, Defendant Tolkin was engaged by
20 Defendant HBO to develop and produce at least two series projects for television.

21 22. On or about December 1, 2006, Defendant Tolkin again approached
22 Plaintiff SBP about developing the Barger fiction works, this time for television
23 with Defendant HBO. At that time Plaintiff SBP orally agreed with Defendant
24 Tolkin to co-develop, co-author and co-produce a television pilot and/or series based
25 on the Barger fiction works, as an alternative to the previously contemplated motion
26 picture adaptation alleged above.

27 23. During December 2006 and early January 2007, Plaintiff SBP (acting
28 through the Zimmerman brothers, Sonny Barger and Clapp) collaborated with

1 Defendant Tolkin and jointly prepared a “pitch” for a television program which was
2 presented to Defendant HBO in a meeting attended by Sonny Barger, Clapp, the
3 Zimmerman brothers, Defendant Tolkin, and Carolyn Strauss, an executive of
4 Defendant HBO, on January 18, 2007.

5 24. On January 19, 2007, Defendant Tolkin represented to Plaintiff SBP by
6 email that Defendant HBO was not satisfied by the specific “pitch” presented in the
7 meeting but was still interested in “the material” and would therefore continue the
8 development “from another angle.”

9 25. During the six months following the meeting on January 19, 2007,
10 Sonny Barger, the Zimmerman brothers and Clapp, on behalf of Plaintiff SBP
11 continued the collaboration with Defendant Tolkin to develop the pilot program
12 through their joint efforts and authorship, by meetings, phone discussions, email
13 correspondence, and exchanges of drafts which included original written material
14 from Plaintiff SBP. In mid-April 2007, Defendant Tolkin traveled to Phoenix for
15 working sessions with Sonny Barger and the Zimmerman brothers.

16 26. During March 2007, Plaintiff SBP suggested to Defendant Tolkin that
17 the relationship of the parties as joint developers, authors and producers should be
18 clarified and formalized. On March 28, 2007, Defendant Tolkin responded by email
19 to the Zimmerman brothers that he had discussed this with his agent, Aaron Kaplan:

20 *“I talked to Aaron. He said there's nothing to be done until HBO wants*
21 *to do this, and I can't make a deal with you because it's HBO that*
22 *makes the deals, so he said **we'll act in good faith** and make a deal at*
23 *the right time.” [emphasis added]*

24 27. Throughout the collaboration with Defendant Tolkin in the first half of
25 2007, Plaintiff SBP performed the agreement on its part by making substantial
26 contributions of original written material to the joint effort, as well as adaptations of
27 pre-existing material contained in the Barger fiction works, all in reliance upon the
28 assurances of Defendant Tolkin as alleged herein.

1 28. In the collaboration between Defendant Tolkin and Plaintiff SBP, the
2 parties had orally agreed that one of the essential functions Plaintiff SBP would
3 perform is the detection and elimination of any elements in the joint work which in
4 the opinion of Plaintiff SBP too closely resembled or depicted real persons and
5 clubs, or which appeared to draw on the Barger life rights already optioned to Fox.

6 29. Defendant Tolkin, with over four years' experience dealing with
7 Plaintiff SBP, Barger and Clapp (who is also corporate trademark counsel for Hells
8 Angels Motorcycle Corporation, owner of the famous Hells Angels marks), knew
9 quite well that the purpose of Plaintiff's insistence on having veto power over
10 possibly controversial elements was to avoid conflicts, confusion and dilution
11 regarding the Sonny Barger life rights, name, mark and persona, and to avoid
12 conflicts, confusion and dilution regarding the Hells Angels marks.

13 30. An illustrative instance in which the aforementioned veto power was
14 actually exercised by Plaintiff SBP occurred on or about July 13, 2007, when Clapp
15 told Defendant Tolkin that the latter's choice of red and white as the fictional club's
16 colors was not permissible because they are well known to be the colors employed
17 by the Hells Angels motorcycle club in its famous membership patches and, in fact,
18 the Hells Angels are known as "the Red & White". Two days later, Defendant
19 Tolkin agreed to change the colors in the script in deference to the desire of Plaintiff
20 SBP to avoid confusion or impermissible depiction of the Hells Angels.

21 31. The contributions of Plaintiff SBP to the joint works identified herein
22 with Defendant Tolkin included ideas, structure, characters, plot elements and
23 settings, some of which may not separately be copyrightable subject matter, but
24 which were woven into a completed literary expression by Defendant Tolkin.

25 32. On or about June 14, 2007, Defendant Tolkin delivered to Defendant
26 HBO a sixteen-page outline or treatment entitled "1%" (the "1% Outline").

27 33. On information and belief, Defendant HBO approved the outline
28 delivered on June 14, 2007, and commissioned a pilot script based upon it.

1 34. On or about July 11, 2007, Defendant Tolkin delivered to Defendant
2 HBO a draft script (the “1% Script”) he prepared from the approved outline with
3 additional and continuing consultation with Plaintiff SBP.

4 35. Plaintiff SBP had objections to some elements contained in the 1%
5 Script, which it communicated to Defendant Tolkin at or about the time of the
6 script’s submission to Defendant HBO. Among these objections were that some
7 characters had been introduced by Defendant Tolkin which too closely resembled or
8 depicted living persons (in particular, a character named “Chief” which for decades
9 has been a well known nickname or alias for Sonny Barger), that some actual place
10 names used in the script were too identifiably associated with Sonny Barger and the
11 Hells Angels (such as the primary location being Carefree, Arizona, which is the
12 town adjacent to where Sonny Barger presently resides, and that the principal
13 character has moved there from Northern California, which is exactly what Sonny
14 Barger did), and that some other elements in combination too closely resembled or
15 depicted the Hells Angels motorcycle club. Defendant Tolkin responded to these
16 objections by assuring Plaintiff SBP that they would be rectified before the pilot
17 went into production. As of the filing of this complaint, on information and belief,
18 the aforesaid objectionable elements remain in the 1% Script which Defendant HBO
19 threatens to produce and exhibit.

20 36. On April 4, 2008, in response to written demands by Plaintiff SBP,
21 Defendant HBO refused to acknowledge the contributions or authorship of Plaintiff
22 SBP, asserting instead that the 1% Script is an original work of Defendant Tolkin.

23 37. Neither Defendant Tolkin nor Defendant HBO has compensated
24 Plaintiff SBP for its valuable contributions to the 1% Script, and neither Defendant
25 has any permission from Plaintiff SBP to exploit said contributions or the joint
26 work.

27 38. At no time has Plaintiff SBP or any authorized representative permitted
28 either Defendant Tolkin or Defendant HBO to use or publish the name, trademark,

1 persona or likeness of Sonny Barger for any purpose.

2 39. Defendant Tolkin and Defendant HBO, through their employees,
3 agents and representatives, caused to be published certain casting notices and
4 promotional material stating that Sonny Barger has been cast in the “1%” program,
5 which was reported in Variety on April 11, 2008. Within days, this false and
6 misleading reference to Sonny Barger in association with the “1%” program has
7 been replicated on thousands of web pages and has naturally led to the inference by
8 the public that Sonny Barger endorses or approves of the program, and to
9 speculation that the “1%” program is the long-awaited biography of Sonny Barger.

10 FIRST CAUSE OF ACTION

11 *Declaratory Judgment*

12 40. Plaintiff incorporates paragraphs 1 through 39 as if set forth herein.

13 41. As set forth herein, ownership of the “1% Outline” and the “1% Script”
14 is in dispute.

15 42. Plaintiff SBP made independently copyrightable contributions to the
16 “1% Outline” and the “1% Script” and was intended to be the joint-author of these
17 works.

18 43. Accordingly, Plaintiff SBP seeks a declaratory judgment as follows:

19 a.) Declaration that the “1% Outline” and the “1% Script” are “joint-
20 works” as that term is understood under the Copyright Act, 17 U.S.C. § 101 et seq.
21 and the common law of the United States; and

22 b.) Declaration that Plaintiff SBP is the “joint-author” of the “1%
23 Outline” and the “1% Script” and therefore co-owns all copyright rights in and to
24 said works.

25 SECOND CAUSE OF ACTION

26 *Unfair Competition— Lanham Act §43(a)*

27 44. Plaintiff incorporates paragraphs 1 through 39 as if set forth herein.

28 45. Plaintiff SBP has valuable interests in the Barger autobiography, the

1 Hells Angel movie, and the Barger fiction works.

2 46. Defendants Tolkin and HBO have intentionally misappropriated the
3 valuable services of Plaintiff SBP without consent or compensation, to create a
4 television program that is likely to cause public confusion, deception, and mistake as
5 to origin, sponsorship or approval, and which therefore unfairly competes with the
6 Hells Angel movie and with the Barger fiction.

7 47. The above actions by Defendants have caused and will cause great
8 damage to Plaintiff SBP in its business, goodwill, reputation, and commercial
9 interests. The injury is and, unless enjoined, will continue to be, ongoing and
10 irreparable.

11 48. Defendants' actions constitute a deliberate and willful violation of
12 Section 43(a) of the Lanham Act, making this case exceptional within the meaning
13 of 15 U.S.C. §§ 1117 and 1118.

14 49. Plaintiff SBP is entitled to a preliminary and permanent injunction
15 against Defendants, as well as all other remedies available under the Lanham Act,
16 including, but not limited to, compensatory damages, disgorgement of profits, treble
17 damages, costs and attorney's fees.

18 THIRD CAUSE OF ACTION

19 *Express Contract*

20 50. Plaintiff incorporates paragraphs 1 through 39 as if set forth herein.

21 51. Plaintiff SBP and Defendant Tolkin had an express oral agreement that
22 they would jointly develop and produce an adaptation of the Barger fiction as a
23 television series; that the relationship would be exclusive; and that Plaintiff SBP
24 would have final authority regarding whether or not any element in the program was
25 an impermissible depiction of Sonny Barger, other real persons or clubs.

26 52. Plaintiff SBP performed the oral agreement fully on its part, making
27 substantial original contributions to the joint development, allowing adaptations of
28 its properties, and declining other opportunities to develop those properties.

1 53. Defendant Tolkin, having benefited from the substantially complete
2 performance of Plaintiff SBP, has acted in bad faith and breached his agreement
3 with Plaintiff SBP by claiming to be the sole creator and author of the “1% Outline”
4 and the “1% Script”, by refusing to acknowledge the authority of Plaintiff SBP as
5 co-producer, and by refusing to honor his agreement to make the revisions
6 demanded by Plaintiff SBP as alleged herein.

7 54. Defendant Tolkin has caused injuries by said breaches that cannot be
8 adequately compensated by money damages, thus requiring and justifying injunctive
9 relief.

10 FOURTH CAUSE OF ACTION

11 *Unfair Competition, False Designation of Origin — Lanham Act §43(a)*

12 55. Plaintiff incorporates paragraphs 1 through 39 as if set forth herein.

13 56. Plaintiff SBP uses the Sonny Barger name and mark in commerce to
14 identify and distinguish products and services sold or authorized by Plaintiff SBP.

15 57. Defendants have wrongfully misappropriated and used Sonny Barger's
16 name and mark in commerce to promote their television program, and possibly for
17 other purposes, in competition with the products and services sold or authorized by
18 Plaintiff SBP. Defendants' unauthorized use is likely to confuse and mislead
19 consumers as to the source and sponsorship of Defendants' television program, in
20 violation of 15 U.S.C. § 1125(a).

21 58. Defendants' unauthorized use of the Sonny Barger name and mark in
22 connection with the promotion and exhibition of their television program expressly
23 or impliedly represents that the program depicts Sonny Barger and/or the Hells
24 Angels motorcycle club with which he is strongly and publicly associated. Those
25 false and misleading representations are likely to cause confusion, mistake and
26 deception among consumers.

27 59. Defendants' unauthorized use of the Sonny Barger name is likely to
28 harm Plaintiff SBP, to diminish its ability to control the use of the Sonny Barger

1 name and mark, and to harm its ability to use or authorize use of the Sonny Barger
2 name and mark for other goods and services in competition with Defendants' goods
3 and/or services.

4 60. Defendants' foregoing actions constitute unfair competition, false
5 designation of origin, and false advertising in connection with products and services
6 distributed in interstate commerce, in violation of 15 U.S.C. § 1125(a).

7 61. The above actions by Defendants have caused and will cause great
8 damage to Plaintiff SBP in its business, goodwill, reputation, and commercial
9 interests. The injury is and, unless enjoined, will continue to be, ongoing and
10 irreparable.

11 62. Defendants' actions constitute a deliberate and willful violation of
12 Section 43(a) of the Lanham Act, making this case exceptional within the meaning
13 of 15 U.S.C. §§ 1117 and 1118.

14 63. Plaintiff SBP is entitled to a preliminary and permanent injunction
15 against Defendants, as well as all other remedies available under the Lanham Act,
16 including, but not limited to, compensatory damages, disgorgement of profits, treble
17 damages, costs and attorney's fees.

18 FIFTH CAUSE OF ACTION

19 *Dilution of Famous Marks – Lanham Act §43(c)*

20 64. Plaintiff incorporates paragraphs 1 through 39 as if set forth herein.

21 65. The Sonny Barger mark is a famous mark within the meaning of the
22 federal Anti-Dilution Act, 15 U.S.C. § 1125(c).

23 66. Defendants are using and disseminating promotional materials bearing
24 the famous Sonny Barger mark in commerce for commercial purposes. Unless
25 enjoined, Defendants' unauthorized actions will continue to dilute and diminish the
26 distinctive nature of the Sonny Barger mark by blurring, in violation of 15 U.S.C. §
27 1125(c).

28 67. On information and belief, Defendants are using the famous Sonny

1 Barger mark in an unwholesome or unsavory context, for commercial purposes for
2 their profit. Such unauthorized uses are likely to continue and will diminish the
3 distinctive nature of the Sonny Barger mark through tarnishment, in violation of 15
4 U.S.C. § 1125(c).

5 68. Defendants' unauthorized misappropriation and wrongful use of Sonny
6 Barger's name and mark are causing, and unless enjoined, will continue to cause,
7 irreparable and ongoing damage to Plaintiff SBP in the form of injury to its
8 business, reputation, and goodwill in the form of (a) loss of income; (b) dilution; (c)
9 interference with the ability of Plaintiff SBP to exploit the Sonny Barger mark; and
10 (d) impairment of goodwill.

11 69. Defendants' actions constitute a deliberate and willful violation of 15
12 U.S.C. § 1125(c), making this case exceptional within the meaning of 15 U.S.C. §§
13 1117 and 1118.

14 70. Plaintiff SBP is entitled to a preliminary and permanent injunction
15 against Defendants, as well as all other remedies available under the Lanham Act,
16 including, but not limited to, compensatory damages, disgorgement of profits, treble
17 damages, costs and attorney's fees.

18 SIXTH CAUSE OF ACTION

19 *Violation of Personality Rights under California Law*

20 71. Plaintiff incorporates paragraphs 1 through 39 as if set forth herein.

21 72. Defendants have used and, unless enjoined, will continue to use, Sonny
22 Barger's name for commercial purposes without consent, in violation of California
23 Civil Code § 3344(a).

24 73. By virtue of Sonny Barger's significant expenditures of time, effort and
25 talent, and the widespread recognition of Sonny Barger's celebrity status, Sonny
26 Barger and his assignee Plaintiff SBP have rights of publicity in his name, image
27 and likeness.

28 74. Defendants' unauthorized use of Sonny Barger's name is not in

1 connection with newsworthy events, but are for the purpose of trade and commerce,
2 in connection with their promotion of a television program.

3 75. Defendants have appropriated Sonny Barger's name for the value
4 associated with it, and not in an incidental matter or for a newsworthy purpose.
5 Defendants have gained the benefit of a celebrity endorsement without having to
6 obtain consent or to pay for it.

7 76. Defendants' aforesaid uses of Sonny Barger's name constitute
8 intentional and willful infringements of the rights of publicity and privacy in
9 violation of California Civil Code § 3344(a) and common law.

10 77. Plaintiff SBP has no adequate remedy at law and has suffered, and will
11 continue to suffer, irreparable harm and damage as a result of Defendants' aforesaid
12 acts, which, if not enjoined, will cause continued injury and loss.

13 78. Plaintiff SBP is entitled to a preliminary and permanent injunction
14 against Defendants, as well as all other remedies available under California law,
15 including, but not limited to, compensatory damages and exemplary damages.

16 SEVENTH CAUSE OF ACTION

17 *Unjust Enrichment under California Law*

18 79. Plaintiff incorporates paragraphs 1 through 39 as if set forth herein.

19 80. Defendants, through their actions and for their own commercial benefit,
20 have appropriated the services of Plaintiff SBP without compensation or consent,
21 thereby obtaining a benefit that in equity and good conscience they should not have
22 obtained or possessed. Defendants have been enriched at the expense of Plaintiff
23 SBP under such circumstances that in equity and good conscience they ought not to
24 retain.

25 81. Plaintiff SBP seeks a preliminary and permanent injunction against
26 Defendants, as well as all other remedies available under California law, including
27 but not limited to, compensatory damages, exemplary damages, and attorney's fees.

28 //

1 PRAYER FOR RELIEF

2 WHEREFORE, Plaintiff requests that the Court enter judgment:

- 3 1. Declaring that under United States copyright law, the “1% Outline” and
4 the “1% Script” are joint works of Plaintiff SBP and Defendant Tolkin;
5 2. Declaring that Plaintiff SBP co-owns with Defendant Tolkin all
6 copyright rights in and to the “1% Outline” and the “1% Script”;
7 3. Enjoining Defendants Tolkin and HBO from exploiting, producing,
8 selling or exhibiting any program based on the “1% Outline” or the
9 “1% Script”;
10 4. Enjoining Defendants Tolkin and HBO from making any unauthorized
11 use of the Sonny Barger name or mark for commercial, promotional or
12 trade purposes;
13 5. For compensatory and exemplary damages;
14 6. For attorney’s fees and costs; and
15 7. For such other and further relief as the Court shall deem just and
16 proper.

17 Dated: April 17, 2008

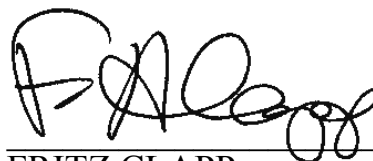
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19 _____
20 FRITZ CLAPP
21 Attorney for SONNY BARGER PRODUCTIONS

22 JURY DEMAND

23 Plaintiff hereby demands trial by jury of all issues triable herein.

24 Dated: April 17, 2008

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26 _____
27 FRITZ CLAPP
28 Attorney for SONNY BARGER PRODUCTIONS