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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
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<p>10 PATRICIA WARD KELLY, an individual, 11 Plaintiff, 12 vs. 13 UNIVERSITY PRESS OF MISSISSIPPI, 14 a Mississippi Corporation, KELLI 15 MARSHALL, an individual, and DOES 1 16 through 10, 17 Defendants.</p>	<p>CASE NO. 2:16-cv-02960 COMPLAINT FOR COPYRIGHT INFRINGEMENT (VERIFIED) JURY DEMAND</p>
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19 Plaintiff, Patricia Ward Kelly, alleges:

20 **FIRST CLAIM**

21 **(Copyright Infringement)**

22 1. Plaintiff, Patricia Ward Kelly (“Plaintiff”), is an individual who
23 resides, and at all times herein concerned did reside, in Los Angeles, California. Plaintiff
24 is the surviving spouse of Eugene C. Kelly (“Gene Kelly”), an internationally known
25 dancer, director, choreographer, actor, and entertainer best known for his starring roles in
26 the classic films *Singin’ in the Rain* and *An American in Paris*. Plaintiff is the duly
27 appointed and acting Executrix of the Estate of Gene Kelly and the owner of all of the
28 copyrights at issue in this case. Plaintiff is also a writer, performer, public speaker,

1 archivist and authority on Gene Kelly’s life and work. Plaintiff has devoted her adult life
2 and career to promoting and protecting all aspects of Gene Kelly’s legacy by writing,
3 directing and performing works that rely on the copyrights at issue in this case.

4 2. Plaintiff is informed and believes and upon such information and
5 belief alleges that defendant, University Press of Mississippi (“University Press), is a non-
6 profit corporation organized under the laws of, and maintaining its principal place of
7 business in, the State of Mississippi. Plaintiff is informed and believes and upon such
8 information and belief alleges that University Press conducts a literary publishing business
9 nationally and internationally, including a sales office in the Central District of California.

10 3. Plaintiff is informed and believes and upon such information and
11 belief alleges that defendant, Kelli Marshall, is an individual who resides in Chicago,
12 Illinois. Plaintiff is informed and believes and upon such information and belief alleges
13 that Marshall is an instructor at the DePaul University College of Communication and
14 edits and causes publication of literary works on popular culture and public figures
15 nationally, including in the Central District of California. Marshall also maintains an
16 active website on the World Wide Web that advertises her projects nationally, worldwide
17 and in the Central District of California.

18 4. The true names or capacities, whether individual, corporate, associate
19 or otherwise of the defendants sued herein as Does 1 through 10, are unknown to Plaintiff
20 who, therefore, sues such defendants by fictitious names. Plaintiff will ask leave to amend
21 this pleading to show their true names or capacities when the same have been ascertained.
22 Plaintiff is informed and believes and upon such information and belief alleges that the
23 DOE defendants are related entities, representatives, and agents of the named defendants
24 or conspired with and aided and abetted the other defendants to do the things complained
25 of herein.

26 5. This claim arises under the copyright laws of the United States, Title
27 17, United States Code, and the Court’s jurisdiction is founded upon 28 U.S.C. § 1338.

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1 6. This Court has personal jurisdiction over University Press in that the
2 alleged willful infringing conduct by University Press is expressly aimed at Plaintiff, a
3 California resident, and has a direct impact on the State of California. Further, Plaintiff is
4 informed and believes and upon such information and belief alleges that this Court has
5 personal jurisdiction over University Press in that University Press engages in continuous
6 and systematic business in California and derives revenues from its commercial activities
7 in California. Plaintiff is informed and believes and upon such information and belief
8 alleges that University Press maintains a sales office at 2031 North Craig Avenue,
9 Altadena, California, which sales office is advertised and disclosed on the official website
10 for University Press, www.upress.state.ms.us. University Press' maintains an active
11 website whereby it includes its catalog of works and provides a mechanism by which
12 customers, including those in California, can purchase works online through the website.
13 Plaintiff is informed and believes and upon such information and belief alleges that
14 University Press' publications are offered for sale in California and sold domestically in
15 interstate commerce, including in the State of California.

16 7. This Court has personal jurisdiction over Marshall in that the alleged
17 infringing conduct by Marshall is willful, expressly aimed at Plaintiff, a California
18 resident, and has a known impact on the State of California. Plaintiff is informed and
19 believes and upon such information and belief alleges that this Court has personal
20 jurisdiction over Marshall in that Marshall engages in continuous and systematic business
21 activities in California and derives revenues from her commercial activities in California.
22 Plaintiff is further informed and believes and upon such information and belief alleges that
23 since 2015, Marshall has engaged in continuous commercial activities in California and
24 has sold and distributed literary works through I-5 Publishing, LLC, a limited liability
25 company authorized to do and doing business in California with an agent for service of
26 process in Glendale, California. Plaintiff is informed and believes and upon such
27 information and belief further alleges that Marshall's book, *Locating Shakespeare in the*
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1 *Twenty-First Century*, has been targeted and sold to California residents. Further,
2 Marshall owns and operates the website www.kellimarshall.net, that she utilizes to
3 promote herself and her publications domestically in every state, including the State of
4 California. Marshall's website is interactive and provides users, including California
5 users, links to engage in commercial transactions to purchase her publications. Marshall
6 also maintains an active and global online presence, promoting and advertising her name
7 and works through blogs, social media platforms and media outlets, including
8 www.genekellyfans.com, twitter.com/kellimarshall, and [www.chroniclevitae.com/people/
9 22828-kelli-marshall/articles](http://www.chroniclevitae.com/people/22828-kelli-marshall/articles), all of which provide a direct and substantial nexus between
10 Plaintiff's claims in this case and Defendants' transaction of business with California
11 residents.

12 8. Venue is proper in this District under Title 28 U.S.C. §§ 1400(a) and
13 1391(b). It is a place where a substantial part of the events or omissions giving rise to the
14 claim occurred, where Plaintiff has been injured and damaged, and where Defendants have
15 done and are doing business.

16 9. Plaintiff's late husband, Gene Kelly, enjoyed great international
17 success in movies and on stage. As a result of his fame, he participated in various press
18 and promotional endeavors, including interviews to news and media publications.

19 10. The spoken and written words by Gene Kelly during all of his
20 interviews ("Interviews") are original works of authorship and are copyrightable subject
21 matter under the laws of the United States.

22 11. Prior to and during Gene Kelly's marriage to Plaintiff, which lasted
23 until his death in 1996, Plaintiff was designated as Mr. Kelly's official biographer and
24 archivist of his materials, including letters, interviews, manuscripts, holograph notes,
25 photographs, memorabilia, and related items. Plaintiff is the sole, official authority
26 entrusted by Gene Kelly to promote and protect his legacy. In these capacities, Plaintiff
27 documented his life and work, and collected, organized and catalogued his materials,
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1 including the Interviews, so that these materials could be used to write books, create online
2 platforms, and produce films, educational talks and shows, so as to provide an accurate
3 record of Gene Kelly's life and work.

4 12. In accordance with Gene Kelly's Will and the Eugene C. Kelly
5 Family Trust, Plaintiff was bequeathed and succeeded to the rights to Gene Kelly's
6 intellectual property, including the copyrights in and to the Interviews.

7 13. At all times herein concerned, Plaintiff has been and still is the sole
8 proprietor of all right, title, and interest in and to the copyrights in the Interviews.

9 14. Among the exclusive rights granted to Plaintiff under the Copyright
10 Act are the exclusive rights to reproduce, publish and distribute the Interviews and to
11 prepare derivative works based upon the Interviews.

12 15. Plaintiff is a writer, performer and public speaker in her own right and
13 has published numerous works, including articles and varying accounts about the life and
14 work of her late husband. Following Mr. Kelly's death, and in fulfilling his wishes,
15 Plaintiff continues to preserve, catalogue and utilize Gene Kelly's written and recorded
16 words and other works, including the Interviews, to further his legacy. In 2011, as part of
17 these efforts, Plaintiff formed *The Gene Kelly Legacy, Inc.*, a corporation established to
18 promote and protect Gene Kelly's artistry worldwide. As the official authority on Gene
19 Kelly, Plaintiff has introduced his films around the world, spoken in scores of high schools
20 and universities, participated in numerous interviews, presented awards in Mr. Kelly's
21 honor, and recorded commentary for media outlets, all of which rely heavily on the
22 Interviews. In 2012, Plaintiff launched a one-woman show, GENE KELLY: THE
23 LEGACY *An Evening with Patricia Ward Kelly*, which show relies heavily on the
24 Interviews, performances, and thoughts. This show continues to tour to sold-out audiences
25 across the country and abroad.

26 16. All of these endeavors, as part of *The Gene Kelly Legacy* platform,
27 have been essential to building momentum and creating a market demand in anticipation of
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1 Plaintiff's forthcoming projects that include an official Gene Kelly memoir, an official
2 Symphonic/Cinema Tribute titled GENE KELLY: A LIFE IN MUSIC, a "virtual" GENE
3 KELLY EXPERIENCE online platform, and continued performances of her one-woman
4 show. Each of these projects incorporates Mr. Kelly's unique expressions about his life
5 and work by extensively utilizing and relying on his Interviews. The accuracy and
6 authenticity of *The Gene Kelly Legacy* is dependent upon Plaintiff's ability to control and
7 use Gene Kelly's intellectual property, especially the Interviews.

8 17. Prior to the filing of this pleading, Plaintiff complied in all respects
9 with the Copyright Act and all other laws governing copyright, and filed registration
10 applications to protect her exclusive rights and privileges in and to the copyrights of the
11 Interviews. Attached hereto as Exhibit A are the registration applications for the
12 Interviews believed by Plaintiff to be the subject of Defendants' forthcoming infringing
13 publication.

14 18. On or about March 29, 2016, Plaintiff was contacted by defendant
15 Marshall via a Facebook message inquiring whether permission is needed to include
16 several of the Interviews in a printed book Marshall is planning to cause to be issued by
17 and through University Press.

18 19. On or about March 29, 2016, Plaintiff responded to Marshall via
19 Facebook message, stating, "Yes, Gene's words are his intellectual property . . . as are his
20 letters, holograph notes, magazine pieces, etc. . . . You must obtain permission to use
21 them."

22 20. On or about March 29, 2016, Marshall responded to Plaintiff via
23 Facebook message, informing Plaintiff that Marshall is in the process of editing a book of
24 Gene Kelly interviews for co-defendant, University Press, as part of the University Press'
25 "Conversations with Filmmakers" series (the "Book"). Marshall stated that she intends to
26 use various Gene Kelly interviews, including several interviews Gene Kelly had conducted
27 with the British Broadcasting Company ("BBC"). Marshall sought Plaintiff's permission
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1 for use of those Interviews.

2 21. On or about March 29, 2016, Marshall sent several follow-up
3 Facebook messages to Plaintiff, asking Plaintiff to respond by week's end.

4 22. Marshall is advertising on her website, www.kellimarshall.net, the
5 Book as follows: "Her book *Gene Kelly: Interviews . . .* is forthcoming from the University
6 of Mississippi Press."

7 23. The website for the faculty in the College of Communications at
8 DePaul University contains the following notices posted on Marshall's Faculty
9 "Instructor" page: "Her book *Gene Kelly: Interviews . . .* is forthcoming from the
10 University of Mississippi Press." On the same page, under the heading of "Selected
11 Publications and Research – Books," the following item is listed: "*Gene Kelly: Interviews.*
12 (Ed.) (University of Mississippi Press)."

13 24. On March 31, 2016, Plaintiff, through counsel, sent defendants
14 Marshall and the University Press a letter ("Cease and Desist Letter") via electronic mail
15 and certified mail. The Cease and Desist Letter advised the Defendants that no permission
16 is, or ever has been, granted to use the Interviews or any other Gene Kelly intellectual
17 property for the Book or otherwise. The Cease and Desist Letter demanded that the Book
18 project be discontinued and that written confirmation of its discontinuance be sent to
19 Plaintiff's counsel by April 7, 2016.

20 25. Each of the Defendants received the Cease and Desist Letter and
21 signed for the receipt thereof. Marshall never responded to the Cease and Desist Letter.

22 26. On April 11, 2016, University Press responded to Plaintiff's counsel
23 by letter, stating that University Press was going ahead with the Book upon obtaining
24 permission from unidentified third parties and would use the Interviews in the Infringing
25 Book, except for the Interviews with the BBC.

26 27. On April 18, 2016, Plaintiff's counsel responded to University Press
27 by email (copying Marshall), stating that Plaintiff owns the copyrights to all of the
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1 Interviews, not just interviews with the BBC, and that Defendants have no permission to
2 use any of the Interviews for the Book or for any other purpose. In that same email,
3 Plaintiff's counsel advised University Press that the threatened publication is highly
4 damaging to Plaintiff's rights and, unless Defendants cease and desist, Plaintiff would seek
5 damages, including statutory damages, for willful infringement of the copyrights in the
6 Interviews.

7 28. Defendants have not responded to the April 18, 2016 email from
8 Plaintiff's counsel.

9 29. After receipt of the Cease and Desist Letter and the follow up email of
10 April 18, 2016, Marshall did not remove or otherwise alter the advertisement about the
11 Book being published on her website, www.kellimarshall.net. As of the date of the filing
12 of this Complaint, Marshall continues to advertise the Book as set forth above in
13 Paragraphs 22 and 23.

14 30. Defendants' intended and threatened publication and dissemination of
15 the Interviews constitutes infringement under the United States Copyright laws.

16 31. Defendants' intended and threatened publication and dissemination of
17 the Interviews is willful, deliberate and in disregard of and with indifference to the rights
18 of Plaintiff, the owner of the copyrights in the Interviews.

19 32. Plaintiff has no adequate remedy at law for the foregoing wrongful
20 conduct in that it is impossible to calculate the damage to Plaintiff. The conduct of
21 Defendants, unless enjoined and restrained by this Court, will cause Plaintiff great and
22 irreparable injury that cannot fully be compensated or measured in money. Pursuant to
23 U.S.C §§ 502 and 503, Plaintiff is entitled to a temporary restraining order and
24 preliminary and permanent injunctive relief prohibiting Defendants from publishing the
25 Interviews and infringing Plaintiff's copyrights in and to the Interviews, and ordering
26 Defendants to destroy all copies of the Interviews made in violation of Plaintiff's exclusive
27 rights.

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1 33. As a result of Defendants' threatened infringement of Plaintiff's
2 copyrights and her exclusive rights in and to the Interviews, Plaintiff is entitled to actual
3 and statutory damages and profits. Plaintiff is also entitled to attorney fees and costs
4 pursuant to 17 U.S.C § 505.

5 WHEREFORE, Plaintiff prays for judgment as follows:

- 6 1. For a temporary restraining order and preliminary and permanent injunction
- 7 ordering Defendants, their agents, employees, attorneys, and all persons in active concert
- 8 or participation with them to cease and refrain immediately and until a final hearing and
- 9 determination of this action, from duplicating, copying, posting, advertising, exploiting,
- 10 editing, printing, publishing, releasing, selling, offering to sell, marketing, disseminating or
- 11 in any manner using the Interviews or any other copyrighted matter belonging to Plaintiff,
- 12 or any substantial portion thereof;
- 13 2. For actual and compensatory damages and profits;
- 14 3. For an order for destruction, deletion or elimination of all of Defendants'
- 15 products and advertising and promotional material bearing, utilizing or incorporating the
- 16 Interviews, or any portion thereof, or any other copyrighted matter belonging to Plaintiff,
- 17 or any substantial portion thereof, and removal of same from the Internet;
- 18 4. For statutory damages for the violation of Plaintiff's copyrights;
- 19 5. For an award of attorney fees and costs as allowed by law; and
- 20 6. For such other and further relief as this Court may deem just and proper.

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22 DATED: April 29, 2016

THOMPSON COBURN LLP

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25 By: /s/ Mitchell Reinis
26 **MITCHELL REINIS**
27 **DIANA A. SANDERS**
28 Attorneys for Plaintiff Patricia Ward Kelly

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DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury of all issues so triable.

DATED: April 29, 2016

THOMPSON COBURN LLP

By: /s/ Mitchell Reinis
MITCHELL REINIS
DIANA A. SANDERS
Attorneys for Plaintiff Patricia Ward Kelly

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VERIFICATION OF COMPLAINT AND CERTIFICATION

STATE OF CALIFORNIA

Plaintiff, Patricia Ward Kelly, states:

1. I am the Plaintiff in this civil proceeding.

2. I have read the above-entitled Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.

3. I believe that this Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.

4. I believe that this Complaint is not interposed for any improper purpose such as to harass any Defendants, cause unnecessary delay to the Defendants, or create a needless increase in the cost of litigation to the Defendants named in the Complaint.

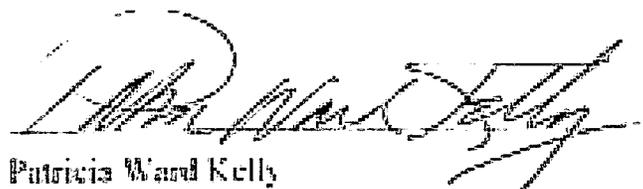
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.

6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.

7. I have not altered, changed, modified or fabricated these exhibits.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed April 29, 2016, at Los Angeles, California.


Patricia Ward Kelly