

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAMILTON EXHIBITION LLC,

Plaintiff,

v.

IMAGINE EXHIBITIONS, INC. and TOM ZALLER,

Defendants.

No. 1:19-cv-01470-LLS-OTW

IMAGINE EXHIBITIONS, INC.

Counterclaim-Plaintiff,

v.

HAMILTON EXHIBITION LLC, ADVENTURELAND,
LLC, and JEFFREY SELLER

Counterclaim-Defendants.

**IMAGINE EXHIBITIONS INC. AND TOM ZALLER'S
ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS**

Imagine Exhibitions, Inc. (“IEI”) and Tom Zaller (“Zaller;” collectively, “Defendants”) for their Answer and Affirmative Defenses against Plaintiff Hamilton Exhibition, LLC (“Hamilton Ex”), and IEI for its Counterclaims against Counterclaim-Defendants Hamilton Ex, Adventureland LLC (“Adventureland”) and Jeffrey Seller (“Seller;” collectively “Counterclaim Defendants”), allege the following, by their undersigned counsel, on personal knowledge as to matters concerning themselves and on information and belief as to other matters:

NATURE OF THE ACTION

1. Defendants admit the allegation in the first sentence of a paragraph 1, deny the allegations in the second sentence of paragraph 1, and lack sufficient information to form a belief as to the truth of the remaining allegations in this paragraph, and on that basis, deny the same.

2. Defendants deny the allegations in paragraph 2.

3. Defendants deny the allegations in paragraph 3.

4. Defendants deny that IEI “actually lacked the experience, expertise, and capabilities as presented.” The other allegations in paragraph 4 state a legal conclusion to which no response is required.

5. Defendants admit to the existence of a draft and unexecuted “Exhibition Producer Agreement,” dated as of January 1, 2017, which Tom Zaller signed on behalf of IEI. Defendants deny the rest of the allegations of paragraph 5.

6. Defendants deny the allegations in paragraph 6.

7. Paragraph 7 purports to characterize the nature of the action and therefore requires no response. To the extent a response is required, Defendants deny the allegations in paragraph 7 except admit that the First Amended Complaint purports to bring claims for fraud, negligent misrepresentation, breach of contract and unjust enrichment.

THE PARTIES

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

9. Defendants deny the allegations in paragraph 9 to the extent that IEI is a corporation organized under the laws of Georgia and not a limited liability company.

10. Defendants admit the allegations in paragraph 10.

JURISDICTION AND VENUE

11. The allegations in paragraph 11 state a legal conclusion to which no response is required. To the extent a response is required, Defendants do not contest subject matter jurisdiction.

12. The allegations in paragraph 12 state a legal conclusion to which no response is required. To the extent a response is required, Defendants admit this Court has personal jurisdiction over them, but deny the remaining allegations of this paragraph.

13. The allegations in paragraph 13 contain legal conclusions for which no response is required. To the extent a response is required, Defendants do not contest that venue is proper in this district.

FACTUAL BACKGROUND

14. Defendants deny the allegations in paragraph 14.

15. Defendants admit that the Exhibition follows the life of Alexander Hamilton, but deny the remaining allegations of paragraph 15.

16. Defendants admit IEI had a meeting with Defendants in New York City in August of 2016 where Defendants and IEI discussed IEI serving as producer of the Exhibition, but deny the remaining allegations in paragraph 16.

17. Defendants deny the allegations in paragraph 17.

18. Defendants deny the allegations in paragraph 18.

19. Defendants deny the allegations in paragraph 19, except admit they have “expertise with regard to designing, producing, marketing, operating and touring of museum-style exhibitions” and expertise with regard to “exhibition architecture.”

20. Defendants deny the allegations in paragraph 20, except admit that IEI was retained, as the Exhibition's producer, in or around October of 2016.

21. Defendants deny the allegations in paragraph 21, except admit that IEI commenced services in 2016.

22. Defendants admit that IEI proposed a draft "Exhibition Producer Agreement" which "Defendant Zaller signed on behalf of IEI as of January 1, 2017," but otherwise state that paragraph 22 refers to a portion of a written document, and refer to the document referenced therein for a description of its contents. Defendants also state that no further response to paragraph 22 is required.

23. Defendants state that paragraph 23 refers to a portion of a written document, and refer to the document referenced therein for a description of its contents. Defendants also state that no further response to paragraph 23 is required.

24. Defendants deny the allegations in paragraph 24.

25. Defendants deny the allegations in paragraph 25, except admit that Zaller, on behalf of IEI, represented that IEI had the capabilities to draft the Exhibition's written content, including drafting a script.

26. Defendants deny the allegations in paragraph 26.

27. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27, and on that basis, deny the same.

28. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28, and on that basis, deny the same.

29. Defendants deny the allegations in paragraph 29.

30. Defendants deny the allegations in paragraph 30.

31. Defendants deny the allegations in paragraph 31.

32. Defendants deny the allegations in paragraph 32.

33. Defendants deny the allegations in paragraph 33.

34. Defendants admit the allegations in paragraph 34.

35. Defendants deny the allegations in paragraph 35.

36. Defendants deny the allegations in paragraph 36.

37. Defendants state that paragraph 37 refers to a portion of a written document, and refer to the document referenced therein for a description of its contents.

38. Defendants deny the allegations in paragraph 38.

39. Defendants deny the allegations in paragraph 39, except admit that part of the services IEI provided Defendants was the production of an artifact and content matrix.

40. Defendants deny the allegations in paragraph 40.

41. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41, and on that basis, deny the same.

42. Defendants deny the allegations in paragraph 42.

43. Defendants deny the allegations in the first sentence in paragraph 43, and state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations in the rest of paragraph 43, and on that basis, deny the same.

44. Defendants deny the allegations in paragraph 44, except admit that IEI agreed to manage the drafting process for the Exhibition.

45. Defendants deny the allegations in paragraph 45.

46. Defendant deny the allegations in paragraph 46, except admit the Las Vegas engineering firm was eventually terminated.

47. Defendants deny the allegations in paragraph 47.

48. Defendants deny the allegations in paragraph 48.

49. Defendants admit that one of IEI's tasks for the Exhibition was to identify a venue for the Exhibition, but state that Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the rest of paragraph 49, and on that basis, deny the same.

50. Defendants deny the allegations in paragraph 50.

51. Defendants state that paragraph 51 refers to a portion of a written document, and refer to the document referenced therein for a description of its contents. Defendants also state that no further response to paragraph 51 is required.

52. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the rest of paragraph 52 and on that basis, deny the same.

53. Defendants deny the allegations of paragraph 53.

54. Defendants deny the allegations of paragraph 54.

55. Defendants deny the allegations of paragraph 55.

56. Defendants state that paragraph 56 refers to a portion of a written document, and refer to the document referenced therein for a description of its contents. Defendants also state that no further response to paragraph 56 is required.

57. Defendants admit that before the project commenced that IEI stated its opinion that, under certain circumstances, the Exhibition could be produced for a budget of \$6 million, but deny that IEI ever made any sort of promise or guarantee as to the budget. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the rest of paragraph 57, and on that basis, deny the same.

58. Defendants admit the allegations in paragraph 58.

59. Defendants deny the allegations in paragraph 59.

60. Defendants deny the allegations in paragraph 60.

61. Defendants state that the first sentence of paragraph 61 refers to a portion of a written document, and refer to the document referenced therein for a description of its contents. Defendants also state that no further response to the first sentence of paragraph 61 is required. Defendants deny allegations in the second sentence of paragraph 61, and lack sufficient information to form a belief as to the truth of the remaining allegations in this paragraph, and on that basis deny the same.

62. Defendants deny the allegations in paragraph 62.

63. Defendants deny the allegations in paragraph 63.

64. Defendants deny the allegations in paragraph 64.

65. Defendants deny the allegations in paragraph 65.

COUNT ONE: FRAUD (AGAINST ZALLER AND IEI)

66. Defendants repeat and re-allege their responses to each and every allegation above as though set fully forth herein.

67. Defendants deny the allegations in paragraph 67.

68. The allegations in paragraph 68 state a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 68.

69. The allegations in paragraph 69 state a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 69.

COUNT TWO: NEGLIGENT MISREPRESENTATION (AGAINST ZALLER AND IEI)

70. Defendants repeat and re-allege their responses to each and every allegation above as though set fully forth herein.

71. Defendants deny the allegations in paragraph 71, except admit they have expertise with regard to designing, producing, marketing, operating and touring museum-style exhibitions.

72. The allegations in paragraph 72 state a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 72.

73. The allegations in paragraph 73 state a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 73.

74. Defendants deny the allegations in paragraph 74.

75. The allegations in paragraph 75 state a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 75.

76. The allegations in paragraph 76 state a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 76.

COUNT THREE: BREACH OF CONTRACT (AGAINST IEI ONLY)

77. Defendants repeat and re-allege their responses to each and every allegation above as though set fully forth herein.

78. Defendants admit the allegations of paragraph 78.

79. Defendants admit that Defendants paid some “consideration for those services,” but deny that the consideration was adequate.

80. The allegations in paragraph 80 state a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 80.

81. The allegations in paragraph 81 state a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 81.

COUNT FOUR: UNJUST ENRICHMENT (AGAINST IEI ONLY)

82. Defendants repeat and re-allege their responses to each and every allegation above as though set fully forth herein.

83. Defendants deny the allegations of paragraph 83.

84. The allegations in paragraph 84 state a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 84.

85. The allegations in paragraph 85 state a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in paragraph 85.

REQUEST FOR RELIEF

Defendants admit that Hamilton Ex purports to request relief from this Court. Defendants deny that Hamilton Ex is entitled to such relief.

GENERAL DENIAL

Defendants deny each and every allegation contained in Hamilton Ex's First Amended Complaint not expressly admitted herein.

AFFIRMATIVE DEFENSES

Defendants state the following affirmative defenses to Hamilton Ex's First Amended Complaint:

First Affirmative Defense

The First Amended Complaint fails, in whole or in part, to state a claim upon which relief can be granted.

Second Affirmative Defense

Hamilton Ex's claims are barred, in whole or in part, by the statute of frauds.

Third Affirmative Defense

Hamilton Ex's claims are barred by the doctrine of unclean hands, acquiescence, waiver, equitable estoppel, laches, and/or related equitable doctrines.

Fourth Affirmative Defense

Hamilton Ex's claims are barred, in whole or in part, because Defendants has not suffered any injury or damages.

Fifth Affirmative Defense

Hamilton Ex's claims are barred, in whole or in part, because Hamilton Ex has failed to mitigate its damages.

Sixth Affirmative Defense

Hamilton Ex's claims are barred, in whole or in part, for lack of contract formation.

Seventh Affirmative Defense

Hamilton Ex's claims are barred, in whole or in part, due to its failure to satisfy conditions precedent, if any, necessary to obtain the relief it seeks.

Reservation of Rights

Defendants reserve the right to amend its defenses as discovery continues or the facts warrant.

IMAGINE EXHIBITIONS, INC.'S COUNTERCLAIMS

Counterclaim-Plaintiff IEI for its Counterclaims against Counterclaim-Defendants Hamilton Ex, Adventureland and Seller, by its undersigned counsel, alleges the following on personal knowledge as to matters concerning itself, and on information and belief as to other matters:

INTRODUCTION

1. In August of 2016, IEI approached Seller with the idea of creating a museum-style exhibition based on the story of Alexander Hamilton's life that would be supported and marketed alongside the hit Broadway show, *Hamilton: The Musical* ("Hamilton"). Owing to its vast experience creating, building and operating profitable, traveling museum-quality exhibitions, IEI saw enormous potential in an exhibition based off *Hamilton* (the "Exhibition") that could, if executed properly, be substantially profitable while also educating the public at large.

2. Seller and Adventureland had virtually no experience in building or operating such an exhibition and were instantly receptive to IEI's concept and vision, and induced IEI to undertake developing the Exhibition based on repeated representations that reasonably led IEI to believe it would be compensated for the fair value of its work. Indeed, Seller and Adventureland created the Hamilton Ex entity in part as a means to compensate IEI. These representations turned out to be false, as Counterclaim-Defendants have yet to compensate IEI despite the substantial efforts IEI undertook creating and developing the Exhibition. In reliance on Counterclaim-Defendants' repeated misrepresentations, for over eighteen months IEI worked extensively to not only bring the Exhibition into fruition, but also to position it to be profitable and capable of being toured to cities around the world after its initial run in Chicago.

3. To that end, in addition to creating and developing the highly innovative concept behind the Exhibition, IEI negotiated the essential terms of the lease for the Exhibition's Chicago location, sourced hundreds of historical artifacts for potential display in the Exhibition, and developed script for the Exhibition from scratch. Further, IEI leveraged its substantial industry contacts to locate a multitude of third-party vendors who could work on commercially favorable terms. During the course of these efforts, IEI not only devoted enormous internal resources, but

also incurred substantial out-of-pocket costs that have not been compensated by Counterclaim-Defendants but rightfully should be.

4. Throughout the parties' working relationship, Counterclaim-Defendants repeatedly conveyed to IEI that it would be paid fair value for its services. However, after exploiting IEI's experience, expertise, industry contacts, trade secrets and intellectual property for a year-and-a-half under the guise of a working partnership, on May 31, 2018, Counterclaim-Defendants abruptly terminated IEI without justification. Counterclaim-Defendants evidently determined (wrongly so) that IEI was no longer needed at that point and that they could cut IEI out of the Exhibition and reap the financial rewards of the Exhibition solely to themselves. To that end, just before dismissing IEI out of avarice, Seller instructed IEI to send to him copies of the most recent versions of IEI's work product. Later, Seller even went so far as to ask IEI to continue to work on the Exhibition's script *after* IEI's termination. By the time it was summarily terminated, IEI had incurred approximately \$750,000 in hard costs to pay vendors, employees and contractors for work relating to the Exhibition, the vast majority of which have not been compensated, and for which reimbursement is past due. Throughout the parties' entire working relationship, Counterclaim-Defendants paid IEI only \$100,000, which is magnitudes below IEI's out-of-pocket expenses, far less than even the initial fee of \$250,000, and enormously short of industry standard fees or what IEI is actually owed for its efforts and contributions.

5. Counterclaim-Defendants' calculation that they could operate the Exhibition while excluding IEI's participation turned out to be grossly misguided. Development of the Exhibition quickly foundered in the absence of IEI's expertise and stewardship. While the Exhibition belatedly opened in Chicago on April 29, 2019 months behind schedule due to Counterclaim-Defendants' missteps, it closed on August 25, 2019, months earlier than originally scheduled.

Plans to tour the Exhibition to cities other than Chicago were dropped entirely. Despite the promising potential of the Exhibition based on IEI's original vision, due to Counterclaim-Defendants' inability to execute that vision after terminating IEI, multiple media outlets have characterized the Exhibition as disappointing.

6. In describing the Exhibition's failure to meet expectations, and indeed its potential, Seller told the *Chicago Tribune* that "you can put it down to my naivete." Such naivete was on frequent display during the parties' working relationship, as Counterclaim-Defendants frequently ignored IEI's advice, leading to a bloated Exhibition that the *Tribune* reported cost over \$13 million.

7. In Seller's own words, "I built something that was too big, too beautiful, too gigantic, to move around." That immobility stemmed from Seller—who had had virtually no prior experience in the niche industry of traveling museum Exhibitions—frequently ignoring IEI's planning advice and instead incorporating the impractical design ideas of David Korins ("Korins"), the set designer of *Hamilton*, who similarly had no large-scale exhibition experience to speak of. Korins' and his firm's, David Korins Designs' ("DKD"), design choices drove up the Exhibition's costs while Counterclaim-Defendants ignored guidance from IEI that would have kept the Exhibition's budget reasonable. Thus, the blame for the Exhibition significantly exceeding budget falls squarely on Counterclaim-Defendants' shoulders, as substantial amounts toward the Exhibition had not yet been even been committed at the time that IEI was unjustifiably terminated. IEI has decades of experience touring exhibitions, and its design decisions and suggestions that were rejected by Counterclaim-Defendants would have ensured a mobile Exhibition capable of touring the world.

8. While mismanaging the Exhibition following IEI's baseless termination, Counterclaim-Defendants nonetheless continued to steal IEI's intellectual property. In a letter responding to IEI's allegations that Counterclaim-Defendants were infringing copyrights in their work product, Seller, without basis, claimed that he "reject[ed] any claim of copyright." IEI responded with copies of no fewer than eleven copyright registrations issued to IEI for just some of its work product for the project. From that point forward, Counterclaim-Defendants unilaterally cut off communication with IEI and Hamilton Ex filed this action, dishonestly seeking to portray itself as the aggrieved party. Counterclaim-Defendants may believe that they were entitled to take and use IEI's work product as they wished without compensating IEI, but fundamental law and basic equity is to the contrary.

THE PARTIES

9. Counterclaim Plaintiff IEI is a corporation organized under the laws of Georgia, with its principal offices located at 1800 Briarcliff Rd NE, Building B, Atlanta, GA, 30329. For more than twenty years, IEI, which Zaller founded in 2009, and Zaller have created, built, and opened hundreds of profitable, popular traveling and permanent museum-quality exhibitions. These include, among many others, *Titanic: The Exhibition*, *REAL BODIES*, *Jurassic World: The Exhibition*, *Angry Birds Universe*, *Dinosaurs Around the World*, *The Hunger Games: The Exhibition*, and *Downton Abbey: The Exhibition*. IEI is currently producing over 35 unique exhibitions in museums, science centers, zoos, integrated resorts and non-traditional venues worldwide.

10. Counterclaim-Defendant Seller is a resident of the state of New York. Seller is in the business of managing the production of Broadway musicals. Seller managed the production

of *Hamilton* through Adventureland, and in the past produced musicals such as *Rent*, *Avenue Q*, and *In the Heights*.

11. Counterclaim-Defendant Adventureland is a limited liability company organized under the laws of New York, with a principal place of business at 1501 Broadway, 24th Floor, New York, N.Y, 10036. Adventureland is owned by and controlled by Seller, and was established in 2012 to serve as Seller's primary production company to manage the production of certain Broadway musicals.

12. Counterclaim-Defendant Hamilton Ex is a limited liability company organized under the laws of New York with a principal place of business at 1501 Broadway, 24th Floor, New York, N.Y, 10036. According to the First Amended Complaint, Hamilton Ex was organized to commercially exploit certain rights to *Hamilton*, specifically the Exhibition. Hamilton Ex is owned by and controlled by Seller.

13. Throughout IEI's engagement with Seller, Seller used Adventureland and Hamilton Ex interchangeably. For example, when Zaller instructed a colleague to create an invoice to Hamilton Ex, Seller's personal assistant clarified: "[a]ctually, make it out to Adventureland, LLC. Same address. Thx." Further, while an unexecuted draft agreement, which set forth certain compensation terms, was between IEI and Hamilton Ex, the letter purportedly terminating IEI's services came from Adventureland. Additionally, Adventureland was the entity that paid IEI's initial invoices and development advance. Throughout the parties' relationship, IEI understood that Seller and his employees and affiliates were acting on behalf of both Hamilton Ex and Adventureland collectively, and that IEI was performing its services for the benefit of both entities that were acting in unison under the direction and control of Seller. As a functional matter, each

of the Counterclaim-Defendants acted as alter-egos to each other for purposes of their dealings with IEI.

JURISDICTION AND VENUE

14. This court has subject matter jurisdiction over IEI's copyright claims pursuant to 28 U.S.C. § 1338(a). This court has subject matter jurisdiction over IEI's state law claims pursuant to 28 U.S.C. § 1332 because IEI and Counterclaim-Defendants are citizens of different states and the amount in controversy exceeds \$75,000.

15. This court has personal jurisdiction over Counterclaim-Defendants and venue is proper in this district under 28 U.S.C. § 1391(b) because Counterclaim-Defendants have committed acts that have caused harm in this district, a substantial part of the events giving rise to these Counterclaims occurred in this District, and Counterclaim-Defendants reside in this district.

FACTUAL BACKGROUND

IEI Introduces the Idea of an Exhibition Based off *Hamilton* to Seller

16. For more than twenty years, Zaller has created, built, and opened dozens of profitable, popular traveling and permanent museum-quality exhibitions and venues. Zaller started IEI in 2009 after successfully operating other companies that thrived in the niche industry of museum exhibitions. Owing to that extensive experience, Zaller and IEI have developed a specialized ability to identify new exhibition opportunities from an extremely diverse array of mediums. One concept IEI developed involved *Hamilton*, the smash-hit Broadway musical that tells the story of the life of Alexander Hamilton. IEI saw enormous potential to transform the musical into an immersive museum-style traveling exhibition that, if properly executed, could at once entertain and educate the public at large.

17. To that end, in May of 2016, Zaller emailed an industry colleague and asked him if he had any contacts with the producers of *Hamilton* since IEI wanted to “do an exhibition on the historical story and include the show and the music.” Shortly thereafter, that industry colleague informed Zaller that he had passed along his request to his *Hamilton* contacts.

18. Zaller was subsequently introduced to Seller, who was instantly excited by Zaller’s vision for a *Hamilton* exhibition and scheduled a meeting with IEI in New York City in August of 2016, where IEI introduced Seller, Brohn, the Chief Operating Officer of Adventureland, and other Adventureland employees to IEI’s initial vision of the Exhibition.

19. After the meeting, Zaller sent Seller and Brohn a spreadsheet outlining various financial scenarios for producing a potential *Hamilton* exhibition in various cities at both museums and non-museum venues. Each scenario had a low, medium, and high financial scenario for budgeting purposes. In September of 2016, Brohn confirmed that Seller was interested in partnering with IEI to create the exhibition, writing “I would like to get on the phone with you tomorrow and let’s start talking about what a deal might look like to move forward together on this project.”

20. Shortly thereafter, Brohn informed Zaller telephonically that Seller and Adventureland had decided to retain IEI to serve as producer to develop and oversee the Exhibition.

Counterclaim-Defendants Make False Representations to IEI that Lead IEI to Reasonably Believe It Would be Fairly Compensated for its Work

21. When IEI was retained to develop and provide its expertise to the Exhibition, Seller and Adventureland represented that IEI, as producer of the Exhibition, would be paid fair value for the substantial services it was undertaking to perform. To that end, Adventureland, Seller and IEI began to negotiate compensation terms throughout the fall of 2016. Seller subsequently caused

Hamilton Ex, which he directs and controls, to be established in part to serve as the entity through which IEI would be compensated for its services.

22. It was beyond doubt that the parties recognized that IEI would be substantially compensated for its valuable services, and that neither Zaller nor IEI were performing any work on an unpaid or voluntary basis. To the contrary, the parties agreed that, as part of the engagement, IEI would be paid a small fee of \$250,000 on the front end, and then be paid weekly operating fees and share in the Exhibition's profits on the back end. IEI saw this structure as creating a true partnership where both sides would mutually benefit from the success of the Exhibition—success that IEI was uniquely positioned to bring about due to its expertise and experience.

23. In a multitude of conversations, Seller and Brohn, on behalf of the Counterclaim-Defendants, repeatedly made clear by words and conduct, that IEI would be fairly compensated for its services. IEI also relied on the fact that Adventureland initially paid IEI's invoices without dispute. On October 28, 2016, Brohn wrote to Zaller by email and re-confirmed the parties' understanding that IEI would be paid in a reasonable fashion, and noted that IEI's would receive a weekly "GM" fee during the course of the Exhibition as well as a participation interest. Further, on November 18, 2016, Brohn emailed IEI a marked-up draft agreement which set forth additional compensation terms. Subsequently, the parties negotiated further compensation terms that were set forth in a draft "Exhibition Producer Agreement" dated as of January 1, 2017 (ECF No. 24, Ex. 1), which included the payment structure described above. However, due in part to the intransigence of Counterclaim-Defendants, the parties never finalized all essential terms.

24. IEI relied on these false representations, leading IEI to reasonably believe it would be paid fair value, and on that basis, IEI continued to perform valuable services, dedicated its own personnel to the Exhibition, hired outside personnel to the Exhibition at its own expense, and

forewent other opportunities. Indeed, IEI not only expended enormous time, effort, and internal resources in developing the Exhibition, it also incurred out-of-pocket costs of approximately \$750,000 in the design and development of the Exhibition. While IEI was promised on numerous occasions an initial fee of \$250,000, the only payment it ever received throughout the entire engagement was a payment of \$100,000. The only other disbursement Counterclaim-Defendants ever made to IEI was an advancement toward development of \$201,750 that Adventureland remitted in March of 2018. *All* of the funds IEI expended from this advance went toward development of the Exhibition, and IEI kept none of these funds for itself.¹

Counterclaim-Defendants' False Representations Induce IEI to Perform Services

25. In reliance on these multiple representations, IEI began performing services in late-2016 to develop the Exhibition, and continued to perform through at least May of 2018. On December 7, 2016, IEI directed a creative charrette at Adventureland's offices with Seller, Brohn and Korins, the set designer of *Hamilton*, present. At the meeting, IEI presented a draft written script for the Exhibition with a concept book filled with written descriptions, illustrations and reference imagery. On December 10, 2016, IEI sent a revised draft of this concept to Seller for him to pass on to Lin Manuel Miranda, the creator of *Hamilton*. On January 23, 2017, Seller requested an additional copy of this revised concept, which IEI promptly provided.

26. On February 4, 2017, Zaller emailed Korins and Brohn its plan for bringing the Exhibition to reality. IEI set forth the following plan in that email:

¹ In fact, IEI still retains \$79,394.63 of these funds in a segregated bank account dedicated solely to the Exhibition that it does not plan to withdraw until this dispute is resolved.

- Imagine to do an initial floorplan this week based on current Narrative – showing square footages for ticketing, audio tour, exhibit entrance, show and exit, merchandise and photo locations, tech rooms, etc. this will be sent to David's team by Tuesday night or Wed morning as a draft and then hopefully we can meet Thursday or Friday after you have reviewed and we can discuss
- Imagine(JZ) to work with Jeffrey on refining narrative focus on entrance and exit(floorplan can be amended after initial based on narrative changes from the Hamilton creative team.
- Once floorplan and Narrative are more locked in or enough elements are locked in(next couple weeks) then David's team does the schematic and detailed design and renderings or Imagine can do but I think we discussed that David would. The renderings are needed for the sales deck and the schematic and details are needed for the bid process.
- Imagine should manage the project management of th bid, and build as we will eventually end up producing and operating the tour and its movements and will want certain build requirements.
 - We will look at a variety of builders, both ones we know and you know and get the most of our money and the best quality
 - We have great resources for truss, lights and AV gear as I am sure you do but may be cheaper if people don't know it is coming from the Hamilton show!
 - We need to discuss the lighting design and designer?
- Draft timeline was sent Friday, please confirm or challenge any dates you see there
- We should be building by October or November so we have a solid 4 months before a proposed presidents day opening in Chicago. (holidays, etc)

27. That same day, Zaller met Korins in Philadelphia to give him a behind the scenes tour of IEI's *Jurassic World* exhibition and presented the floor plan for the future Exhibition's layout. This presentation clearly indicated that the floor plan was IEI's copyrighted material by conspicuously referencing IEI's copyright throughout the materials. Additionally, IEI also introduced Seller and Brohn to officials of the National Constitution Center ("NCC") in Philadelphia, who expressed a serious interest in serving as host venue for the Exhibition and an interest in partnering with IEI to provide content and access to historical artifacts. During this meeting, IEI suggested to Seller and Brohn that the Exhibition feature bronze-styled sculptures similar to those on display at the NCC. Counterclaim-Defendants attempted to follow through on IEI's vision in the finalized Exhibition's "Schuyler Mansion" gallery, which featured substantially similar sculptures.

28. On February 27, 2017, IEI shared a revised ground plan for its Exhibition concept, and this is the basis upon which all future ground plans, including the one used for the finalized Exhibition, were based. These floor plans also bear IEI's copyright notice.

29. Throughout 2017 and 2018, IEI shared with Counterclaim-Defendants multiple drafts of the script of the Exhibition. On October 26, 2017, Zaller emailed Seller and Brohn a

“long form narrative that attempts to capture the major themes and begin to drill down a bit into the details.” The next month, IEI sent to Counterclaim-Defendants an updated script, incorporating all team comments to the prior draft. Subsequently, IEI continued to work on developing the script with the last version being sent to Counterclaim-Defendants on May 29, 2018.

30. Throughout the script’s development and drafting, Counterclaim-Defendants knowingly accepted and took advantage of the work product being provided to them by IEI. Throughout the script’s drafting process, a history professor at Yale University worked with all parties to review the script for historical accuracy, and her comments were incorporated into each turn of the script. IEI, at its own expense, additionally hired independent research assistants to further assist in refining the script.

31. IEI also worked diligently to source and secure historical artifacts relating to Alexander Hamilton or the founding of the United States to feature in the Exhibition. For example, Zaller informed Seller and Brohn that he was in discussions with the Museum of the American Revolution, the Mount Vernon Hotel Museum, and the National Constitution Center about securing artifacts for the Exhibition.

32. Subsequently, IEI provided Counterclaim-Defendants with an extensive “artifact matrix,” a spreadsheet, featuring descriptions and pictures of hundreds of historical artifacts, categorized by where they would feature in the Exhibition and which lender or vendor would provide them.

33. IEI devoted substantial time and resources to develop the script and historical artifact list in reliance on Counterclaim-Defendants’ false representations that they would adequately compensate IEI for the valuable services it was providing. Additionally, IEI incurred

substantial out-of-pocket costs, including expenses associated with retaining independent contractors, in developing the script and working with museums and other institutions to source the artifact list for which it has not been compensated to this day.

IEI Negotiates and Works to Secure the Exhibition's Venue

34. Throughout 2017, IEI diligently worked to secure a venue in Chicago to house the Exhibition. IEI made use of (and shared with Counterclaim-Defendants) their extensive contacts in the exhibition and museum industry to negotiate a potential venue on commercially favorable terms. Based on Zaller's long relationship with the Museum of Science and Industry in Chicago ("MSI"), IEI initially targeted MSI as a potential venue for the Exhibition in Chicago.

35. Counterclaim-Defendants were supportive of utilizing MSI as suggested by IEI, and Brohn informed IEI that Seller "only wants to consider the best (most elite) museums in each city---basically he thinks MSI is probably the only one we would want in Chicago." To that end, IEI began diligently negotiating with MSI, while still exploring other potential venues across the country at its own expense, for which IEI still has not been compensated by Counterclaim-Defendants.

36. IEI had several meetings with MSI officials, both with and without the presence of Counterclaim-Defendants, and MSI's leadership initially expressed strong interest in hosting the Exhibition on multiple occasions, including at a meeting in Chicago on August 22, 2017. However, it subsequently became apparent that MSI was stalling signing an agreement, which made Seller increasingly impatient. Consequently, IEI arranged a meeting between Seller and the president of MSI in November of 2017. At this meeting, MSI chose to pass on hosting the Exhibition and indicated to Seller that the Exhibition may not fit within MSI's science-based mission. This decision offended Seller, who took it personally and considered it an affront to the

Hamilton brand. While IEI urged Seller to try to bring MSI back to the bargaining table by proposing different business terms, it appeared that Seller's bruised ego interfered with his exercise of sensible judgment on this matter.

37. Despite its disagreement with Seller's decision, as his partner in the Exhibition, IEI continued to examine alternative venues in Chicago or elsewhere. IEI recommended engaging the mayor's office of Chicago in negotiations due to the tremendous success *Hamilton* was having in its Chicago run. To that end, a meeting was secured with a Chicago government official who had a direct line to Rahm Emanuel, the mayor of Chicago at the time.

38. Afterwards, IEI engaged in extensive negotiations with the Chicago Parks District ("CPD"), chiefly with the Chief Administrative Officer of the CPD. Two alternative Chicago venues were initially discussed: the lawn of the Field Museum of Natural History and Northerly Island, a somewhat remote peninsula off of Lake Michigan, which would host the Exhibition as a standalone site. It was IEI's strong belief that of these two locations, the only viable option was the Field Museum lawn, and IEI promptly informed Counterclaim-Defendants that it thought Northerly Island would be a poor option due to its remote location, complicated parking, loud neighbors, and a significant lack of critical infrastructure, including dedicated power. IEI told Counterclaim-Defendants that creating a power infrastructure specifically for the Exhibition could prove to be unduly expensive.

39. Due to these concerns, IEI recommended that Counterclaim-Defendants choose the Field Museum lawn over the Northerly Island location or continue to look at other locations in Chicago. In fact, IEI repeatedly urged Counterclaim-Defendants to allow it to explore other alternatives (including in other cities where IEI had already identified other potential host venues) if the Field Museum lawn was not an option. However, Seller overruled this recommendation and

chose Northerly Island and expressed the belief that—no matter how remote the location—the *Hamilton* brand was strong enough to justify an ethos of “if you build it, they will come.”

40. When it became clear that Northerly Island was Counterclaim-Defendants’ preference regardless of IEI’s reservations, IEI worked hard to secure the venue. To that end, IEI engaged in months-long negotiations to secure a deal with the CPD on the best possible terms to Counterclaim-Defendants. On February 14, 2018, Zaller, relying on conversations with Seller, informed the CPD that “I spoke to [Seller] and we are prepared to finalize this deal on the below terms”:

CPD to

- provide the land required for the Hamilton Exhibition from Sept, 2018 until Nov 2019
- assist with permitting and expediting
- assist with Marketing efforts
-

Hamilton will

- pay to the CPD \$1 for each paid visitor to come through the exhibition
- share 15% of any local sponsorship that CPD bring to the table
- Share 1% of Gross merchandise revenue(there is no way for more as it is already divided into too many pots)
- Share 15% of Net F&B revenue.
- Allow Title one Schools free entry
 - other CPD campers, and initiatives for underserved community will also be allowed admission, just need to figure out days, time, etc.
- coordinate Speakers series with Hamilton play & Exhibition key persons, staff or cast in CPD series.
- We act as partners

41. Negotiations were protracted by disputes over certain terms, and more importantly, the CPD informed IEI that, as a prerequisite to any agreement, Commonwealth Edison (“ComEd”), Illinois’s largest utility company, needed to perform a feasibility study of the Exhibition site.

42. After negotiating the price of the feasibility study down, IEI secured the study, and then finalized the basic terms of an agreement with the CPD for Northerly Island to serve as the site of the Exhibition.

43. Not only did IEI provide Counterclaim-Defendants the benefits of its substantial experience and industry contacts in negotiating the best deal possible for a Northerly Island land

lease on Counterclaim-Defendants' behalf, but it also designed an extremely efficient and mobile tent structure that could be set up at the site in just a few days and used without the need for the costly and extensive construction methods Counterclaim-Defendants ultimately used.

IEI Identifies and Negotiates with a Multitude of Third-Party Vendors

44. In addition to initiating and conceiving of the idea of the Exhibition, IEI also spent considerable time sourcing and negotiating with third-party vendors to assist in the project. Vetting vendors usually involved a thorough RFP process that was handled by IEI.

45. Vendors that IEI secured for the project include, but are not limited to, the following:

- a) RSF International – An audio tour company (that was necessary for the audio book component of the Exhibition) that was identified by IEI as the only company capable of delivering audio that is specifically triggered depending on what area of the Exhibition the listener is walking through. IEI not only identified and negotiated with RSF International, but spent considerable time educating them on the project. IEI also organized an intensive demonstration of their work in Counterclaim-Defendants' presence in both New York and Los Angeles.
- b) NGX Interactive – A digital interactive company that IEI not only identified and introduced to the Exhibition, but also spent considerable time familiarizing with the project and ensuring the design intent was understood.
- c) ID3 Group – A critical vendor identified by IEI to handle the fabrication of the Exhibition. IEI's decades'-long relationship with ID3 Group provided the only chance for the project to come in within budget, as other fabrication vendors would have charged significantly more. Throughout the design process, IEI checked in with ID3 at each phase of design process to ensure that the information that IEI was providing to Counterclaim-Defendants was substantiated by a fabricator who was intimately familiar with the details of the design.
- d) ComEd – As noted above, IEI met numerous times with the City of Chicago and ComEd to ensure proper power would be delivered to the Exhibition. While IEI's participation the Exhibition ended before a final agreement was reached with ComEd, IEI negotiated very favorable terms, and worked to secure and negotiated the price down of a required feasibility study to be performed by ComEd at the Exhibition's Northerly Island site.

46. IEI expended substantial resources and provided Counterclaim-Defendants the benefits of its vast industry expertise in identifying, negotiating with, and working to engage these vendors for which it has not been compensated. In turn, Counterclaim-Defendants continue to receive the benefit of the services of these vendors identified by IEI.

Counterclaim-Defendants Fail to Heed IEI's Advice, Leading to Significant Budget Inflation and an Immobile Exhibition

47. Counterclaim-Defendants retained Korins and his firm DKD to assist with the design of the Exhibition. While Korins was the set designer for *Hamilton*, before being retained for this project, he and his firm had no prior experience in the large-scale touring exhibition industry, having only worked with small museum galleries, and had no experience in ensuring cost efficiency for such Exhibitions.

48. As a result, and due to frequent indecision and constant delays from DKD's team that Counterclaim-Defendants regularly authorized, even Exhibition designs that appeared near-final were constantly in flux. Indeed, entire exhibition galleries that were fully drafted had to be entirely redrafted due to design last-minute design changes imposed by DKD. As but one example, in March of 2018 a vendor that IEI had a decades-long relationship with informed IEI that design changes DKD submitted to it (that IEI was not consulted on) resulted in more than \$1 million in additional costs being added into the design from the last time the vendor saw the designs just one month earlier.

49. While IEI informed Counterclaim-Defendants and DKD that "we are now at the point in the design process where the decisions I am making are going to be harder to change as we go forward without extensive time and financial costs," DKD continued to meddle and run up the costs of the project as 2018 progressed. The effect of this meddling was to turn the Exhibition into a much larger show, thereby rendering the \$8 million budget assumption IEI was working

under at this time entirely unsustainable. While Counterclaim-Defendants could have at any time instructed DKD as to what the budget was and ordered it not to further drive up costs, they simply chose not to.

50. While Counterclaim-Defendants frequently demanded that IEI cut costs in an unreasonable manner, they at the same time repeatedly authorized design additions by Korins and his firm that had the effect of significantly increasing the budget. While IEI repeatedly accommodated Counterclaim-Defendants' frequent requests that IEI provide an itemized budget of all Exhibition-related expenses, DKD's frequent and misguided changes rendered the budgets IEI was providing all but obsolete.

51. Specifically, DKD continued to submit new drawings, and revised renderings of exhibition galleries even after RFPs had been sent to vendors (a process which was itself already delayed by a month due to DKD's inability to settle on design choices) which had the effect of significantly increasing expenses. DKD's design choices were not only expensive, but also significantly impaired the Exhibition's mobility and thus rendered impractical any future touring of the Exhibition.

52. As another example, in February of 2018, DKD issued a hastily completed "Elements" list, which included for the first time ceilings in each room of the Exhibition. When IEI reached out to the vendor that was going to perform the fabrication of these ceilings, the vendor indicated that this addition increased their bid price by close to \$1 million. When IEI suggested removing the ceilings to accommodate Counterclaim-Defendants' frequent demands to cut the budget, DKD refused to even consider the idea.

53. IEI informed Brohn in May of 2018 that "we continue to work on the revised budget, however the incoming requests are driving it in the wrong direction across several

categories.” In response, rather than instruct DKD to cease unilaterally adding modifications that were substantially increasing the budget, Brohn replied that “Hearing that Incoming design changes are pushing the number in the wrong direction is pretty infuriating,” and that “we discussed that no further changes being contemplated that would negatively impact the budget.” However, all of these changes were coming from Korins and DKD, not IEI. IEI repeatedly informed Counterclaim-Defendants that it was unnecessary to spend the type of money contemplated by Korins’ design choices to ensure a quality Exhibition, but if they were going to incorporate these ideas they would need to make some hard choices as to Exhibition cuts, because it was simply impossible to stay within the current budget and at the same time accommodate all of Korins’ design proposals. IEI’s plea fell on deaf ears, and Counterclaim-Defendants subsequently blamed IEI for the massive budget overruns caused by Korins and his team.

54. Counterclaim-Defendants decision to follow DKD’s and its own advice led to a project that was significantly over budget, through no fault of IEI. Worse still, DKD’s additions caused the Exhibition to become so bloated that touring it at the conclusion of the Chicago-run became unfeasible. Had Counterclaim-Defendants properly followed IEI’s direction, IEI believed that the Exhibition could have both been produced for under \$8 million *and* been sufficiently portable to tour across the world to both museum and non-museum venues.

Counterclaim-Defendants’ Unfairly Terminate IEI and Misappropriate its Intellectual Property

55. By late May 2018, Counterclaim-Defendants perceived an opportunity to steal all of the valuable intellectual property, expertise, advice and industry contacts IEI had provided to them and use it for their own benefit. Counterclaim-Defendants evidently believed that IEI had provided enough at this point that it was no longer indispensable to a successful Exhibition, and saw the opportunity to cut IEI out of the partnership and misappropriate all of the financial upside

of the Exhibition to themselves. To that end, on May 31, 2018, Seller unjustifiably terminated IEI at a telephonic meeting. The decision to terminate IEI came as a surprise to IEI, as Counterclaim-Defendants had continued to solicit services from IEI until that very day, and IEI was provided with no notice period whatsoever.

56. Counterclaim-Defendants continued to use IEI's work after termination, and were even so bold as to continue to solicit services from IEI *after* terminating it. For example, just one day after termination, on June 1, 2018, Hamilton Ex requested that IEI continue to develop the script and artifacts list, among other things, in spite of the termination that occurred a day earlier.

57. Further, on June 5, 2018, Brohn, in transparently pretextual fashion, complained of several "errors" in the script that IEI had drafted. Tellingly, IEI later learned that the version being commented on was actually over four months old, and did not reflect the input of the history professor or the independent researchers IEI had subsequently retained to ensure the script's utmost historical accuracy. Despite their after-the-fact, pretextual criticisms, Counterclaim-Defendants *still* requested that IEI complete the script, complete the sourcing of historical artifacts to be displayed the Exhibition *and* complete the drafting of written descriptions of those historical artifacts.

58. IEI understandably declined to continue to perform services after it was terminated (though it continued to act in good faith by continuing to respond to Counterclaim-Defendants' repeated requests for information for weeks after termination), and IEI's active participation in the Exhibition largely ceased at this point. Subsequently, IEI notified Seller of its claim of all rights of copyright in the work product it had created over the course of its relationship with Counterclaim-Defendants. However, in a letter dated June 11, 2018, Seller informed IEI that he

would not be returning to IEI its intellectual property, and that “I reject any claim of copyright on behalf of [IEI].”

59. The Exhibition eventually opened in Chicago on April 29, 2019—more than six months later than originally scheduled—and closed on August 25, 2019, months earlier than originally scheduled. The *Chicago Tribune* recently reported that the Exhibition cost more than \$13 million to produce. These budget overruns are attributable to Counterclaim-Defendants and DKD, as substantial amounts had not yet been spent or committed on the Exhibition at the time of IEI’s termination, and Counterclaim-Defendants frequently overruled or ignored IEI’s decisions, suggestions and advice that would have kept the Exhibition’s expenses within a much more reasonable range.

60. While IEI did not continue work after being unfairly terminated, many elements of the final Exhibition were clearly based upon numerous works of authorship created by IEI and constitute unauthorized derivative works thereof. Moreover, the third-party vendors that IEI worked to secure while it was performing services for Counterclaim-Defendants were kept on even after IEI was terminated, though IEI has learned that the rates Counterclaim-Defendants paid those vendors, specifically ComEd, turned out to be significantly more than what IEI was negotiating with them at the time of termination.

61. Ultimately, despite IEI’s substantial contributions, Counterclaim-Defendants were unable to implement IEI’s vision, and the Exhibition received a lukewarm response from the industry and the public generally. After the Exhibition’s early closing and lack of touring was announced, Seller acknowledged his own missteps and told the *Chicago Tribune* that “[y]ou can put it down to my naivete,” and noted that “I built something that was too big, too beautiful, too gigantic, to move around.”

62. IEI has decades of experience in building exhibitions that are built to travel not only the country, but the world. Neither Seller nor any of his team had any relevant experience producing traveling exhibitions. Nevertheless, during the time IEI worked on the project, Counterclaim-Defendants frequently ignored IEI's advice on how to actually build an affordable traveling exhibition. Instead of heeding IEI's expert advice, Seller instead relied on his own inapplicable experience from Broadway or turned to others, like Korins, whose experience was also primarily in staging musicals. Thus, the Exhibition's failure to achieve the success it could have had if IEI remained involved, while unfortunate, is not surprising.

63. The Exhibition's disappointing results, along with Counterclaim-Defendants' unjustified termination and poor treatment of IEI have caused immeasurable damage to IEI's reputation and standing in the exhibition industry. While IEI forewent other business opportunities to partner with Counterclaim-Defendants to create the Exhibition, the conduct of Counterclaim-Defendants has hindered IEI's prospective business dealings. While Counterclaim-Defendants only benefited from their association with IEI and its reputation, IEI and Zaller's reputation were severely harmed due to their wrongful treatment at the hands of Counterclaim-Defendants.

COUNT I: COPYRIGHT INFRINGEMENT: 17 U.S.C. § 501
(against all Counterclaim-Defendants)

64. IEI repeats and realleges the allegations set forth above as though fully set forth herein.

65. IEI created and owns the eleven (11) original works of authorship identified in Exhibits A-K attached hereto ("the Works").

66. IEI filed copyright applications for the Works, which have been registered with the United States Copyright Office. Attached hereto as Exhibits A-K are copies of the registration

certificates for the Works issued to IEI, together with the associated deposit materials submitted to the Copyright Office constituting each of the Works.

67. Between August 2016 and June 5, 2018, IEI spent thousands of hours providing services to Counterclaim-Defendants in connection with the Exhibition.

68. Copies of each of the Works were sent to Counterclaim-Defendants at its request prior to Counterclaim-Defendants' termination of the working relationship between Counterclaim-Defendants and IEI on May 31, 2018. The dates of first publication indicated on each of the registrations for the Works correspond to the dates on which copies of each respective Work were first sent to Counterclaim-Defendants.

69. No rights of copyright in the Works were ever assigned to Counterclaim-Defendants.

70. Several of the Works are original illustrations executed by IEI and depicting the design of specific rooms that were included in the version of Exhibition that Counterclaim-Defendants eventually opened in Chicago on April 29, 2019, including rooms depicting the Battle of Yorktown and the infamous duel between Alexander Hamilton and Aaron Burr. One illustrative instance of an unauthorized derivative work infringing IEI's rights of copyright can be seen in Exhibit L, which shows side-by-side images of one of IEI's copyrighted drawings and a corresponding photograph of the actual Exhibition gallery room constructed in Chicago, depicting the Hamilton-Burr duel.

71. Other Works contain extensive detail and evidence hundreds of creative choices made by IEI with respect to elements to be displayed in each gallery room in the Exhibition, as well as explanatory text to be displayed on panels throughout the Exhibition.

72. Counterclaim-Defendants relied heavily on these Works in creating derivative works that formed significant portions of the final version of the Exhibition. These portions include, among others, distinctive visual depictions of: (i) the stylized depiction of the devastation caused by a hurricane that struck the Caribbean island of St. Croix when Hamilton lived there during his teenage years by utilizing items suspended from the ceiling, as originally designed by IEI; (ii) Hamilton's writing desk and quill to serve as a *leitmotif*; (iii) an interactive depiction of the Battle of Yorktown with moving pieces showing the positions of the British and Continental Armies; (iv) interactive displays illustrating policy debates reflected in the Federalist Papers; and (v) the climatic duel between Hamilton and Burr.

73. After terminating its relationship with IEI on May 31, 2018 and without the permission or authorization of IEI, upon information and belief, Counterclaim-Defendants copied and distributed the Works to third parties in derogation of IEI's exclusive rights under 17 USC §§106(1) and 106(3).

74. After terminating its relationship with IEI on May 31, 2018 and without the permission or authorization of IEI, Counterclaim-Defendants created derivative works of the Works, in derogation of IEI's exclusive rights under 17 USC §106(2).

75. IEI owns all right, title, and interest in all rights of copyright in the Works.

76. Counterclaim-Defendants have infringed and are infringing the copyrights of the Works by unlawfully reproducing and distributing identical copies of the Works in violation of the United States Copyright Act, 17 U.S.C. §§ 106 (1) and (3) and creating unauthorized derivative works of the Works in violation of 17 U.S.C. § 106(2).

77. Counterclaim-Defendants' infringements were and are willful, in bad faith, and executed with full knowledge of IEI's copyright, and in conscious disregard for IEI's exclusive rights in the Works.

78. Counterclaim-Defendants' deliberate infringement of IEI's copyrights in the Works has greatly and irreparably damaged IEI, and will continue to damage IEI greatly and irreparably unless enjoined by this Court. In the absence of injunctive relief, IEI will have no adequate remedy at law. Accordingly, IEI is entitled to a permanent injunction in accordance with 17 U.S.C. § 502.

79. IEI is further entitled to recover from Counterclaim-Defendants its profits, calculated in the manner set forth in 17 U.S.C. § 504(b), as well as damages and costs including attorneys' fees, that IEI has sustained and will sustain as a result of Counterclaim-Defendants' infringements. At present, the amount of such damages, gains, profits and advantages cannot be fully ascertained by IEI. Pursuant to 17 U.S.C. § 504(c)(1), IEI may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in this Action.

80. IEI hereby demands trial by jury on all issues triable to a jury.

COUNT II: UNJUST ENRICHMENT
(against all Counterclaim-Defendants)

81. IEI repeats and realleges the allegations set forth in the above paragraphs as though fully stated herein.

82. At Counterclaim-Defendants' direction and repeated request, IEI furnished valuable services to Counterclaim-Defendants in connection with the Exhibition that it has not been adequately compensated for despite repeated false representations made by Seller and Brohn, among others, throughout IEI's engagement that led IEI to reasonably believe it would be paid fair value for its services.

83. For over eighteen months IEI expended enormous amounts of energy and devoted significant resources on Counterclaim-Defendants' behalf. Among other things, IEI provided the benefit of its substantial expertise, resources, trade secrets, and industry contacts to Counterclaim-Defendants in drafting a script for the Exhibition, sourcing hundreds of artifacts to be displayed in the Exhibition, sourcing the Exhibition's venue and negotiating its lease, and identifying and negotiating with a multitude of outside vendors on commercially favorable terms.

84. In addition to the valuable services IEI provided to Counterclaim-Defendants, IEI also incurred substantial out-of-pocket expenses during the performance of these services for which it has not been compensated.

85. Without reason or justification, Counterclaim-Defendants have refused to pay IEI for the reasonable value of its services.

86. Counterclaim-Defendants have enormously benefited and profited from IEI's services, for which they have not fairly compensated IEI.

87. By refusing to pay IEI the reasonable value of its services that it represented that it would pay, Counterclaim-Defendants have therefore been unjustly enriched, and this Court should award IEI an amount sufficient to eliminate Counterclaim-Defendants' unjust enrichment.

COUNT III: QUANTUM MERUIT
(against all Counterclaim-Defendants)

88. IEI repeats and realleges the allegations set forth in the above paragraphs as though fully stated herein.

89. At Counterclaim-Defendants' direction and repeated request, IEI furnished valuable services at great costs to itself and for the benefit of Counterclaim-Defendants in connection with the Exhibition for which it has not been adequately compensated. IEI also

forewent other opportunities by devoting such substantial time and resources to providing valuable services to Counterclaim-Defendants.

90. Specifically, IEI provided the benefit of its substantial expertise, resources, trade secrets, and industry contacts to Counterclaim-Defendants in drafting a script for the Exhibition, sourcing hundreds of artifacts to be displayed in the Exhibition, sourcing the Exhibition's venue and negotiating its lease, and identifying and negotiating with a multitude of outside vendors on commercially favorable terms.

91. In addition to the valuable services IEI provided to Counterclaim-Defendants, IEI also incurred substantial out-of-pocket expenses during the performance of these services for which it has not been compensated.

92. Counterclaim-Defendants knowingly accepted the benefits of IEI's valuable services.

93. IEI had a reasonable expectation of being compensated fair value for these services due to, among other things, Counterclaim-Defendants' repeated false representations that it would compensate IEI on agreed upon terms.

94. Therefore, this Court should award IEI quantum meruit to compensate it for the reasonable value of its services.

COUNT IV: FRAUDULENT MISREPRESENTATION
(against all Counterclaim-Defendants)

95. IEI repeats and realleges the allegations set forth in the above paragraphs as though fully stated herein.

96. On a multitude of occasions, Counterclaim-Defendants made representations that led IEI to believe that Counterclaim-Defendants would compensate IEI for the fair value of enormously valuable services it was providing on an ongoing basis. For example, on October 28,

2016, Brohn, on behalf of Adventureland and Seller and at Seller's direction, wrote to Zaller by email and re-confirmed the parties' understanding that IEI would be paid in a reasonable fashion. Brohn noted that IEI's would receive a weekly "GM" fee during the course of the Exhibition as well as a participation interest based in the Exhibition. Further, on November 18, 2016, Brohn emailed IEI a marked-up draft agreement which set forth additional compensation terms. Subsequently, the parties negotiated further compensation terms that were set forth in a draft "Exhibition Producer Agreement" dated as of January 1, 2017 (ECF No. 24, Ex. 1).

97. IEI justifiably relied on these representations in continuing to provide valuable services to Counterclaim-Defendants.

98. Counterclaim-Defendants either knew these representations were false when made or acted with reckless indifference to the truth of the representations, as demonstrated by Counterclaim-Defendants' refusal to pay for the work IEI provided.

99. As a direct and proximate result of its reasonable reliance on Counterclaim-Defendants' misrepresentations, IEI has suffered and continues to suffer economic losses and damages in an amount to be proven at trial.

REQUEST FOR RELIEF

WHEREFORE, IEI respectfully requests the following relief:

a. For Count I:

- i. That a permanent injunction be issued against Counterclaim-Defendants in accordance with 17 U.S.C. § 502; and
- ii. That Counterclaim-Defendants be required to account for and pay over to IEI the actual damages suffered by IEI as a result of the infringement and any profits of the Counterclaim-Defendants attributable to the infringement

of IEI's copyright or exclusive rights under copyright and to pay such damages to IEI as to this Court shall appear just and proper within the provisions of the Copyright Act, *or*, in the alternative, at IEI's election, that IEI be awarded statutory damages for infringement of each separate copyright in accordance with 17 U.S.C. § 504; and

iii. That an award of costs be issued pursuant to 17 U.S.C. § 505; and

iv. That an award of attorneys' fees be issued pursuant to 17 U.S.C. § 505.

- b. For Counts II, III and IV, that a judgment be entered in IEI's favor and against Counterclaim-Defendants on these Counts, in an amount to be proven at trial by competent evidence but believed to be well into the seven-figure range, together with the full amount of interest and costs allowed by law, including interest and punitive damages for Defendants' willful, malicious, and outrageous behavior; and the cost of attorneys' fees incurred by IEI in connection with this proceeding; and.
- c. Such other and relief as the Court deems just and proper.

Dated: New York, New York
August 30, 2019

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