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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 Teller, an individual,
11 Plaintiff,

12 v.

13 Gerard Dogge (P/K/A, Gerard Bakardy) an
14 individual,
15 Defendant.

Case No.

COMPLAINT FOR:

- (1) Copyright Infringement
17 U.S.C. § 501 et seq.;
- (2) Unfair Competition
15 U.S.C. § 1125(a)

Jury Trial Demanded

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18 Plaintiff Teller, an individual residing in Nevada (hereinafter "Teller" or "Plaintiff"), by
19 and through his attorneys Greenberg Traurig, LLP, hereby demands a trial by jury and
20 complains and alleges against Defendant Gerard Dogge (P/K/A, Gerard Bakardy), an
21 individual, (hereinafter "Bakardy" or "Defendant"), as follows:

22 **NATURE OF ACTION**

23 This is an action for copyright infringement and unfair competition under federal
24 statutes. Plaintiff seeks damages, attorneys' fees and costs.

25 **JURISDICTION AND VENUE**

26 1. These Claims arise under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and the
27 Lanham Act, 15 U.S.C. § 1051 *et seq.*

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1 Tonight Show with Jay Leno,” “Friends,” “The Simpsons,” “Chelsea Lately” and “Top Chef,”
2 to name a few.

3 10. Additionally, Penn & Teller had their own critically acclaimed television series
4 on the Showtime cable network called “Penn & Teller: BS!,” which was nominated for
5 thirteen Emmys and was the longest running series in the history of the network. Penn &
6 Teller also had a British television series called “Fool Us” that ran last year, and have a
7 show on the Discovery Channel called “Penn & Teller Tell A Lie.”

8 11. Penn & Teller have written two national best-selling books, hosted their own
9 Emmy nominated variety show for the FX network, starred in their own specials for major
10 networks ABC, NBC and Comedy Central and produced the critically lauded feature film
11 documentary “The Aristocrats.”

12 12. Currently, Penn & Teller are performing their live Show regularly at The Rio
13 All-Suite Hotel & Casino in Las Vegas, Nevada (“The Rio”), where it has been running for
14 over eleven years, making it one of the longest running, successful and most-beloved
15 shows in Las Vegas history. Penn & Teller’s long run at The Rio has earned them the
16 prestigious award of “Las Vegas Magicians of the Year” six times, including in 2011.

17 13. Plaintiff Teller has been instrumental in the success of the Show, and has
18 created many of the original comedy bits and magic tricks that have been featured in the
19 Show over the years. One of Teller’s most successful and lasting original magic tricks is a
20 dramatic work called “Shadows,” which is the subject of the instant litigation.

21 14. Teller created the highly innovative and unusual dramatic work “Shadows” in
22 1976, and obtained a U.S. Copyright Registration for it in 1983. True and accurate copies
23 of U.S. Copyright Office Certificate of Registration No. PA 469-609, and the deposit
24 materials submitted in support of the registration, are attached hereto as **Exhibit 1**.

25 15. “Shadows” essentially consists of a spot light trained on a bud vase
26 containing a rose. The light falls in a such a manner that the shadow of the real rose is
27 projected onto a white screen positioned some distance behind it. Teller then enters the
28 otherwise still scene with a large knife, and proceeds to use the knife to dramatically sever

1 the leaves and petals of the rose's shadow on the screen slowly, one-by-one, whereupon
2 the corresponding leaves of the real rose sitting in the vase fall to the ground, breaking
3 from the stem at exactly the point where Teller cut the shadow projected on the screen
4 behind it. Upon information and belief, the magic trick "Shadows" was the first illusion of its
5 kind.

6 16. "Shadows" has been performed by Teller in Penn & Teller's Show thousands
7 of times, including live and televised performances throughout the United States and the
8 world. In fact, "Shadows" has appeared in every Penn & Teller Show performed on and off
9 Broadway and in their national tours. It is the oldest, most venerated piece of material in
10 continuous use in Penn & Teller's Show, and while other material has come and gone, it
11 has remained as a universal favorite.

12 17. "Shadows," among all of Penn & Teller's repertoire, has an iconic quality as
13 the piece with the longest association to Penn & Teller's Show, and to Teller himself. It is
14 considered one of the rare new plots in the canon of 20th Century magic and is Teller's
15 principal claim to fame in magic history. In fact, "Shadows" is still a major part of the Show
16 currently running at The Rio, and it has been used so extensively and exclusively by Teller
17 that it has become his signature piece - millions of people in the United States and around
18 the world have seen Teller perform "Shadows," and have come to identify this signature
19 piece with its creator and source: Teller.

20 **FACTS REGARDING DEFENDANT'S CONDUCT**

21 18. Upon information and belief, Defendant is a Dutch professional entertainer,
22 and along with his wife is part of a musical singing lounge act duo, currently performing a
23 regular engagement in a hotel located in Fuerteventura, Spain (Canary Islands).

24 19. Upon information and belief, a part of Defendant's act also includes
25 performing magic tricks. True and correct copies of printouts of webpages from
26 Defendant's website at <www.losdosdeamberes.com>, showing that Defendant is in the
27 business of providing entertainment services in the nature of musical performances as well
28 as magic performances, are attached hereto as **Exhibit 2**.

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1 20. Upon information and belief, Defendant has traveled to Las Vegas, Nevada
2 and seen Penn & Teller’s Show at The Rio, including Teller’s dramatic performance of his
3 signature piece “Shadows.”

4 21. Without authorization from Teller, Defendant has created a magic routine that
5 is substantially similar to Teller’s copyrighted work “Shadows.” Defendant calls his magic
6 routine “The Rose & Her Shadow.”

7 22. Defendant has recorded a video of himself performing the dramatic work “The
8 Rose & Her Shadow,” and had posted it on the popular Internet website YouTube along
9 with an advertisement offering to sell the magic trick to consumers. True and correct
10 copies of screen captures of the YouTube pages containing the video “The Rose & Her
11 Shadow” are attached hereto as **Exhibit 3**.

12 23. In fact, in the text beneath Defendant’s YouTube video post, Defendant refers
13 to Penn & Teller’s Show, admitting that he has “seen the great Penn & Teller performing a
14 similar trick and now I’m very happy to share my version....” See Exhibit 3.

15 24. Upon information and belief, Defendant created an advertisement for the sale
16 of “The Rose & Her Shadow” trick, and has expressed his intention to Plaintiff to place this
17 particular ad in magazines in Belgium and potentially other countries as well. The
18 Defendant’s listed selling price for “The Rose and Her Shadow” is an amount equal to
19 approximately USD \$3,050.00. A true and correct copy of the intended magazine
20 advertisement for the sale of the magic trick “The Rose & Her Shadow” is attached hereto
21 as **Exhibit 4**.

22 25. On or about March 15, 2012, Plaintiff Teller became aware of the Defendant’s
23 video of “The Rose & Her Shadow” posted on YouTube, including the offer to sell the trick
24 to consumers shown at the end of the video, and recognizing this as an infringement of his
25 copyrighted work “Shadows,” Plaintiff instructed his attorneys to send YouTube a DMCA
26 takedown notice, eventually resulting in YouTube’s removal of the Defendant’s video from
27 its website.

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1 necessary to secure his copyright including obtaining a United States Copyright
2 Registration with the U.S. Copyright Office.

3 33. Plaintiff owns a valid copyright registration in “Shadows” and is the owner of
4 all rights, title and interest in and to said work, and owns all rights, title and interest to the
5 registered copyright of “Shadows,” and has done nothing to abandon the copyrighted work
6 or place it into the public domain.

7 34. Upon information and belief, and without the knowledge, approval or consent
8 of Plaintiff, Defendant willfully infringed and continues to infringe Plaintiff’s copyright by
9 reproducing, copying, duplicating, displaying, publically performing and using Plaintiff’s
10 copyrighted work for Defendant’s own commercial purposes by publically performing and
11 displaying Plaintiff’s work, and making unauthorized video copies of Plaintiff’s work for the
12 purpose of being hired for his entertainment services, and offering to sell the work to third
13 parties. Defendant has done so with full knowledge that such acts are an infringement of
14 Plaintiff’s copyright, and such acts being in violation of Plaintiff’s exclusive rights under The
15 Copyright Act.

16 35. Defendant’s past and present acts violate Plaintiff’s exclusive rights under
17 Section 106 of the Copyright Act, 17 U.S.C. §106, and constitute willful and intentional
18 infringement of the Plaintiff’s copyright in his work “Shadows.”

19 36. Defendant has realized unjust profits, gains and/or advantages as a
20 proximate result of its infringement.

21 37. As evidenced by Defendant’s copying, public performance, display and
22 prominent use of Plaintiff’s protected work for his own gain, Defendant’s disregard of
23 Plaintiff’s previous demands and his misappropriation of Plaintiff’s copyrighted and
24 registered work, Defendant has infringed upon Plaintiff’s copyright.

25 38. As a direct and proximate result of Defendant’s copyright infringement,
26 Plaintiff has suffered monetary damages and irreparable injury to his business, reputation
27 and goodwill.

28

1 39. Plaintiff has complied in all respects with the statutory requirements for the
2 creation and enforcement of the copyright in his work "Shadows;" therefore, Plaintiff is
3 entitled to an award of statutory damages for Defendant's infringement or, in the
4 alternative, Plaintiff's actual damages and Defendant's profits.

5 40. Furthermore, since Defendant's conduct has made it necessary for Plaintiff to
6 engage the services of outside legal counsel to file this suit, Plaintiff is entitled to recover
7 his reasonable attorney fees and court costs incurred in connection herewith.

8 **SECOND CLAIM FOR RELIEF**

9 **(Unfair Competition under the Lanham Act, 15 U.S.C. § 1125(a))**

10 41. Plaintiff repeats and realleges each and every allegation in the preceding
11 paragraphs as though set forth fully herein.

12 42. Defendant's use in commerce of his work "The Rose & Her Shadow," which is
13 confusingly similar to Plaintiff's signature piece "Shadows," in connection with Defendant's
14 entertainment services and related goods constitutes a false designation of origin and/or a
15 false or misleading description or representation of fact, which is likely to cause confusion,
16 cause mistake, or deceive as to affiliation, connection, or association with Plaintiff, or as to
17 the origin, sponsorship, or approval of Defendant's services, goods and commercial
18 activities.

19 43. Defendant's use in commerce of his work "The Rose & Her Shadow," which is
20 confusingly similar to Plaintiff's signature piece "Shadows," with the knowledge that Plaintiff
21 owns and has used and performed, and continues to use and perform, his signature piece
22 "Shadows" constitutes intentional conduct by Defendant to make false designations of
23 origin and false descriptions about Defendant's services, goods and commercial activities.

24 44. As a direct and proximate result of such unfair competition, Plaintiff has
25 suffered, and will continue to suffer, monetary loss and irreparable injury to his business,
26 reputation, and goodwill.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests for judgment in his favor and against Defendant, granting the following relief:

A. A declaration that Defendant has infringed Plaintiff’s copyright in the work “Shadows;”

B. A permanent injunction preventing Defendant from using Plaintiff’s copyrighted work in any way, including but not limited to ceasing all use and offers for sale of Defendant’s infringing work “The Rose & Her Shadow;”

C. Awarding to Plaintiff, pursuant to 17 U.S.C. §504, all actual damages suffered by Plaintiff and all additional profits earned by Defendant attributable to the copyright infringement; or, in the alternative, awarding to Plaintiff the statutory damages provided by 17 U.S.C. §504;

D. Awarding to Plaintiff, pursuant to 17 U.S.C. §505, a reasonable sum as attorneys’ fees and costs incurred in prosecuting Plaintiff’s claim for copyright infringement;

E. A preliminary and permanent injunction prohibiting Defendant, his respective officers, agents, servants, employees and/or all persons acting in concert or participation with him, from using Plaintiff’s signature piece “Shadows” or confusingly similar variations thereof, in commerce or in connection with any business or for any other purpose;

F. An award of compensatory, consequential, statutory, and punitive damages to Plaintiff in an amount to be determined at trial;

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G. An award of interests, costs, and attorneys' fees incurred by Plaintiff in prosecuting this action; and

H. All other relief to which Plaintiff is entitled.

DATED: April 11th, 2012.

GREENBERG TRAURIG, LLP

/s/ Mark G. Tratos

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