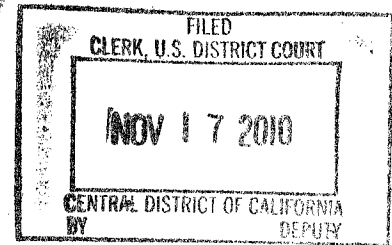


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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 HOLLYWOOD FOREIGN PRESS
14 ASSOCIATION, a California
15 Corporation,

16 Plaintiff,

17 v.

18 RED ZONE CAPITAL PARTNERS
19 II, L.P., a Delaware Limited
20 Partnership; DICK CLARK
21 PRODUCTIONS, INC., a Delaware
22 Corporation; DOES 1 through 10,
23 inclusive,

24 Defendants.

Case No. **CV10-8833** ^{VBF} (FMDA)

COMPLAINT FOR
(1) TRADEMARK
INFRINGEMENT; (2) FALSE
ASSOCIATION; (3) DECLARATION
OF COPYRIGHT CO-OWNERSHIP;
(4) BREACH OF CONTRACT;
(5) DECLARATORY RELIEF;
(6) ACTION FOR AN
ACCOUNTING; (7) BREACH OF
THE IMPLIED COVENANT OF
GOOD FAITH AND FAIR
DEALING; (8) BREACH OF
FIDUCIARY DUTY; (9) UNFAIR
COMPETITION UNDER CAL. BUS.
& PROF. CODE § 17200 AND
CALIFORNIA COMMON LAW;
(10) INTENTIONAL
INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE; AND
(11) REFORMATION

JURY DEMANDED

1 Plaintiff Hollywood Foreign Press Association (“HFPA”), by and through its
2 undersigned counsel, for its claims for relief against Defendants dick clark
3 productions, inc. (“dcp”) and Red Zone Capital Partners II, L.P. (“Red Zone
4 Capital”) (collectively, “Defendants”) alleges as follows:

5 **NATURE OF THE DISPUTE**

6 1. For the past 67 years HFPA, a nonprofit organization dedicated to
7 bridging the international and entertainment communities, has hosted the Golden
8 Globe Awards to recognize outstanding achievements in foreign and domestic
9 motion pictures and television. The intellectual property and contract rights to the
10 Golden Globes are HFPA’s primary assets, and HFPA uses proceeds from the
11 Awards to fund its annual philanthropic grant program, through which it distributes
12 millions of dollars to support arts-related scholarships and charities, educational
13 film programs, and cultural preservation foundations.

14 2. Since their inception in 1944, the Golden Globe Awards have become
15 one of the most watched awards programs in the world. HFPA is the registered and
16 indisputably exclusive owner of federally protected intellectual property rights in
17 the Golden Globe marks and Golden Globe statuette.

18 3. In 1983, HFPA engaged Dick Clark and his company, dcp, to produce
19 the television production of the Golden Globe Awards show and to help license the
20 rights to a broadcaster for telecast. The parties entered into a new agreement four
21 years later, and through later amendments extended that agreement to 2011,
22 (collectively, “the Awards Agreement”). In return for its services, dcp received a
23 handsome share of the revenue generated by the show.

24 4. Since 2001, ownership of dcp has changed hands twice. In 2002, it
25 was acquired by Mosaic Media Group, Inc., and in 2007 by, on information and
26 belief, Red Zone Capital (a private equity firm owned by dcp board member Daniel
27 Snyder, and managed by dcp Chief Executive Officer Mark Shapiro), Six Flags
28 Theme Parks, Inc., and an unidentified third party investor. Over the last decade,

1 dcp has taken great liberties with its accounting for revenue generated by the
2 Golden Globe Awards shows. More recently, dcp has begun pursuing agreements
3 to produce, create, or exploit digital rights, ancillary shows, sponsorships, and
4 promotional campaigns, even though it lacks the rights to do so. And now, dcp has
5 dropped all pretense of cooperation or good faith, and is attempting to assume
6 complete control over the rights to the show.

7 5. HFPA brings this lawsuit because on October 29, 2010, dcp
8 surreptitiously signed a television broadcast license agreement with NBC
9 Entertainment (“NBC”) for the Golden Globe Awards shows through 2018, without
10 HFPA’s consent or authorization. In fact, dcp did not even notify or consult with
11 HFPA before entering into the NBC agreement, in marked contrast with all prior
12 extensions of the NBC agreement. Rather, dcp proceeded in stealth. Months
13 earlier, HFPA had specifically instructed dcp not to discuss television broadcast
14 rights with anyone unless and until HFPA and dcp were able to consummate a new
15 deal to extend their soon-to-expire contractual relationship. dcp assured HFPA that
16 it would never do such a thing, but then broke that commitment by commencing
17 and completing broadcast rights negotiations with NBC—all behind HFPA’s back,
18 and all while pretending to negotiate a new contract with HFPA.

19 6. dcp acts as though it has the unilateral right to license the broadcast
20 rights for the Golden Globe Awards show on whatever terms it pleases, without
21 HFPA’s knowledge or authorization. And dcp claims that, so long as it grants the
22 television broadcast rights for the awards show to NBC—regardless of whether it
23 does so in good faith or at market value—dcp can control the television production
24 and broadcast rights to the Awards in perpetuity. dcp’s actions fly in the face of
25 representations that its executives made to HFPA at the time the original Awards
26 Agreement and later amendments were negotiated and signed. dcp never bargained
27 for such unlimited and unchecked rights; indeed, it strains credulity to imagine
28

1 what dcp could have given to induce HFPA to interminably abdicate its most
2 valuable asset.

3 7. dcp has absolutely no right under the Awards Agreement to grant
4 television broadcast licenses for future Golden Globe Awards shows without
5 HFPA's knowledge and authorization. Nor does dcp have the right to unilaterally
6 exploit the Golden Globe-related marks, license the digital and other ancillary
7 rights, create promotional campaigns, or sell sponsorships. HFPA never
8 surrendered these rights, and dcp is now trying to steal them.

9 8. dcp's motivation for this betrayal is clear. This is a brazen attempt by
10 dcp not only to extend its television production and licensing rights beyond the
11 terms of the parties' agreement, but to do so in perpetuity. dcp contends that any
12 unilateral agreement with NBC—even one that involves licensing fees substantially
13 below current market rates—permits dcp to remain as HFPA's licensee and to
14 usurp HFPA's control over the production and broadcast rights for future Golden
15 Globe Awards shows. dcp is wrong. Its agreement with NBC has no force or
16 effect because dcp has no broadcast rights to grant. Even if dcp's view of its rights
17 were to be credited, at most it would have had options. But those options would
18 have been revocable, and HFPA revoked them in February 2010.

19 9. Although ineffective, dcp's actions have economic consequences for
20 HFPA. dcp's bad-faith conduct creates uncertainty about the broadcast rights for
21 the Golden Globe Awards show and severely compromises HFPA's ability to
22 exploit its property. Until the cloud of this non-agreement, with sub-market rates,
23 is removed, HFPA will be unable to obtain a fair market value for the production
24 and broadcast of the Golden Globes Awards show—its primary asset.

25 10. HFPA seeks a judgment confirming the invalidity of dcp's recent
26 actions. HFPA also seeks injunctive relief preventing any marketing, promotion, or
27 other exploitation of its intellectual property and contractual rights in the Golden
28

1 Globe Awards show without HFPA's permission, and asks that damages be
2 awarded to redress dcp's numerous contractual breaches and bad-faith conduct.

3 **JURISDICTION AND VENUE**

4 11. This Court has subject matter jurisdiction under the Lanham Act, 15
5 U.S.C. § 1121, and the Copyright Act, 17 U.S.C. § 201(a), and pursuant to 28
6 U.S.C. §§ 1331 and 1338. This Court has supplemental jurisdiction of California
7 claims under 28 U.S.C. § 1367(a).

8 12. Defendant dcp is based in Los Angeles County and is subject to the
9 personal jurisdiction of this Court. Defendant Red Zone Capital is based in
10 Virginia and is subject to the personal jurisdiction of this Court because dcp is its
11 alter ego, because HFPA is informed and believes that Red Zone Capital conducts
12 substantial business in California, and because Red Zone Capital engaged in
13 intentional wrongful conduct directed at HFPA, which it knew to be a resident of
14 California.

15 13. Venue is proper under 28 U.S.C. § 1391 as dcp is a resident of this
16 district, and has its principal place of business in this district; Red Zone Capital is a
17 corporate entity subject to the personal jurisdiction of this Court, and therefore is
18 deemed a resident of this judicial district; and actions giving rise to this dispute
19 occurred in this judicial district.

20 **THE PARTIES**

21 14. Plaintiff Hollywood Foreign Press Association is a nonprofit
22 corporation organized and existing under the laws of the State of California, with its
23 principal place of business at 646 N. Robertson Blvd., West Hollywood, California
24 90069.

25 15. Defendant dick clark productions, inc. is a corporation organized and
26 existing under the laws of the State of Delaware, with its principal place of business
27 at 2900 Olympic Blvd., Santa Monica, California 90404.

28

1 16. Defendant Red Zone Capital Partners II, L.P. is a limited partnership
2 organized and existing under the laws of the state of Delaware, with its principal
3 place of business at 1800 Tysons Boulevard, Suite 500, McLean, Virginia, 22102.

4 17. Since acquiring a controlling majority ownership interest in dcp in
5 2007, Red Zone Capital has abused the corporate form and exploited dcp for its
6 own gain. HFPA is informed and believes that: Red Zone Capital employees direct
7 and perform important functions at dcp; Red Zone Capital and dcp operations are
8 conducted out of the same offices in both Santa Monica, California and McLean,
9 Virginia; employees do not distinguish between Red Zone Capital and dcp in
10 performing work related to major awards show event management, digital and
11 marketing strategy, and licensing; the managing members and directors of Red
12 Zone Capital are also directors and officers of dcp, and Red Zone Capital has
13 knowingly abused this overlap to HFPA's detriment; Red Zone Capital caused dcp
14 to put up an intellectual property library that includes all of the copyrights to the
15 Golden Globe Awards shows and Pre-Shows as security to obtain a \$165 million
16 high-interest short-term loan, which will be used not to invest in dcp, but to repay
17 dcp's already-existing \$51 million bank loans and to obtain for Red Zone Capital a
18 \$90 million distribution. HFPA is further informed and believes that dcp will be
19 unable to answer for any judgment in favor of HFPA against dcp, in part because of
20 the debt that Red Zone Capital has directed dcp to assume in order to benefit Red
21 Zone Capital. In sum, a unity of interest and ownership exists between Red Zone
22 Capital and dcp such that Red Zone Capital has relegated dcp to the status of a mere
23 instrumentality and conduit for Red Zone Capital, and is manipulating its control to
24 drain dcp of its assets. Red Zone Capital is abusing dcp's corporate form to its own
25 benefit and to HFPA's detriment, and unless dcp's acts are treated as those of Red
26 Zone Capital's, an inequitable outcome will befall HFPA.

27 18. The identities and capacities of Defendants Does 1 to 10 are unknown
28 to Plaintiff. Plaintiff therefore sues these defendants by fictitious names. As to all

1 defendants sued by fictitious names, Plaintiff will provide notice of this complaint
2 and their true identities and capacities when ascertained. Plaintiff is informed and
3 believes, and based thereon alleges, that Does 1 to 10 are, and at all relevant times
4 were, other corporate or business entities, agents, successors in interest, assigns,
5 representatives, principals and/or employees of dcp and Red Zone Capital or its
6 affiliates and are responsible for the acts and omissions resulting in the causes of
7 action alleged in this complaint. Plaintiff is further informed and believes, and
8 based thereon alleges, that each defendant was the agent, employee, servant, partner
9 and/or co-conspirator of each of the other defendants and/or is in some other
10 manner legally liable for the conduct and damages at issue in this action and was
11 acting within the course and scope of one or more of such relationships and with the
12 direct or implied knowledge, consent and/or ratification of each of the other
13 defendants.

14 **THE HOLLYWOOD FOREIGN PRESS AND**
15 **THE GOLDEN GLOBE AWARDS**

16 19. Founded during World War II, HFPA was originally comprised of a
17 handful of Los Angeles-based overseas journalists seeking to connect the
18 international community with Hollywood and hoping to provide a welcome
19 distraction from the hardships of war through film. Nearly seven decades later,
20 HFPA members today represent some of the world's most respected publications in
21 55 countries, with a combined readership of 250 million people. Each year HFPA
22 members view more than 300 films and interview over 400 actors, directors, writers
23 and producers. The organization's first awards presentation for distinguished
24 achievements in the film industry was held in early 1944 with an informal
25 ceremony at 20th Century Fox. The next year, the now-famous globe statuette was
26 adopted, and in early 1945 the first official Golden Globe Awards presentation was
27 held at the Beverly Hills Hotel.
28

1 Awards Agreement is attached as Exhibit B.) The 1987 Awards Agreement granted
2 dcp five (5) consecutive and exclusive options to acquire the rights to produce a
3 live television broadcast of and to produce on tape or film the Golden Globe
4 Awards presentations for 1988, 1989, 1990, 1991, and 1992, and to exploit such
5 live television, tape, or film productions. dcp, in turn, agreed that it would attempt
6 in good faith to arrange for the Golden Globe Awards show to be licensed for live,
7 syndicated, or network domestic television broadcast. A central objective and
8 common purpose of the 1987 Awards Agreement was to maximize the revenue
9 each party would receive through the broadcast and exploitation of the televised
10 Awards show. The parties recognized that obtaining the highest broadcast license
11 fee possible for the Awards show telecast was critical to achieving that objective
12 and purpose. As under the 1983 contract, the 1987 Awards Agreement required
13 dcp to pay HFPA 50% of the net profits it derived from the rights granted under the
14 agreement; required each party to bear certain costs related to the event and
15 television production; allowed HFPA to maintain creative control over the
16 presentation and certain elements of the television production; and provided for
17 HFPA and dcp sharing a joint copyright interest in the produced television
18 programs. In 1989, HFPA and dcp amended their agreement to grant dcp five (5)
19 additional options (for the years 1993 through 1997).

20 24. The rights granted to dcp under the 1987 Awards Agreement did not
21 include the right to produce or license a digital internet stream of the Awards show,
22 and did not cover any ancillary pre- or post-Awards shows, promotional campaigns
23 surrounding the Awards show, or sponsorship opportunities. Nor did the contract
24 grant dcp the right to use HFPA's trademarks and service marks for anything
25 beyond advertising and publicity for the live television, tape, or film productions of
26 the Awards. And even then, the 1987 Awards Agreement required dcp to obtain
27 HFPA's prior approval before issuing any publicity relating to the Awards.
28

1 25. The Golden Globe Awards grew in popularity while on TBS in the
2 1980s and early 1990s, and on April 8, 1993, HFPA met with dcp and authorized it
3 to proceed with negotiations for the purpose of obtaining a multi-year broadcasting
4 agreement with NBC for the Golden Globe Awards. At that meeting, dcp had
5 asked HFPA to extend its relationship with dcp, which was ending in 1997. HFPA
6 stated that any additional options to produce a television broadcast and license the
7 show would be dependant on dcp negotiating and securing a firm broadcast
8 licensing commitment from NBC.

9 26. On September 22, 1993, dcp representatives attended HFPA's general
10 membership meeting. During that meeting, Dick Clark, Francis La Maina, and
11 Gene Weed of dcp described an opportunity to move the television broadcast from
12 TBS to the NBC. The dcp team stated that NBC wanted to enter into a multi-year
13 broadcasting license under which it would broadcast the awards show starting in
14 1996 through 1999, with options through 2005.

15 27. At that same meeting, dcp representatives proposed an amendment to
16 the 1987 Awards Agreement that would provide dcp with the necessary additional
17 options to produce and license the Golden Globe Awards television broadcasts for
18 the duration of the proposed NBC broadcast license. HFPA members asked how
19 long it would be potentially extending its agreement with dcp under such an
20 arrangement. The dcp representatives stated that the amendment to the 1987
21 Awards Agreement would be finite, and that once NBC's broadcasts began in 1996
22 it would be effective for no longer than 10 years.

23 28. HFPA's general membership and board of directors understood that
24 dcp was seeking through this amendment a finite number of additional options to
25 conform to the proposed broadcast license that dcp was negotiating with NBC, and
26 that in no event was HFPA making a commitment to either dcp or NBC beyond
27 2005.

28

1 29. On information and belief, dcp was fully aware of HFPA's
2 understanding of the proposed amendment to the 1987 Awards Agreement. To the
3 extent that any dcp representative understood the proposed amendment would
4 afford dcp unilateral options to license the television broadcast rights for the
5 Golden Globe Awards show to NBC in perpetuity and to remain as producer in
6 perpetuity under the same terms, that understanding was never disclosed to HFPA.
7 Nor would it have made any sense for HFPA to grant options to dcp in perpetuity:
8 such an arrangement would have been unheard of in the television industry.

9 30. Based on the interactions and discussions between the parties, dcp was
10 well aware of HFPA's understanding of the 1993 Amendment. On information and
11 belief, dcp understood the 1993 Agreement to have the same meaning as HFPA at
12 the time of contracting. Indeed, dcp executives Gene Weed and Francis La Maina
13 told HFPA that dcp had always and would always come to HFPA for prior approval
14 before negotiating towards a broadcast license of the Awards show telecast, or any
15 other like efforts.

16 31. Based on its understanding of the proposed terms of the broadcast
17 license agreement with NBC, and of the amendment to the 1987 Awards
18 Agreement, HFPA approved proceeding with both the extension of dcp's options as
19 licensee and with the NBC broadcast license pursuant to the proposed amendment
20 to the 1987 Awards Agreement (hereafter referred to as the "1993 Amendment").
21 (A copy of the 1993 Amendment is attached as Exhibit C.) Specifically, HFPA
22 approved the 1993 Amendment and the NBC broadcast agreement with the
23 understanding—based on dcp's representations—that HFPA's prior informed
24 approval would be required for: (1) any extension, renewal, substitution, or
25 modification of the broadcast license with NBC; and (2) any further options for dcp
26 to remain as producer of the television program and licensee of the television
27 broadcast rights for the Awards show.
28

1 32. In 1999, the parties negotiated a now-expired contract under which
2 HFPA granted dcp the right to “produce, distribute, promote, advertise and exploit”
3 a one-hour pre-awards show (the “Pre-Show”) to be telecast by NBC on the same
4 day as a lead-in to the 2000 Awards, which was to feature “the arrival of
5 celebrities” and “pre-taped segments about dinner menus, gift packages, pressroom
6 interviews in prior years, planning of parties, [and] scenes of celebrities entering
7 (but not inside) the ballroom.” (A copy of the 1999 Pre-Show Agreement is
8 attached as Exhibit D.) HFPA also granted dcp one option to produce the 2001 Pre-
9 Show, and the parties amended the Pre-Show Agreement in 2001 and again in 2003
10 for HFPA to grant dcp options to produce the Pre-Show in 2002 through 2006. The
11 Pre-Show Agreement has since expired.

12 33. In 2001, NBC expressed interest in broadcasting the Golden Globe
13 Awards through 2011. In the spring of 2001, representatives of dcp once again
14 made a presentation to HFPA about extending the NBC broadcast license
15 agreement and granting to dcp further options to produce and license the television
16 broadcast of the Awards show. HFPA decided in favor of both extending the
17 broadcast license and granting to dcp further options. Thereafter, the NBC
18 broadcast license was amended to extend through the 2011 Golden Globe Awards
19 show telecast, and dcp exercised the options that would allow it to remain involved
20 through the January 2011 Golden Globe Awards show.

21 **DCP ATTEMPTS TO ASSUME CONTROL OVER THE GLOBES**

22 34. On information and belief, in 2002, Dick Clark sold his majority stake
23 in dcp to a group of investors led by Mosaic Media Group, Inc., and in 2007, Red
24 Zone Capital (one of several similarly named private equity companies owned and
25 operated by Daniel Snyder), along with Six Flags, Inc., purchased dcp for \$175
26 million. Six Flags represented in its 2009 bankruptcy disclosure filings that an
27 unidentified third-party investor purchased approximately 2.0% of dcp from Six
28 Flags and Red Zone Capital in late 2007. (On information and belief, Red Zone

1 LLC had acquired control of Six Flags in 2005 through a successful proxy contest.
2 Snyder and Schar owned Red Zone LLC, and Mark Shapiro was Red Zone LLC's
3 CEO. After Red Zone LLC's acquisition of control over Six Flags, Snyder and
4 Dwight Schar became directors and Mark Shapiro became CEO. Six Flags filed for
5 Chapter 11 bankruptcy in 2009.) HFPA is informed and believes that Red Zone
6 Capital now holds the controlling majority interest in dcp, that Snyder and Schar
7 are managing members of Red Zone Capital and directors of dcp, and that Snyder
8 and Schar installed Shapiro as Director and Executive Vice Chairman of dcp.

9 35. Unbeknownst to HFPA, dcp and its new corporate parents have been
10 systematically attempting both to assert proprietary interests in the Golden Globe
11 Awards shows, and to encumber the rights to those shows in return for financial
12 benefit that is not being reported to, or shared with, HFPA. HFPA is informed and
13 believes that dcp has repeatedly represented to third parties that it owns the rights to
14 the Golden Globe Awards show and that it has the unilateral ability to grant all or
15 pieces of those rights without the involvement or consent of HFPA.

16 36. For example, HFPA recently hired digital consultants to negotiate with
17 third parties with respect to the digital rights surrounding the Golden Globe
18 Awards. dcp has no license from HFPA for digital rights. HFPA's digital
19 consultants had commenced discussions with senior employees at Facebook
20 regarding an online component to complement the live telecast of the Awards show.
21 On information and belief, Facebook was eager to have involvement with HFPA
22 and the Golden Globe Awards, and invited HFPA's consultants to meet in Los
23 Angeles.

24 37. On information and belief, dcp was aware of HFPA's interest in
25 forming a business relationship with Facebook, and expressly and knowingly
26 prevented HFPA and Facebook executives from meeting by telling Facebook that
27 dcp owns all digital rights associated with the Golden Globe Awards—even though
28 dcp had never been granted such rights by HFPA.

1 38. HFPA is informed and believes that Facebook terminated its
2 discussions with HFPA under the mistaken belief—created by dcp’s
3 misrepresentations—that dcp had the exclusive authority to license Golden Globe
4 digital rights to Facebook.

5 39. Further, HFPA is informed and believes that several other companies
6 are now involved in dcp’s supposed digital plans, and that dcp falsely informed
7 those companies that it owns or otherwise controls digital rights related to the
8 Golden Globe Awards show.

9 40. After Snyder, Schar, and Shapiro took control of Six Flags and dcp,
10 Six Flags made public statements about its supposed rights to leverage the Golden
11 Globe Awards show. In a 2009 bankruptcy filings, Six Flags stated that it
12 “leveraged the dcp library, which includes the Golden Globe Awards . . . to provide
13 additional product offerings in its parks” and that it “believes that its investment in
14 dcp provides it with additional sponsorship and promotional opportunities.” And
15 HFPA recently discovered that dcp claimed for itself copyright ownership over the
16 2007 and 2009 Pre-Shows, even though HFPA is a rightful co-owner of those
17 copyrights.

18 41. At the same time, dcp has claimed questionable items as production
19 costs, has sold sponsorships without telling HFPA or sharing the revenue, and has
20 neglected to provide regular accounting statements as required under the Awards
21 Agreement. For example, HFPA discovered after the 2010 Golden Globe Awards
22 that dcp secretly entered into a verbal \$200,000 promotional deal with a corporate
23 third party whose representatives believed HFPA had been informed of the deal.
24 But dcp did not inform HFPA of the agreement, and accounted to HFPA for the
25 revenue only after HFPA discovered what had happened from the corporate third
26 party and confronted dcp.

27 42. By 2010, the Golden Globe Awards—which is HFPA’s primary asset
28 and the revenue source for its philanthropic grants—had become one of the most

1 popular, most watched, and most recognized film and television awards programs
2 in the world. Although the Awards Agreement only required HFPA to negotiate
3 with dcp after the agreement's expiration (following the 2011 Golden Globe
4 Awards show), HFPA representatives broached with dcp in early 2010 the
5 possibility of beginning such talks early in order to give the parties additional time
6 to discuss their relationship.

7 43. On February 8, 2010, Philip Berk (President of HFPA) sent dcp's
8 Mark Shapiro an email stating that the 2011 Golden Globe Awards show was the
9 "last show" under the existing agreement between HFPA and dcp, and offering to
10 "begin exploring the nature of our relationship after the January 2011 Globes."
11 Mr. Berk noted that entering into discussions early may "provide us with the
12 necessary time to secure the best possible licensing deal." Mr. Berk was clear that
13 dcp had no right to license any further Golden Globe Awards show beyond the
14 2011 show, and should not pursue any broadcast license involving the Awards
15 show "until we agree upon the nature of any such future relationship." Thus,
16 Mr. Berk emphasized that "I want to ensure that dcp does not seek or agree to any
17 subsequent broadcast licensing agreement with NBC (or anyone else, for that
18 matter) as dcp's options obviously also expire with that last broadcast in January
19 2011."

20 44. The following day, Mr. Shapiro responded to Mr. Berk by email,
21 agreeing to early discussions between dcp and HFPA. Mr. Shapiro noted that there
22 was "no need to remind me or ask me not to seek a new license agreement for the
23 property. I would never make a move on a network renewal or new home without
24 your involvement."

25 45. Over the months that followed, HFPA and dcp representatives entered
26 into substantial negotiations over a new agreement that would allow dcp to remain
27 involved in the Golden Globe Awards show after the 2011 broadcast. The parties
28 and counsel had multiple in-person discussions, telephone conversations, and email

1 exchanges, and made proposals for terms of a new agreement between HFPA and
2 dcp.

3 46. Joseph Calabrese (outside counsel and lead negotiator for HFPA) met
4 with Shapiro in person on July 14, and spoke again on July 29 and August 7. On
5 August 13, 2010, Calabrese sent a letter to Shapiro once again noting that the
6 existing Awards Agreement between HFPA and dcp would shortly be expiring, and
7 that without a new agreement dcp's involvement with the Golden Globe Awards
8 show come to an end. Calabrese stated: "HFPA would very much like to make a
9 new deal with dcp to ensure its continued involvement with the Golden Globe
10 Awards show after 2011. At this point, dcp has the right to be involved with only
11 one remaining main Awards show I appreciate the fact that dcp would like to
12 continue on the same terms as they understand were originally agreed over 13 years
13 ago, but those terms will be expiring soon and are not acceptable to HFPA."

14 47. That same day, HFPA sent dcp proposed terms for a new agreement.
15 Shapiro called Calabrese on August 16 to discuss moving forward with talks, and
16 on August 19 Shapiro assured Calabrese that dcp wanted to schedule meetings in
17 early September in order to close a deal between dcp and HFPA by September 30.
18 On September 8, Calabrese again met with dcp to negotiate terms of the new
19 agreement. HFPA and dcp continued to negotiate into late September, and on
20 September 27 they again discussed the potential deal. Shapiro told HFPA he
21 needed to discuss the matter with his board of directors. Believing that they were
22 close to reaching a new deal with dcp, HFPA waited for dcp to respond with an
23 acceptance or counter-proposals, following up with dcp twice to inquire as to the
24 status of dcp's response, the last time on October 21. The response HFPA was
25 waiting for never arrived.

26 48. Instead, on October 29, 2010, dcp sent Berk a letter informing HFPA
27 that dcp had executed an agreement with NBC that same day under which dcp
28 purported to grant NBC a license for the exclusive broadcast rights to the Golden

1 Globe Awards through 2018. dcp also sent HFPA a notice, attached hereto as
2 Exhibit E, that dcp was now attempting to exercise the seven options it would have
3 needed in order enter into that agreement—options dcp never had in the first place,
4 options that dcp never bargained for, and (to the extent they ever existed) options
5 that were revocable and had been unequivocally revoked through HFPA’s February
6 8, 2010 and August 13, 2010 letters as well as other statements. In short, dcp
7 granted NBC a broadcasting license for rights that were not dcp’s to grant.

8 49. dcp’s announcement of this purported broadcast agreement and its
9 purported exercise of non-existent options blindsided HFPA. HFPA had not
10 authorized dcp to negotiate over the broadcast rights for any further Golden Globe
11 Awards shows. In fact, quite the opposite. HFPA had explicitly informed dcp that
12 it was not empowered to even discuss the broadcast rights with any third parties.
13 Nor did HFPA offer dcp any further options to extend its role in producing the
14 television broadcast of the Golden Globes Award show. Once again, the opposite
15 was true: HFPA had made clear that its relationship with dcp was coming to an end
16 in January 2011 absent the parties reaching a new agreement.

17 50. dcp’s attempt in October 2010 to unilaterally license the television
18 broadcast rights to NBC, and on that basis to attempt exercising options to extend
19 its agreement with HFPA, was the first time in the parties’ history that dcp had
20 taken actual and affirmative steps inconsistent with HFPA’s understanding that dcp
21 needed its consent before entering into any license agreement for the Golden Globe
22 Awards show broadcast rights.

23 51. dcp followed a similar pattern with respect to the Pre-Show
24 Agreement. HFPA repeatedly informed dcp that the Pre-Show Agreement had
25 expired, and the parties engaged in what HFPA believed were good faith
26 negotiations to enter into a new agreement. All the while, dcp was misleading
27 HFPA, and instead attempted to arrogate HFPA’s rights for itself.
28

1 several Internet domain names incorporating its trade and service marks, including
2 www.goldenglobeawards.org.

3 56. dcp has used HFPA's trademarks and service marks in commerce,
4 without HFPA's knowledge or authorization. Among other things, on September
5 30, 2010, dcp entered into an agreement with NBC purporting to license the right to
6 broadcast the 2012 to 2018 Golden Globe Awards shows throughout the United
7 States. dcp is capitalizing, to its great financial benefit, on the fame and goodwill in
8 HFPA's marks, without HFPA's permission or approval. dcp has the right to use
9 HFPA's marks only in connection with the Golden Globes Awards shows through
10 the 2011 show. It has no right to license the use of those marks in connection with
11 future shows.

12 57. In addition, the agreement between dcp and NBC is predicated on, and
13 expressly anticipates, dcp further infringing HFPA's marks and dcp causing NBC
14 to infringe the marks. The agreement was made for the express purpose of
15 imminently exploiting plaintiff's registered marks in interstate commerce by
16 marketing, advertising, producing, and broadcasting the 2012 Golden Globe
17 Awards show (as well as shows in later years). On information and belief, those
18 efforts in connection with the 2012 Awards show have already begun, and further
19 efforts will commence shortly.

20 58. On information and belief, dcp has also generally claimed to third
21 parties to have the exclusive right to license, and empower others to make
22 commercial use of, HFPA's Golden Globe-related marks. For example, on
23 information and belief, dcp falsely represented to Facebook that dcp owned all
24 digital rights associated with the Golden Globe Awards and that it had exclusive
25 authority to license those rights. dcp made these false representations even though
26 HFPA never granted dcp any authority, let alone exclusive authority, to license
27 such rights.
28

1 NBC to use HFPA's Golden Globe-related marks to market and advertise the
2 Awards shows, and then to broadcast the unique Golden Globe Awards shows
3 using HFPA's Golden Globe-related marks. On information and belief, dcp has
4 also generally claimed to third parties to have the right to license and empower
5 others (for example, Facebook) to make commercial use of HFPA's Golden Globe-
6 related marks. These acts, among others, constitute a false association, a false
7 designation of origin, and a false description or representation of goods and
8 services, tending wrongfully and falsely to describe or represent a connection
9 between both dcp and its purported licensees, on the one hand, and HFPA and the
10 Golden Globe Awards show, on the other hand. By these acts, Defendants have
11 infringed HFPA's marks in violation of 15 U.S.C. § 1125(a).

12 66. The impressions of affiliation created by Defendants' use of Plaintiffs'
13 marks are false. This false impression of association has created and will continue
14 to create confusion as to the continued connection between both dcp and its
15 purported licensees, on the one hand, and HFPA and the Golden Globe Awards
16 show, on the other hand.

17 67. HFPA is informed and believes, and on that basis alleges, that
18 Defendants acted willfully, with the intent to trade upon the goodwill and
19 reputation of HFPA and the Golden Globe Awards show, and with the intent to
20 cause confusion, to cause mistake, or to deceive.

21 68. On information and belief, Red Zone Capital was aware of dcp's
22 actions, and dcp was acting at Red Zone Capital's direction and under its control.

23 69. HFPA has suffered, and will continue to suffer, irreparable damage to
24 its business, reputation, and goodwill resulting from the confusion of potential
25 licensees and the general public regarding the continued association between both
26 dcp and NBC, on the one hand, and HFPA and the Golden Globe Awards show, on
27 the other hand. As a result, HFPA is entitled to injunctive relief preventing dcp
28 from creating a false impression of association between both dcp and its purported

1 licensees, on the one hand, and HFPA and the Golden Globe Awards show, on the
2 other hand.

3 70. As a result of the harm suffered as alleged herein, HFPA is also
4 entitled to all of the other remedies available under the Lanham Act, including
5 actual damages, an accounting of Defendants' profits, treble damages, and costs
6 and attorneys' fees.

7 **THIRD CLAIM FOR RELIEF**

8 **(Declaration of Copyright Co-Ownership)**

9 71. Plaintiff realleges and incorporates herein by reference, each and every
10 allegation contained in paragraphs 1 through 70, inclusive, of the complaint as
11 though set forth at length.

12 72. An actual controversy has arisen and now exists between HFPA, on
13 the one hand, and Defendants, on the other hand, relating to their respective rights
14 regarding ownership of the 1990, 1993, 1998, and 1999 Golden Globe Awards, and
15 the 2003, 2004, 2005, 2006, 2007 and 2009 Pre-Shows. HFPA contends:

- 16 a) The 1990, 1993, 1998, and 1999 Golden Globe Awards, as well
17 as the 2003, 2004, 2005, 2006, 2007 and 2009 Pre-Show
18 productions, are copyrightable as motion pictures or other
19 audiovisual works. The agreements between HFPA and dcp
20 contemplate that HFPA and dcp are co-authors of the Awards
21 shows and Pre-Shows. HFPA made substantial and valuable
22 contributions to these works by exercising creative control and
23 input over the Awards presentations, script content, the identity
24 of presenters and performers appearing on the Golden Globe
25 Awards show, as well as the Pre-Show set decoration, and
26 casting of the Pre-Show hosts. HFPA and dcp intended that
27 their respective contributions to the 1990, 1993, 1998, and 1999
28 Golden Globe Awards, as well as the 2003, 2004, 2005, 2006,

1 2007 and 2009 Pre-Shows, would be merged into inseparable or
2 interdependent parts of a unitary whole. Accordingly, each of
3 these motion pictures constitute a “joint work” within the
4 meaning of 17 U.S.C. § 101 and, pursuant to 17 U.S.C. § 201(a),
5 HFPA and dcp are co-owners of the copyright in each of them.

6 b) dcp listed itself as the sole copyright claimant to the above-
7 mentioned works in violation of HFPA’s rights as the owner of a
8 joint work. Upon information and belief, dcp has derived, and
9 will continue to derive, substantial revenues from the use of the
10 1990, 1993, 1998, and 1999 Golden Globe Awards, and the
11 2003, 2004, 2005, 2006, 2007 and 2009 Pre-Shows.

12 c) As a co-owner of these Awards shows and Pre-Shows, HFPA is
13 entitled, under 17 U.S.C. § 201(a), and to a full and proper
14 accounting with respect to revenue derived from the shows, and
15 to half of all profits attributable to them.

16 73. HFPA is informed and believes, based on dcp’s willful failure to
17 disclose HFPA’s status as co-owner of these works to the Copyright Office and
18 dcp’s purported transfer of its rights in the above-mentioned works to obtain \$165
19 million by selling senior secured first-lien notes in the 144a private placement
20 market to Banc of America Securities LLC and SunTrust Robinson Humphrey,
21 Inc., that dcp disputes these contentions and contends to the contrary.

22 74. Plaintiff desires a judicial determination of its rights under the
23 Copyright Act of 1976, and a declaration that its contentions, as set forth above, are
24 correct. Such a declaration is necessary and appropriate in order to set at rest the
25 respective rights and obligations of the parties and to avoid a multiplicity of actions.
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1 **FOURTH CLAIM FOR RELIEF**

2 **(Breach of Contract)**

3 75. Plaintiff realleges and incorporates herein by reference, each and every
4 allegation contained in paragraphs 1 through 74, inclusive, of the complaint as
5 though set forth at length.

6 76. As described above, HFPA and dcp entered into the valid, binding
7 Awards Agreement in 1987, as amended in 1989 and 1993, that expires in January
8 2011.

9 77. Plaintiff has fully performed all obligations required of it under the
10 Awards Agreement, except for those obligations waived, excused or prevented by
11 dcp.

12 78. Defendants have materially breached the provisions of the Awards
13 Agreement by, among other things:

- 14 a) pursuing agreements to produce, create, or exploit digital internet
15 streams of the Awards show, ancillary shows, promotional
16 campaigns surrounding the Awards show, and sponsorship
17 campaigns, and by otherwise trading on the Golden Globe
18 Awards without HFPA's knowledge and consent, in violation of,
19 *inter alia*, the limited grant of rights to dcp under Section 1 of the
20 1987 Awards Agreement (which includes only the right to
21 produce a live television broadcast of, and to produce on tape or
22 film, the Golden Globe Awards, and to exploit such recorded
23 television broadcast, tape, or film productions), and the
24 requirement that dcp not interfere with HFPA's rights pursuant to
25 Section 18 of the 1987 Awards Agreement;
- 26 b) unilaterally attempting to sell rights to the Golden Globe Awards
27 show that it did not own, without HFPA's knowledge or consent;
28

- 1 c) encumbering or transferring HFPA's copyright interests in the
2 1990, 1993, 1998, and 1999 Golden Globe Awards without
3 HFPA's knowledge or consent;
- 4 d) failing to cause HFPA to be listed as a proper copyright claimant
5 and co-owner of the 1990, 1993, 1998, and 1999 Golden Globe
6 Awards, as required by Section 7 of the 1987 Awards
7 Agreement;
- 8 e) entering into at least one sponsorship agreement (with a
9 corporate third party) without HFPA's knowledge or consent and
10 thereafter failing to properly account for HFPA with written
11 documentation thereof, in violation of, *inter alia*, Section 1 of the
12 Awards Agreement's limited grant of rights, and Section 3's
13 requirement that dcp account to HFPA for all profits;
- 14 f) taking impermissible deductions of expenses as production costs
15 in violation of, *inter alia*, Section 3 of the 1987 Award
16 Agreement's requirement for accounting to HFPA;
- 17 g) improperly apportioning licensing fees when selling the Awards
18 show as part of a "package" with dcp's other, less popular, shows
19 in violation of, *inter alia*, Section 3 of the 1987 Award
20 Agreement's requirement for accounting to HFPA; and
- 21 h) failing to disclose and pay the full compensation owed to HFPA
22 by virtue of any licenses granted to Six Flags or any other
23 entities, in violation of, *inter alia*, Section 3 of the 1987 Award
24 Agreement requirement that dcp account to HFPA for all profits.

25 79. On information and belief, Red Zone Capital was aware of dcp's
26 actions, and dcp was acting at Red Zone Capital's direction and under its control.
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- 1 c) The 1993 Amendment does not permit dcp to extend, renew,
2 substitute, or modify the broadcast license agreement with NBC
3 without HFPA's prior knowledge and approval.
- 4 d) The Awards Agreement—including without limitation, the first
5 paragraph of Section 1 of the 1987 Awards Agreement—does
6 not grant dcp the right to produce, create, or exploit digital
7 internet streams of the Awards show, ancillary shows,
8 promotional campaigns surrounding the Awards show, and
9 sponsorship campaigns.
- 10 e) The Pre-Show Agreement has expired, and has no further force
11 and effect.

12 83. Based on statements made by dcp's representatives, and on dcp's
13 actions as described above, HFPA is informed and believes, and based thereon
14 alleges, that dcp disputes these contentions and contends to the contrary.

15 84. HFPA desires a judicial determination of its and dcp's respective
16 rights and duties under the Awards Agreement, a judicial determination of the
17 parties' rights and duties under the Pre-Show Agreement, and a declaration that
18 HFPA's contentions, as set forth above, are correct.

19 85. Such a judicial declaration is necessary and appropriate at this time
20 under the circumstances in order to set at rest the respective rights and obligations
21 of the parties and to avoid a multiplicity of actions. At present, the parties cannot
22 agree on their respective rights and duties, creating a financial burden and
23 uncertainty regarding future Golden Globe Awards shows.

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1 **SIXTH CLAIM FOR RELIEF**

2 **(Action For an Accounting)**

3 86. Plaintiff realleges and incorporate herein by reference, each and every
4 allegation contained in paragraphs 1 through 85, inclusive, of the complaint as
5 though set forth at length.

6 87. Under the Awards Agreement, HFPA is entitled to 50% of the net
7 profits from the exploitation of the Awards show, as defined under terms that
8 agreement. Under Section 3 of the Awards Agreement, dcp has a contractual duty
9 to account to HFPA with respect to HFPA's share of net profits on a quarterly
10 basis, and HFPA is entitled to audit the information underlying those accounting
11 statements.

12 88. HFPA is also entitled to an accounting of revenue generated by each of
13 the Golden Globe Awards shows based on its status as a copyright co-owner in all
14 Award shows and Pre-Shows produced with dcp.

15 89. Defendants have taken impermissible deductions of expenses as
16 production costs in violation of the Awards Agreement to HFPA's material
17 detriment. Defendants have also failed to properly account for the revenue from at
18 least one sponsorship agreement, which was entered into without HFPA's
19 knowledge or consent, in violation of the Awards Agreement. HFPA also is
20 informed and believes that Defendants failed to properly account for, among other
21 things: additional foreign revenue generated through exploitation of Golden Globe
22 Awards shows; revenue generated (and improperly apportioned) by bundling rights
23 to Awards shows in license agreements with Defendants' other, less popular,
24 shows; and benefits it derived, and that were derived, by its affiliated and parent
25 entities, through licensing, transferring or otherwise encumbering rights to the
26 Golden Globes Award shows. On information and belief, Defendants are also
27 continuing to pursue ancillary agreements that trade on the Golden Globe Awards
28 show, without HFPA's knowledge and consent.

1 96. On information and belief, the negotiation between dcp and NBC was
2 necessarily compromised because it believed it could only guarantee itself
3 continued rights and interests in the Golden Globe Awards show by entering into an
4 extension, renewal, substitution or modification of the 2001 NBC/dcp Agreement,
5 and as a result dcp: failed to take reasonable steps towards assessing the fair market
6 value of the rights to broadcast the Golden Globes Award show; acted to benefit
7 itself to the detriment of HFPA by seeking only to explore a license agreement with
8 NBC; and expressly misled HFPA into believing that it was not engaging in
9 negotiations over the broadcast rights with any broadcast networks. Moreover, on
10 information and belief, dcp conducted an abbreviated, hurried negotiation with
11 NBC in order to quickly secure a deal.

12 97. On information and belief, Defendants have further breached the
13 implied covenant of good faith and fair dealing by, among other things, more
14 generally falsely representing its rights with respect to the Golden Globe Awards
15 show, and ancillary pre- and post-shows. This includes dcp's false representation
16 that it has the right to enter into a license agreement covering Award shows after
17 2011 and that it has the exclusive right to license the digital rights for the 2011
18 Award show.

19 98. On information and belief, Red Zone Capital was aware of dcp's
20 actions, and dcp was acting at Red Zone Capital's direction and under its control.

21 99. As a direct and proximate result of Defendants' breaches of the
22 implied covenant of good faith and fair dealing, HFPA has suffered substantial
23 damage in the form of being materially comprised in any efforts to actually and
24 effectively license the rights for those same Awards shows. And in the event that
25 the Court were to determine that dcp's 2010 agreement with NBC is valid, as a
26 direct and proximate result of Defendants' breaches of the implied covenant of
27 good faith and fair dealing, HFPA has been substantially damaged by dcp's
28 acceptance of a below-market license fee from NBC. HFPA's ability to fully and

1 fairly exploit its rights has been further compromised as a consequence of dcp's
2 false statements about its ownership or control of rights. HFPA will establish the
3 exact amount of its damages at trial, but they are in the millions of dollars annually.

4 **EIGHTH CLAIM FOR RELIEF**

5 **(Breach of Fiduciary Duty)**

6 100. Plaintiff realleges and incorporate herein by reference, each and every
7 allegation contained in paragraphs 1 through 99, inclusive, of the complaint as
8 though set forth at length.

9 101. As described above, HFPA and dcp entered into a valid, binding
10 agreement in 1987, as amended in 1989 and 1993. Pursuant to the agreement,
11 HFPA entrusted dcp to properly register and maintain the copyrights for the
12 television broadcasts of the Golden Globe Awards shows, and to use HFPA's
13 trademarks and intellectual property only to promote or advertise the Awards
14 television productions. Consequently, HFPA relied on dcp not to improperly
15 exploit these rights.

16 102. The trust and confidence HFPA placed in dcp, with regard to its
17 intellectual property rights, created a fiduciary relationship under which dcp owed a
18 fiduciary duty to HFPA.

19 103. Pursuant to this fiduciary duty, dcp was required to deal fairly with
20 HFPA and to refrain from committing any acts or omissions that would
21 compromise HFPA's intellectual property rights and interests in the Golden Globes.

22 104. On information and belief, Defendants have breached their fiduciary
23 duty through dcp falsely representing its rights with respect to the Golden Globe
24 Awards show, ancillary pre- and post-shows, and improperly bundling rights to the
25 Award shows with dcp's other, less popular broadcasts. Also among the breaches
26 are dcp's false representation to NBC that it had the right to enter into a television
27 broadcast license agreement covering Award shows after 2011, and its false
28

1 representations that it had the exclusive right to license the digital rights associated
2 with the 2011 Awards show.

3 105. On information and belief, Red Zone Capital was aware of dcp's
4 actions, and dcp was acting at Red Zone Capital's direction and under its control.

5 106. As a direct and proximate result of dcp's breaches of fiduciary duties,
6 HFPA has suffered substantial damage in the form of being materially comprised in
7 any subsequent efforts to actually and effectively license the rights for those same
8 award shows, pre- and post- shows, and ancillary rights. Among other things,
9 HFPA has been substantially damaged by dcp's acceptance of below-market license
10 fees from NBC. HFPA will establish the exact amount of its damages at trial, but
11 are in the millions of dollars annually.

12 **NINTH CLAIM FOR RELIEF**

13 **(Unfair Competition Under Cal. Bus. & Prof. Code § 17200 and California** 14 **Common Law)**

15 107. Plaintiff realleges and incorporate herein by reference, each and every
16 allegation contained in paragraphs 1 through 106, inclusive, of the complaint as
17 though set forth at length.

18 108. Defendants' unauthorized use of HFPA's trademarks and service
19 marks, and its related misrepresentations about controlling HFPA's intellectual
20 property, constitute unfair, unlawful, and fraudulent business acts, prohibited by the
21 California Business and Professions Code Sections § 17200 *et seq.* and by the
22 common law of California.

23 109. Defendants' unfair, unlawful, and fraudulent acts are more specifically
24 alleged above, but include dcp's representations to and agreement with NBC for the
25 period commencing in 2012, dcp's purported empowerment of NBC to exploit
26 HFPA's Golden Globe-related intellectual property, and on information and belief,
27 dcp's misrepresentations to other third parties (including Facebook). By these acts,
28 among others, dcp has violated the Lanham Act, 15 U.S.C. §§ 1114, 1125(a), and

1 has committed unlawful, unfair and fraudulent business acts in violation of
2 California Business and Professions Code Sections 17200 *et seq.* dcp's acts also
3 constitute unfair competition in violation of California common law.

4 110. Defendants' misconduct has already caused and will continue to cause
5 confusion, mistake, and deception. Defendants acted willfully, with the intent to
6 trade upon the goodwill and reputation of HFPA and the Golden Globe Awards
7 show, and with the intent to cause confusion, to cause mistake, or to deceive.

8 111. On information and belief, Red Zone Capital was aware of dcp's
9 actions, and dcp was acting at Red Zone Capital's direction and under its control.

10 112. Defendants' commission of unfair competition, unlawful business acts,
11 and unfair business acts have caused damage and irreparable injury to HFPA in an
12 amount to be determined at trial, and such acts will result in further damage and
13 irreparable injury to HFPA if Defendants are not restrained by this Court. All
14 profits generated by dcp through its acts of unfair competition should also be
15 ordered disgorged.

16 **TENTH CLAIM FOR RELIEF**

17 **(Intentional Interference with Prospective Economic Advantage)**

18 113. Plaintiff realleges and incorporate herein by reference, each and every
19 allegation contained in paragraphs 1 through 112, inclusive, of the complaint as
20 though set forth at length.

21 114. The Golden Globe Awards shows is one of the most anticipated
22 broadcasts of the season. In prepare for another successful Awards show, HFPA
23 and Facebook began conversations regarding the potential for a digital initiative to
24 complement and bolster the Golden Globes Awards show for the 2011 broadcast.
25 In exchange for the rights to host Golden Globes-related content, Facebook was
26 going to pay HFPA a license fee and a share of revenue generated.

27
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1 115. The agreement with Facebook would have generated substantial
2 revenue for HFPA. As such, HFPA had a reasonable probability of future
3 economic benefit from this economic relationship with Facebook.

4 116. On information and belief, dcp began negotiating with Facebook in
5 order to license Golden Globe rights that dcp did not rightfully possess, and
6 wrongly represented to Facebook that dcp had the exclusive right to grant digital
7 rights for the 2011 Golden Globe Awards show. dcp did so behind HFPA's back,
8 and without its consent or authorization. As a direct result of dcp conduct,
9 Facebook cut off communications with HFPA's consultants and has since dealt
10 exclusively with dcp.

11 117. On information and belief, dcp was aware of HFPA's ongoing
12 discussions with Facebook. HFPA's consultants and Facebook discussed a meeting
13 that Facebook had with dcp, and only after that meeting did Facebook cut off
14 communications with HFPA.

15 118. Defendants' conduct was otherwise wrongful as a false representation
16 constituting, among other things, unfair competition under California Business &
17 Professions Code section 17200.

18 119. On information and belief, Red Zone Capital was aware of dcp's
19 actions, and dcp was acting at Red Zone Capital's direction and under its control.

20 120. As a direct and proximate result of Defendants' wrongful conduct, it
21 disrupted HFPA's economic relationship with Facebook and its ability to enter into
22 a licensing agreement. HFPA has consequently been substantially damaged in an
23 amount to be proven at trial.
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1 **ELEVENTH CLAIM FOR RELIEF**

2 **(Reformation)**

3 121. Plaintiff realleges and incorporates herein by reference, each and every
4 allegation contained in paragraphs 1 through 120, inclusive, of the complaint as
5 though set forth at length.

6 122. dcp claims to be empowered by the 1993 Amendment to extend or
7 renew the broadcast license with NBC forever, without HFPA's specific consent or
8 authorization. dcp points to the provision that states: "This will confirm that the
9 [1987 Awards] Agreement is hereby further amended to provide that HFPA grants
10 to dcp eight (8) additional, consecutive, exclusive, and irrevocable options to
11 acquire the exclusive right to produce a live television broadcast of and to produce
12 on tape or film the Awards for each of the years 1998 through and including 2005,
13 and for any extensions, renewals, substitutions or modifications of the NBC
14 Agreement, and to exploit such productions in all media through the world in
15 perpetuity."

16 123. Based on its own reading of the words of the 1993 Amendment, and
17 on statements by dcp representatives in 1993, HFPA understood at the time of
18 contracting (and still understands) that provision to merely anticipate the possibility
19 of HFPA extending further options to dcp to remain involved in the Golden Globe
20 Awards show in the event that the NBC broadcast license is extended, renewed,
21 substituted, or modified with HFPA's approval. Neither the language of the 1993
22 Amendment, nor any other operative document executed by both parties, affords
23 dcp the right to unilaterally enter into a license agreement with NBC, without
24 HFPA's knowledge and approval, in order to trigger further contractual options for
25 dcp under the Awards Agreement.

26 124. However, to the extent that the Court were to interpret the 1993
27 Amendment to empower dcp to extend, renew, substitute, or modify an existing
28 broadcast license with NBC, without HFPA's knowledge and authorization, then

1 reformation of the 1993 Amendment to add the words “entered into with HFPA’s
2 approval” is necessary and proper on one or more of the following grounds:

- 3 a) The absence of the phrase “entered into with HFPA’s approval”
4 after the word “Agreement” on the ninth line of the third
5 paragraph of the 1993 Amendment is a result of a mutual
6 mistake, and it is contrary to the parties’ intent to interpret the
7 1993 Amendment as only permitting dcp to extend, renew,
8 substitute, or modify an existing broadcast license with NBC
9 with HFPA’s specific approval and authorization. To grant dcp
10 the ability to license HFPA’s intellectual property without any
11 authorization from HFPA would reverse the parties’ basic
12 assumptions about the effect of the 1993 Amendment, and
13 would have a material effect on the parties’ agreed-upon
14 exchange.
- 15 b) dcp knew HFPA did not intend to waive all future approval
16 rights of a proposed extension, renewal, substitution or
17 modification of the license of its intellectual property, and dcp
18 did not express to HFPA its understanding that the 1993
19 amendment should or could be interpreted in that manner at the
20 time of contracting. To the extent that dcp knew or believed at
21 the time of contracting that the 1993 amendment would allow
22 dcp to extend, renew, substitute, or modify an existing broadcast
23 license with NBC without HPFA’s specific approval and
24 authorization, the 1993 Amendment should be reformed because
25 it does not accurately reflect HFPA’s intent by reason of
26 HFPA’s unilateral mistake coupled with fraudulent or
27 inequitable conduct by dcp in that it was or should have been
28 aware of HFPA’s mistake.

1 c) Irrespective of dcp's intent, the 1993 amendment should be
2 reformed because the interests of justice so require, since
3 construing amendment as a waiver of HFPA's future approval
4 rights of any extension, renewal, substitution, or modification of
5 an existing broadcast license with NBC does not reflect HFPA's
6 intent.

7 125. With respect to all grounds for reformation, HFPA did not undertake
8 the risk of mistake under the 1993 Amendment and only came to learn of this
9 mistake on October 29, 2010, when dcp for the first time took actual and
10 affirmative steps that were inconsistent with HFPA's understanding that its consent
11 was required for any license of the Golden Globe Awards show broadcast rights.

12 126. Whether based on mutual mistake, on unilateral mistake coupled with
13 fraudulent or inequitable conduct, on the interests of justice, or on some
14 combination thereof, the phrase "entered into with HFPA's approval" should be
15 added to the ninth line of the third paragraph of the 1993 Amendment. Such
16 reformation will conform the language of the 1993 Amendment to reflect the
17 parties' true intent at the time of contracting.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for judgment as follows:

- 20 1. For actual and compensatory damages in an amount to be determined
21 at the trial of this action;
- 22 2. For disgorgement of all profits generated by Defendants through their
23 wrongful acts;
- 24 3. An order directing Defendants to account to HFPA for all revenue and
25 profits generated by each of the Golden Globe Awards shows;
- 26 4. For a declaration of the parties' contractual rights and obligations as
27 alleged herein above;
- 28

1 5. For a preliminary and permanent injunction against Defendants
2 enjoining them and their officers, agents, employees, and representatives from
3 using HFPA's trademarks and service marks for any purpose other than the
4 promotion, advertising, and broadcast of the 2011 Golden Globe Awards show;

5 6. A declaration that HFPA is a co-owner of all rights, title, and interest
6 in the copyrights to the 1990, 1993, 1998, and 1999 Golden Globe Awards, and the
7 2003, 2004, 2005, 2006, 2007 and 2009 Pre-Shows;

8 7. For exemplary and punitive damages;

9 8. For costs of suit herein incurred;

10 9. For reasonable attorneys' fees in accordance with Section 19 of the
11 1987 Awards Agreement and the Lanham Act, 15 U.S.C. § 1117, and the Copyright
12 Act, 17 U.S.C. § 505;

13 10. For all allowable interest on any monetary award to HFPA at the legal
14 rate;

15 11. For any other orders necessary to accomplish complete justice between
16 the parties; and

17 12. For such other and further relief as this Court may deem just and
18 proper.

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21 Dated: November 17, 2010

LINDA J. SMITH
MARVIN S. PUTNAM
AMY R. LUCAS
O'MELVENY & MYERS LLP

22
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24 By: 
25 LINDA J. SMITH
26 Attorneys for Plaintiff
27 Hollywood Foreign Press Association
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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, HFPA hereby demands a trial by jury for all issues triable to a jury.

Dated: November 17, 2010

LINDA J. SMITH
MARVIN S. PUTNAM
AMY R. LUCAS
O'MELVENY & MYERS LLP

By: 
LINDA J. SMITH
Attorneys for Plaintiff
Hollywood Foreign Press Association

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Valerie Baker Fairbank and the assigned discovery Magistrate Judge is Fernando M. Olguin.

The case number on all documents filed with the Court should read as follows:

CV10- 8833 VBF (FMOx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

COPY

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
CENTRAL DISTRICT OF CALIFORNIA

HOLLYWOOD FOREIGN PRESS ASSOCIATION,
a California Corporation,

Plaintiff

v.

RED ZONE CAPITAL PARTNERS II, L.P., a
Delaware Limited Partnership; DICK CLARK
PRODUCTIONS, INC., a Delaware Corporation;
DOES 1 through 10, inclusive,

Defendant

Civil Action No

CV10-8833 ^{VBF}
(FMDx)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

DICK CLARK PRODUCTIONS, INC.
2900 Olympic Blvd.
Santa Monica, California 90404

RED ZONE CAPITAL PARTNERS II, L.P.
1800 Tysons Blvd, Suite 500
McLean, Virginia 22102

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Linda J. Smith (S.B. # 78238)
Marvin S. Putnam (S.B. # 212839)
Amy R. Lucas (S.B. # 264034)
O'Melveny & Myers LLP
1999 Avenue of the Stars, 7th Floor
Los Angeles, California 90067

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

TANYA DURANT



1188

Date: 11-17-10

Signature of Clerk or Deputy Clerk

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself)
HOLLYWOOD FOREIGN PRESS ASSOCIATION, a
California Corporation

DEFENDANTS
RED ZONE CAPITAL PARTNERS II, L.P., a Delaware Limited
Partnership; DICK CLARK PRODUCTIONS, INC., a Delaware
Corporation; DOES 1 through 10, inclusive

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
 Linda J. Smith (S.B. # 78238)
 Marvin S. Putnam (S.B. # 212839)
 Amy R. Lucas (S.B. # 264034)
 O'Melveny & Myers LLP (310-553-6700)
 1999 Avenue of the Stars, 7th Fl., Los Angeles, CA 90067

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
 (Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. ORIGIN (Place an X in one box only.)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify): 6 Multi-District Litigation 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT:** \$ in excess of 10,000,000.00

VI. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
15 U.S.C. § 1114 Trademark Infringement and associated causes of action

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 22 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE / PENALTY	PROPERTY RIGHTS
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input checked="" type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 630 Liquor Laws	SOCIAL SECURITY
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 61 HIA(1395ff)
<input type="checkbox"/> 891 Agricultural Act	REAL PROPERTY	IMMIGRATION	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 660 Occupational Safety /Health	<input type="checkbox"/> 863 DIWC/DIWW 405(g))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 465 Other Immigration Actions			<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land				FEDERAL TAX SUITS
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

CV10-8833

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District, State, if other than California; or Foreign Country
Los Angeles	

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District, State, if other than California; or Foreign Country
Dick Clark Productions, Inc. - Los Angeles	Red Zone Capital Partners II, L.P. - Delaware

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District, State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties
 Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):

Stacy J. Smith

Date November 17, 2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))