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6 Counsel for Plaintiff

7 UNITED STATES DISTRICT COURT

8 DISTRICT OF NEVADA

9 TRP ENTERTAINMENT, LLC a Nevada
limited liability company,

10 Plaintiff,

11 v.

12 SANDY ZADE HACKETT, an individual,

13 Defendant.
14

Case No.

COMPLAINT FOR DECLARATORY
RELIEF

15
16 Plaintiff TRP ENTERTAINMENT, LLC, a Nevada limited liability company
17 (hereinafter "TRP"), by and through its attorneys Greenberg Traurig, LLP, for its Complaint
18 against Defendant SANDY ZADE HACKETT, an individual (hereinafter "Hackett"), hereby
19 alleges as follows:

20 NATURE OF CLAIMS

21 1. TRP seeks a declaratory judgment that its continued production, performance
22 and recording of the live musical stage show titled "The Rat Pack Is Back," which is a
23 musical comedy tribute to the world famous entertainers previously known as "The Rat
24 Pact," including Frank Sinatra, Sammy Davis Jr., Joey Bishop and Dean Martin
25 (hereinafter referred to as the "Show"), has not and will not infringe or otherwise violate
26 Hackett's alleged copyrights or other rights in the Show.

27 2. TRP further seeks damages, attorneys' fees, costs, and preliminary and
28 permanent injunctive relief.

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JURISDICTION AND VENUE

3. This case arises under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, FED. R. CIV. P. 57, and the Copyright Act, 17 U.S.C. § 101 et seq.

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338, and the Copyright Act codified as 17 U.S.C. § 101 et seq.

5. This Court has personal jurisdiction over Hackett because he: (a) has contracted with TRP, whom he knew was located in the State of Nevada; (b) solicits or has solicited business in the State of Nevada; (c) has sent threatening correspondence to TRP in the State of Nevada threatening to take action if TRP does not comply with his demands; and (d) is a resident of Nevada.

6. Hackett has created an actual case and controversy and a reasonable apprehension of litigation by, among other things, sending a letter threatening to file suit against TRP on September 10, 2009.

7. Venue is proper in the United States District Court for the District of Nevada pursuant to 28 U.S.C. §1391(b) because the defendant resides in this judicial district and a substantial part of the events or omissions giving rise to the claims occurred in Nevada. Venue lies in the unofficial Southern Division of this Court.

THE PARTIES

8. Plaintiff, TRP ENTERTAINMENT, LLC is a limited liability company doing business in the State of Nevada.

9. Defendant, SANDY ZADE HACKETT, upon information and belief is an individual principally residing at 269 Hickory Hollow Ave., Las Vegas, Nevada 89123 and who also maintains a residence at 18375 Ventura Boulevard, #4000, Tarzana, California 91356.

ALLEGATIONS COMMON TO ALL COUNTS

10. TRP is a Nevada limited liability company that operates primarily in the realm of the entertainment industry and is in the business of creating and producing live entertainment shows, among other entertainment related endeavors.

1 11. TRP was formed in 2002 by Richard Feeney ("Feeney"), Arthur Petrie
2 ("Petrie") and Hackett and had been the producers and owners of the Show since 2002,
3 and during that time has been responsible for the production of the Show in various venues
4 in Las Vegas, Nevada, including most recently at the Plaza Hotel & Casino, as well as a
5 traveling production of the Show internationally and throughout the United States.

6 12. TRP owns incontestable federal trademark registrations for THE RAT PACK
7 IS BACK in International class 41 for "entertainment services, namely, live stage musical
8 productions" (Reg. No. 2,640,066) and THE RAT PACK IS BACK in International Class 25
9 for "clothing, namely, hats, T-shirts, jackets, and sweatshirts" (Reg. No. 2,578,115), through
10 its predecessor in interest, DRDC Productions, Inc. (See Printouts of Registration
11 Certificates and Electronic Records of Federal Registrations Nos. 2,640,066 and
12 2,578,115, attached hereto as **Exhibit 1.**)

13 13. The Show, in its current incarnation, was created and written by Feeney,
14 Hackett and others with the intent that it be a joint work of authorship for TRP's benefit, and
15 it incorporates some original material as well as preexisting material to which neither
16 Feeney nor Hackett can claim any exclusive copyrights. Such preexisting material includes
17 songs, dialogue, gags and jokes originally performed by Frank Sinatra, Sammy Davis Jr.,
18 Joey Bishop and Dean Martin during their heyday as headlining performers on the world
19 famous Las Vegas Strip.

20 14. On March 25, 2005, Feeney, Petrie and Hackett, as the only three members
21 of TRP, unanimously amended the company's operating agreement to include an optional
22 buyout clause which set forth that the divorce of any member from his wife formed the
23 basis under which a member's entire interest in the company could be purchased by the
24 other remaining members for a predetermined amount. (See the March 25, 2005 Executed
25 Amendment to the Operating Agreement, attached hereto as **Exhibit 2.**)

26 15. This March 25, 2005 amendment to the operating agreement was effectuated
27 by the members of TRP for the sole purpose of providing for a fair buyout of any partner's
28 entire interest in TRP.

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1 16. On June 7, 2005, three months after all the members of TRP executed the
2 amendment to the operating agreement allowing for the purchase of Hackett's entire
3 interest, and three years after the Show had opened, Hackett secretly filed a copyright
4 application with the United States Copyright Office for the work titled "The Tribute To Frank,
5 Sammy, Joey, and Dean," with an alternate titled included on the electronic copyright
6 record of "The Rat Pack returns in the tribute to Frank, Sammy, Joey & Dean." Hackett
7 listed himself as the sole author and copyright claimant of the words, text, script and book
8 only (not the songs) of this work in the nature of a musical show, and this application
9 matured into United States Copyright Registration No. PA 1-284-402. (See copies of the
10 Copyright Certificate of Registration No. PA 1-284-402 and printout of the U.S. Copyright
11 Office's electronic records for same, attached here to as **Exhibit 3**.)

12 17. At the time, Feeney and Petrie were completely unaware of Hackett's
13 copyright application and resulting registration for the Show, contrary to Feeney's co-
14 authorship and co-ownership of the work, and they were also unaware of Hackett's
15 unsupported and false claims of sole authorship and ownership of the Show.

16 18. During the period of time between March 25, 2005 and September 2, 2006,
17 Hackett experienced personal circumstances leading to the separation and subsequent
18 filing of divorce papers between his wife and him.

19 19. On September 2, 2006, Feeney, Petrie and Hackett, as the only three
20 members of TRP, agreed to effect the purchase of Hackett's entire interest in the company
21 by Feeney and Petrie for the total amount of Forty Thousand Dollars (\$40,000.00) as
22 predetermined in the March 25, 2005 amendment to the TRP operating agreement. (See
23 the September 2, 2006 Executed Purchase Agreement, attached hereto as **Exhibit 4**.)

24 20. Within the time period set forth in the September 2, 2006 Executed Purchase
25 Agreement, Feeney and Petrie each delivered to Hackett personal checks, which combined
26 equaled the total agreed upon purchase price of Hackett's entire interest in TRP, and said
27 checks were cashed by Hackett in complete satisfaction of the sale of his entire interest in
28 TRP. (See printouts from Wells Fargo banking records, including copies of the cancelled

1 checks, attached hereto as **Exhibit 5.**)

2 21. As a result of Hackett's sale of his entire interest in TRP on September 2,
3 2006 to Feeney and Petrie, from that point forward Hackett was no longer a member of
4 TRP, and as such, was no longer an owner of TRP or any of its assets.

5 22. Hackett continued to work as an actor and producer on the Show after selling
6 his interest in TRP to Feeney and Petrie; however, such activities were performed strictly
7 as an at will employee of TRP under the direction and control of Feeney and Petrie.

8 23. The Show has continued to evolve and change over its run, and through the
9 years Hackett, Feeney and others with Feeney's permission have changed and added
10 material to the Show. Some of these changes have incorporated new original material into
11 the Show, and others have simply added previously copyrighted material and/or material
12 that is in the public domain over which no copyright can be claimed. However, other than
13 Hackett's U.S. Copyright Registration No. PA 1-284-402, upon information and belief no
14 other copyright applications have been filed by the parties for any of the modified versions
15 of the Show.

16 24. In recent months, Hackett's discontent with TRP and the production and
17 direction of the Show has become evident and has manifested in ways that are
18 counterproductive to the continued success of the Show, including Hackett's agitation of
19 employees otherwise uninvolved in his dispute with Feeney and Petrie. As such, on
20 September 9, 2009 TRP effectively terminated Hackett's involvement in the Show in any
21 and every capacity.

22 25. On September 10, 2009, the dispute between Hackett on one hand, and
23 Feeney and Petrie on the other escalated to the point of threatened litigation, when Hackett,
24 through his attorney, sent Feeney and Petrie, as representatives of TRP, a threatening
25 letter falsely asserting Hackett's sole ownership of the copyright in the Show, demanding
26 that TRP immediately cease production of the Show, and threatening litigation if TRP
27 continues to produce the Show in violation of Hackett's alleged copyrights. (See
28 September 10, 2009 Demand Letter sent to TRP by Hackett's attorney, Howard E. King,

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1 attached hereto as **Exhibit 6.**)

2 26. By and through the undersigned counsel, TRP responded to Hackett's
3 September 10, 2009 Demand Letter and directed Hackett's attention to Feeney's and
4 Petrie's complete buyout of Hackett's interest in TRP, TRP's valid rights to continue
5 producing the Show, and TRP's valid claim to ownership of the Show and any copyrights
6 thereto.

7 27. Due to Hackett's continued threats and demands against TRP, TRP has a
8 reasonable apprehension that Hackett will file legal action against it.

9 **CLAIMS FOR RELIEF**

10 **FIRST CLAIM FOR RELIEF**

11 **Declaration as to Rights Pursuant to 28 U.S.C. § 2201 and Copyright Infringement**
12 **under The Copyright Act, 17 U.S.C. § 101 et seq.**

13 28. TRP incorporates the allegations in the preceding paragraphs as if set forth
14 fully herein.

15 29. Declaratory relief actions are available when an actual case or controversy
16 exists between two parties.

17 30. Beginning on September 10, 2009, Hackett has asserted that TRP's
18 continued production of the Show constitutes an infringement of copyrights allegedly held
19 by Hackett in violation of The Copyright Act, and demanding, *inter alia*, that TRP
20 immediately cease and desist all production of the Show.

21 31. TRP maintains that its continued production of the Show is lawful and does
22 not infringe upon any of Hackett's rights.

23 32. Therefore, an actual case or controversy exists between the parties.

24 33. TRP has no adequate remedy at law.

25 34. Hackett's assertions that TRP is violating its legal rights irreparably injures
26 and adversely affects TRP and, unless prevented by this Court, will continue to so affect
27 TRP's business and the immense investment it has made in the Show. To resolve the legal
28 and factual questions raised by Hackett and to afford relief from the uncertainty and

1 controversy which Hackett's assertion has precipitated, TRP is entitled to a declaratory
2 judgment of its rights under 28 U.S.C. §§ 2201-02. TRP's continued production of the
3 Show is not in violation of any rights Hackett might have pursuant to 17 U.S.C. § 101 et
4 seq. or otherwise.

5 35. TRP hereby seeks a judicial declaration of its continued right to produce the
6 Show free and clear of interference or harassment by Hackett and without any obligation or
7 liability to Hackett, under copyright law or otherwise.

8 36. TRP additionally seeks compensation for the harm caused by Hackett,
9 including reimbursement of its attorneys fees and costs for filing this Declaratory Relief
10 Action, together with injunctive relief against Hackett.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, TRP respectfully requests that the Court grant the following relief:

13 A. A determination and adjudication of the rights and liabilities of the parties with
14 regard to the copyright in the Show as it relates to this dispute;

15 B. A declaration that TRP's production of the Show is lawful and does not
16 infringe upon any rights of Hackett;

17 C. A permanent injunction prohibiting Hackett from further vexing conduct or
18 harassment of TRP;

19 D. An award of interests, costs, and attorneys' fees incurred by TRP in
20 prosecuting this action; and

21 E. All other relief to which TRP is entitled.

22 DATED: September 28, 2009

23 GREENBERG TRAURIG, LLP

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