

NOV 08 2011

The 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, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

Julie Taymor and Loh, Inc.,

DEFENDANTS

8 Legged Productions, LLC, et al.

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Charles T. Spada; Lankler Siffert & Wohl LLP, 500 Fifth Avenue, NY, NY 10110; (212) 921-8399

ATTORNEYS (IF KNOWN)

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(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Has this or a similar case been previously filed in SDNY at any time? No? ☒ Yes? ☐ Judge Previously Assigned

If yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

ACTIONS UNDER STATUTES

TORTS		FORFEITURE/PENALTY		BANKRUPTCY	OTHER STATUTES
CONTRACT	PERSONAL INJURY	PERSONAL INJURY	[ ] 610 AGRICULTURE	[ ] 422 APPEAL	[ ] 400 STATE
	[ ] 310 AIRPLANE	[ ] 362 PERSONAL INJURY -	[ ] 620 OTHER FOOD &	28 USC 158	REAPPORTIONMENT
	[ ] 315 AIRPLANE PRODUCT	MED MALPRACTICE	[ ] 625 DRUG RELATED	[ ] 423 WITHDRAWAL	[ ] 410 ANTITRUST
	LIABILITY	[ ] 365 PERSONAL INJURY	SEIZURE OF	28 USC 157	[ ] 430 BANKS & BANKING
	[ ] 320 ASSAULT, LIBEL &	PRODUCT LIABILITY	PROPERTY		[ ] 450 COMMERCE
	SLANDER	[ ] 368 ASBESTOS PERSONAL	21 USC 881	PROPERTY RIGHTS	[ ] 460 DEPORTATION
	[ ] 330 FEDERAL	INJURY PRODUCT	[ ] 630 LIQUOR LAWS	✗ 820 COPYRIGHTS	[ ] 470 RACKETEER INFLU-
	EMPLOYERS'	LIABILITY	[ ] 640 RR & TRUCK	[ ] 830 PATENT	ENCED & CORRUPT
	LIABILITY	PERSONAL PROPERTY	[ ] 650 AIRLINE REGS	[ ] 840 TRADEMARK	ORGANIZATION ACT
	[ ] 340 MARINE		[ ] 660 OCCUPATIONAL		(RICO)
[ ] 345 MARINE PRODUCT	[ ] 370 OTHER FRAUD	[ ] 680 OTHER		[ ] 480 CONSUMER CREDIT	
	[ ] 371 TRUTH IN LENDING		SOCIAL SECURITY	[ ] 490 CABLE/SATELLITE TV	
[ ] 151 MEDICARE ACT	[ ] 380 OTHER PERSONAL	LABOR		[ ] 810 SELECTIVE SERVICE	
[ ] 152 RECOVERY OF	PROPERTY DAMAGE	[ ] 710 FAIR LABOR	[ ] 861 HIA (1395ff)	[ ] 850 SECURITIES/	
DEFAULTED	PRODUCT LIABILITY	[ ] 720 STANDARDS ACT	[ ] 862 BLACK LUNG (923)	COMMODITIES/	
STUDENT LOANS	[ ] 385 PROPERTY DAMAGE	[ ] 730 LABOR/MGMT	[ ] 863 DIWC/DIWW (405(g))	EXCHANGE	
(EXCL VETERANS)	INJURY	RELATIONS	[ ] 864 SSID TITLE XVI	[ ] 875 CUSTOMER	
[ ] 153 RECOVERY OF		[ ] 740 LABOR/MGMT	[ ] 865 RSI (405(g))	CHALLENGE	
OVERPAYMENT OF		[ ] 750 REPORTING &		12 USC 3410	
VETERAN'S BENEFITS		DISCLOSURE ACT	FEDERAL TAX SUITS	[ ] 890 OTHER STATUTORY	
[ ] 160 STOCKHOLDERS SUITS		[ ] 790 OTHER LABOR	[ ] 870 TAXES (U.S. Plaintiff or	ACTIONS	
[ ] 190 OTHER CONTRACT		[ ] 791 EMPL RET INC	Defendant)	[ ] 891 AGRICULTURAL ACTS	
[ ] 195 CONTRACT PRODUCT		SECURITY ACT	[ ] 871 IRS-THIRD PARTY	[ ] 892 ECONOMIC	
LIABILITY			26 USC 7609	STABILIZATION ACT	
[ ] 198 FRANCHISE	ACTIONS UNDER STATUTES			[ ] 893 ENVIRONMENTAL	
	CIVIL RIGHTS	PRISONER PETITIONS	IMMIGRATION	MATTERS	
REAL PROPERTY				[ ] 894 ENERGY	
	[ ] 441 VOTING	[ ] 510 MOTIONS TO	[ ] 462 NATURALIZATION	ALLOCATION ACT	
[ ] 210 LAND CONDEMNATION	[ ] 442 EMPLOYMENT	VACATE SENTENCE	APPLICATION	[ ] 895 FREEDOM OF	
[ ] 220 FORECLOSURE	[ ] 443 HOUSING/	20 USC 2255	[ ] 463 HABEAS CORPUS-	INFORMATION ACT	
[ ] 230 RENT LEASE &	ACCOMMODATIONS	[ ] 530 HABEAS CORPUS	ALIEN DETAINEE	APPEAL OF FEE	
EJECTMENT	[ ] 444 WELFARE	[ ] 535 DEATH PENALTY		DETERMINATION	
[ ] 240 TORTS TO LAND	[ ] 445 AMERICANS WITH	[ ] 540 MANDAMUS & OTHER		UNDER EQUAL ACCESS	
[ ] 245 TORT PRODUCT	DISABILITIES -	[ ] 550 CIVIL RIGHTS	[ ] 465 OTHER IMMIGRATION	TO JUSTICE	
LIABILITY	EMPLOYMENT	[ ] 555 PRISON CONDITION	ACTIONS	[ ] 950 CONSTITUTIONALITY	
[ ] 290 ALL OTHER	[ ] 446 AMERICANS WITH			OF STATE STATUTES	
REAL PROPERTY	DISABILITIES -OTHER				
	[ ] 440 OTHER CIVIL RIGHTS				

Check if demanded in complaint:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ \_\_\_\_\_ OTHER \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint

JURY DEMAND: ☒ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

## **RIDER FOR CIVIL COVER SHEET**

**Julie Taymor, et al. v. 8 Legged Productions, LLC, et al.**

### List of Defendants and Addresses

8 Legged Productions, LLC  
c/o Joshua D. Saviano, Esq.  
Morrison Cohen LLP  
909 Third Avenue  
New York, New York 10022

Hello Entertainment, LLC  
c/o National Registered Agents, Inc.  
160 Greentree Dr., Suite 101  
Dover, DE 19904

Goodbye Entertainment, LLC  
c/o The Corporation Trust Company  
Corporation Trust Center  
1209 Orange St.  
Wilmington, DE 19801

Savior Productions, LLC  
c/o Joshua D. Saviano, Esq.  
Morrison Cohen LLP  
909 Third Avenue  
New York, New York 10022

Michael Cohl  
1140 Broadway, 4th Fl.  
New York, NY 10001

Jeremiah Harris  
630 Ninth Ave., Suite 610  
New York, NY 10036

Glen Berger  
382 Band Camp Road  
Saugerties, NY 12477-3104

**JUDGE HOLWELL**

**ORIGINAL**

LANGLER SIFFERT & WOHL LLP  
Charles T. Spada (cspada@lswlaw.com)  
Matthew G. Coogan (mcoogan@lswlaw.com)  
500 Fifth Avenue  
New York, NY 10110  
(212) 921-8399

**11 CIV 8002**

*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

JULIE TAYMOR and LOH, INC.,

Plaintiffs,

- against -

8 LEGGED PRODUCTIONS, LLC, HELLO  
ENTERTAINMENT, LLC, GOODBYE  
ENTERTAINMENT, LLC, SAVIOR  
PRODUCTIONS, LLC, MICHAEL COHL,  
JEREMIAH HARRIS, and GLEN BERGER,

Defendants.

11 Civ. \_\_\_\_

**COMPLAINT**

**Jury Trial Demanded**

2011 NOV -8 PM 1:08  
S.D. OF N.Y.

Plaintiffs Julie Taymor and LOH, Inc., by and through their attorneys Lankler Siffert & Wohl LLP, as and for their Complaint against Defendants 8 Legged Productions, LLC, Hello Entertainment, LLC, Goodbye Entertainment, LLC, Savior Productions, LLC, Michael Cohl, Jeremiah Harris, and Glen Berger, allege as follows:

**NATURE OF THE ACTION**

1. Julie Taymor and her wholly-owned company, LOH, Inc. ("LOH"), bring this action to remedy Defendants' willful copyright infringement and breaches of contract arising from their unauthorized and unlawful use of Taymor's copyrighted written works in the current hit Broadway musical *Spider-Man: Turn Off the Dark* (the "Musical" or "*Spider-Man*").

2. Taymor, a world-famous director, writer, collaborator, and costume designer, worked on *Spider-Man*—including co-writing its book (also called a “libretto” or “script”)—for over seven years. In early 2011, the Musical’s producers removed Taymor from the production. Since then, they have continued to promote, use, change, and revise Taymor’s work, including her book of the Musical. They have done so without her approval or authorization and in violation of their agreements with Taymor and Taymor’s intellectual property rights, including her right to approve changes to her book of the Musical. They have refused to pay Taymor her contractually guaranteed authorship royalties.

3. By their actions, Defendants have: (a) violated Taymor’s rights under the Copyright Act; (b) breached their agreements with Taymor and LOH; and (c) threatened to violate Taymor’s right of privacy under Sections 50 and 51 of the New York Civil Rights Law. Taymor and LOH seek compensatory and statutory damages, a declaratory judgment, and injunctive relief.

### **PARTIES**

4. Plaintiff Julie Taymor is domiciled in this District. Taymor served as director, collaborator, co-bookwriter, and mask designer for *Spider-Man*.

5. Plaintiff LOH, Inc., is a domestic business corporation organized and existing under the laws of the State of New York and having its principal place of business in this District. LOH is wholly owned by Taymor, who serves as President of the company.

6. Defendant 8 Legged Productions, LLC (“8 Legged”) is a domestic limited liability company organized and existing under the laws of the State of New York and having its principal place of business in this District. 8 Legged is the current lead production company for *Spider-Man*. 8 Legged was formed by Defendants Hello Entertainment, LLC (“Hello”) and

Goodbye Entertainment, LLC (“Goodbye”) in or around August 2010. In August 2010, by written agreement between Hello and Goodbye and its operating agreement, 8 Legged assumed all rights and obligations relating to *Spider-Man*.

7. Defendant Hello Entertainment, LLC, is a limited liability company organized and existing under the laws of the State of Delaware. Hello was *Spider-Man*’s original lead production company before 8 Legged took over that role in or around 2009. Hello was formed by David Garfinkle and the late Tony Adams in July 2003. Hello is a Manager of 8 Legged and remains a producer of *Spider-Man* today.

8. Defendant Goodbye Entertainment, LLC, is a limited liability company organized and existing under the laws of the State of Delaware. Goodbye was formed by Defendants Michael Cohl and Jeremiah Harris in November 2009 to facilitate the carrying out of Cohl’s and Harris’s new responsibilities as lead producers of *Spider-Man*. Goodbye is a Manager of and responsible for the day-to-day operations of 8 Legged. Goodbye is a producer of *Spider-Man*.

9. Defendant Savior Productions, LLC (“Savior”) is a domestic limited liability company organized and existing under the laws of the State of New York and having its principal place of business in this District. Savior was formed by Cohl and Harris for the purpose of financing the completion of *Spider-Man* after they took over as lead producers in 2009. Savior is a Member of 8 Legged and a producer of *Spider-Man*.

10. Defendants Michael Cohl and Jeremiah Harris are the current lead producers of *Spider-Man*. They have acted as lead producers since 2009, when the Musical’s original producers encountered financing difficulties and ceded control of the Musical to Cohl and Harris.

Upon information and belief, Cohl and Harris are Lead Managers and Board members of, and have authority to conduct the day-to-day management of, Goodbye and Savior.

11. Defendant Glen Berger is a co-bookwriter of *Spider-Man*.

### **JURISDICTION & VENUE**

12. This Complaint arises under the federal Copyright Act, 17 U.S.C. § 101 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, and New York state law. All of the claims in this action form part of the same case or controversy. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1338, and 1367.

13. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(a).

### **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

#### **Julie Taymor**

14. Taymor is an accomplished and critically acclaimed director, writer, collaborator, and costume designer. She is widely known for her work on the Broadway musical *The Lion King*, which is among the longest-running and highest-grossing Broadway musicals of all time and has also been successful in other venues worldwide. Taymor directed *The Lion King* and designed the show's signature costumes, masks, and puppets. In 1998, Taymor won two Tony Awards for her work on *The Lion King*, becoming the first woman ever to win a Tony Award for Best Direction of a Musical. Taymor and *The Lion King* also won numerous other awards for Taymor's direction and her original costume, mask, and puppet designs.

15. In addition to *The Lion King*, Taymor has directed and written numerous Broadway productions, motion pictures, and operas. She has won myriad awards for her work, including three Drama Desk Awards, an Emmy Award, and a MacArthur "Genius" Fellowship.

The motion picture *Frida* (2002), which Taymor directed, was nominated for six Academy Awards and won two.

**Beginnings of *Spider-Man: Turn Off the Dark***

16. Spider-Man, a fictional superhero created in the 1960s by Stan Lee and Steve Ditko, has appeared in many Marvel Comics publications. Spider-Man also has been the subject of three major motion pictures: *Spider-Man* (2002), *Spider-Man 2* (2004), and *Spider-Man 3* (2007). The intellectual property rights in the Spider-Man character are owned by Marvel Entertainment, LLC, or Marvel Entertainment, Inc. (together, “Marvel”).

17. In or around 2003, producers David Garfinkle and Tony Adams began negotiating with Marvel for the right to produce a musical stage play based on the Spider-Man character. Garfinkle and Adams approached famed musicians Paul David Hewson (professionally known and referenced herein as “Bono”) and David Howell Evans (professionally known and referenced herein as “The Edge” or “Edge”) of the multiple Grammy Award winning rock band U2 to compose music and lyrics for the Musical. Bono and Edge agreed to work on the project.

18. In or around 2004, Marvel licensed the right to produce the Musical to Garfinkle and Adams through their production company Hello Entertainment.

19. Garfinkle and Adams initially engaged Neil Jordan to author the “book” of the Musical. A “book” of a musical (also called a “libretto” or “script”) is a written work that sets forth all aspects of a musical stage play, including the spoken dialogue and storyline, as well as descriptions of sets, costumes, characters, and actions that are to occur on stage.

20. In or around 2004, Bono, Edge, Jordan, and the producers asked Taymor to direct and collaborate on the Musical. Taymor agreed.

21. In 2004, Taymor authored a three-page original treatment for the Musical (the "Treatment"). A treatment is a work of prose that sets out the basic storyline, characters, and narrative arc of a longer work. It conveys the essential themes and structure of the work and may be as short as a few pages or much longer. A treatment for a musical stage play is typically used both as a tool to obtain approval of the musical's concept from interested parties and, later, as a basis for drafting the book of the musical.

22. In 2004, Taymor's Treatment was approved by Bono, Edge, Garfinkle, and Adams as the basis for the Musical.

23. In or around 2004, Neil Jordan ceased working as bookwriter on the Musical. With Jordan's departure, Taymor, in addition to directing and collaborating, agreed to author the book of the Musical.

24. In 2005, to accommodate her additional responsibilities on the Musical, Taymor chose Glen Berger as her co-bookwriter. The producers and Marvel approved of Berger as co-bookwriter.

25. On March 17, 2005, Taymor registered her Treatment with the United States Copyright Office. The copyright registration certificate is attached hereto as Exhibit A.

26. From the beginning of her involvement with the Musical, Taymor insisted that she have creative control over her contributions to the Musical, including the book of the Musical, and that she have approval over subsequent productions of the Musical beyond Broadway. On March 28, 2005, Taymor's lawyer, Seth Gelblum, Esq., of the firm Loeb & Loeb LLP, confirmed by e-mail to Garfinkle and Adams that Taymor would serve as the Musical's co-bookwriter going forward with the understanding that Taymor had "full customary author approvals over creative and business issues."



27. Taymor's insistence on creative control over her contributions to the Musical, as well as Garfinkle's and Adams's agreement to such control, was not unusual in light of Taymor's sought-after stature, skill, experience, and proven success.

#### **Deal Memoranda With the Producers**

28. Upon information and belief, Glen Berger entered into a deal memorandum (the "Berger Deal Memo," attached hereto as Exhibit B), dated June 22, 2005, with Hello Entertainment (Garfinkle's and Adams's production company). The Berger Deal Memo reflected the material terms of Berger's and Hello's agreement on issues related to Berger's services as co-bookwriter of the Musical. Among other things, Berger and Hello expressly agreed that Taymor had the sole right to authorize any changes to the book of the Musical. Paragraph 11 of the agreement states:

Consultation on Bookwriter/Creative Decisions: Berger shall collaborate with Julie Taymor on bookwriter related and other creative decisions for the Musical; provided, however, Julie Taymor, in her sole and absolute discretion, shall have final approval on all such decisions, including her directing of any film adaptation of the Musical. [Emphasis added.]

29. Taymor was an intended third-party beneficiary of Paragraph 11 of the Berger Deal Memo. Indeed, on June 28, 2005, Garfinkle sent an unsigned copy of the Berger Deal Memo to Taymor's lawyer (Gelblum) for review. In an e-mail the same day, Gelblum told Garfinkle that Berger "ha[d] to agree that Julie . . . has approval over authorial decisions." Garfinkle confirmed that Paragraph 11 of the Berger Deal Memo reflected such an agreement.

30. On or about June 28, 2005, Garfinkle assured Gelblum during a telephone conversation that Bono's and Edge's agreement with Hello contained a similar provision affirming Taymor's approval rights over authorial decisions for the Musical. Upon information and belief, Bono and Edge executed an agreement with Hello containing such a provision.

31. On August 4, 2005, Taymor, LOH, and Hello signed a deal memorandum reflecting the material terms of their agreement on issues related to Taymor's services as co-bookwriter of the Musical (the "Author Deal Memo," attached hereto as Exhibit C). In entering into that agreement, Taymor knew and relied on the fact that the producers had agreed with other members of the creative team, including Berger, that Taymor had approval rights over changes to the book of the Musical.

32. The Author Deal Memo with Taymor provides that Taymor and LOH, "as a co-owner of the book of the musical . . . shall have approval (to be shared with the composer and lyricist [Bono and Edge], and if such parties and [Taymor and LOH] agree, with the bookwriter) over dispositions of rights to the Musical, and all other decisions customarily reserved to the authors of a Musical." (Emphasis added.) The parties' contemporaneous e-mails and conversations confirm that this was intended to mean, among other things, that Taymor had approval rights over changes to the book of the Musical.

33. Pursuant to the Author Deal Memo, the producers also agreed to pay Taymor a co-bookwriter royalty based on a figure of 1.945% of weekly operating profits from public performances (with that percentage increasing as the Musical's investors recouped their investments).

34. Taymor, LOH, and Hello also signed a deal memorandum, dated July 12, 2005, reflecting the material terms of their agreement on issues related to Taymor's services as director and collaborator on the Musical (Exhibit D). The July 12, 2005 deal memorandum, an amendment thereto, and a subsequent long-form agreement entered into by the parties currently are the subject of an ongoing arbitration brought by the Stage Directors and Choreographers

Society on Taymor's behalf against 8 Legged for, among other things, payment of director and collaborator royalties owed to Taymor.

35. On October 22, 2005, producer Tony Adams died unexpectedly. Garfinkle took over as sole lead producer of the Musical.

### **Subsequent Negotiations and Creation of the Book of the Musical**

36. In or around 2005, Taymor and Berger began to author the book of the Musical based on Taymor's Treatment. They worked on the book over approximately the next six years. Consistent with their agreements regarding Taymor's creative approval rights, Taymor was responsible for or approved all authorial decisions regarding the drafting of the book.

37. Marvel and the various producers of the Musical also approved drafts of the book at each stage of the writing process. During the writing process, Marvel and the producers also viewed workshops and staged readings of the Musical.

38. While working on the book of the Musical, Taymor and Berger, through their representatives, engaged in negotiations with the producers on a long-form author agreement. A final long-form author agreement was not executed, however, because Bono and Edge did not respond to requests for comments. Nevertheless, the negotiations among Taymor, Berger, and the producers toward a long-form author agreement reflected agreement on a number of material terms. For instance, they confirmed Taymor's creative approval rights over authorial decisions and changes to the book of the Musical. Thus, paragraphs 15.1 and 15.5 of the most recent draft of the long-form author agreement provide that:

No changes in the book, music or lyrics of the Musical will be made without the approval of the Author and Producer . . . .

Approval rights belonging solely to the Co-Bookwriters will be made and communicated by Taymor (after consultation with Berger) and Producer will have the right to rely thereupon.

39. In good-faith reliance on these negotiations and the agreement among the parties, Taymor continued to work on the book of the Musical, making numerous, independently copyrightable contributions to the book.

40. The book that Taymor co-authored and approved theatricalizes in novel ways the familiar story of Peter Parker and his love interest Mary Jane Watson, creates new themes and characters, expands on pre-existing characters from Marvel's Spider-Man comic books, develops new plot lines and specific dialogue, and contains detailed, original descriptions of stage activity used to bring the story of Spider-Man to life on stage. By agreement with Marvel, two of the characters created or developed in the book—"Swiss Miss" and "Arachne"—are deemed works made for hire for Marvel under the Copyright Act.

#### **Cohl and Harris Become Lead Producers**

41. In or around 2009, Garfinkle and Hello faced financing difficulties that threatened the Musical's survival.

42. Thereafter, Cohl and Harris took over as lead producers, with the approval of Bono, Edge, and Taymor. Cohl and Harris formed 8 Legged, Goodbye, and Savior to continue the production and financing of the Musical.

43. At the time Cohl and Harris took over as lead producers in 2009, the book of the Musical already had been approved in its then-current form.

44. On or about August 24, 2010, to induce additional investors to finance the Musical, Taymor, LOH, Berger, Bono, Edge, 8 Legged, and others entered into written agreements to reduce their royalty percentages under the 2005 deal memoranda by half for a limited time in exchange for the producers' agreement to double the guaranteed minimum weekly royalties (the "2010 Amendment," attached hereto as Exhibit E). Before the

restructuring, Taymor and the producers had agreed to a guaranteed minimum weekly royalty amounting to \$750 per percentage point of weekly operating profits for each eight-performance week of the Musical, beginning with the first public preview performance. Thus, Taymor was to receive a guaranteed minimum weekly royalty of \$1,458.75 per eight-performance week in her role as co-bookwriter. (Exhibit F.) Under the 2010 Amendment, Taymor's guaranteed minimum weekly royalty as co-bookwriter was doubled to \$2,917.50 per eight-performance week. (Exhibit E.)

**Spider-Man Begins Rehearsals and Opens in Previews on Broadway**

45. In or around mid-August 2010, the Musical began rehearsals. During the rehearsal period, Taymor and Berger continued work on the book of the Musical.

46. In late 2010, Marvel and the producers approved the book of the Musical as it existed at that time.

47. On November 28, 2010, *Spider-Man* played its first public preview performance on Broadway.

48. Throughout the preview period until her removal from the production, Taymor continued to work on changes to the Musical, including working with Berger on further changing and refining the book of the Musical within the confines of the preview performance schedule. After public performances had started, the producers never conveyed to Taymor that they would be agreeable to suspending public performances for a period of time if major changes to the Musical were desirable.

49. Upon information and belief, beginning in or around December 2010, Berger, Cohl, Harris, and others discussed and worked on certain other revisions to the book of the Musical without Taymor's knowledge or consent. Upon information and belief, Berger, Cohl,

and Harris intentionally concealed from Taymor their communications among each other and with Bono, Edge, and others as they prepared to make their own changes to the book of the Musical without Taymor's knowledge or consent.

50. As of February 20, 2011, although Taymor was due royalties as co-bookwriter, director, and collaborator for each public performance from the time the Musical began previews on November 28, 2011, the producers had not paid Taymor the royalties due. On February 20, 2011, Gelblum sent Cohl and Harris an e-mail requesting that they pay Taymor the royalties due.

51. On February 26, 2011, Taymor met with Cohl, Berger, and Edge at Gelblum's office, with Bono and Harris participating by conference call. Taymor was told at that meeting about certain proposed changes to the book of the Musical on which Berger, Cohl, and Harris had been working without Taymor's knowledge or approval.

52. On March 1, 2011, Gelblum notified Cohl and Harris by telephone and e-mail that Taymor was not waiving her approval rights over changes to the book of the Musical.

53. The last version of the original book of the Musical co-written by Taymor before she was removed from the production in March 2011 is entitled "Spider-Man: Turn Off the Dark" (the "Original Book"). Taymor registered the Original Book with the United States Copyright Office effective October 11, 2011. The copyright registration certificate for the Original Book is attached hereto as Exhibit G.

**Defendants Remove Taymor From the Production and Change the Book of the Musical Without Taymor's Approval**

54. On March 4, 2011, Taymor and Gelblum were summoned to a meeting with Cohl, Harris, Bono, and Edge in Manhattan. At that meeting, Taymor was told that she was being removed from the production and that a new "creative consultant" and a bookwriter were being hired to make changes to Taymor's work, including to the Original Book. Taymor did not give

her permission or consent to the hiring of the creative consultant or bookwriter or to the proposed changes to her Original Book.

55. On March 9, 2011, the producers publicly announced that Philip William McKinley and Roberto Aguirre-Sacasa were joining the Musical's creative team "to help implement new staging and book rewrites, respectively." The producers then began to implement the changes to the Original Book that they and Berger secretly had been planning for months. No one sought or obtained Taymor's consent to make these changes.

56. On March 29, 2011, Taymor's counsel again notified the producers' counsel in writing that Taymor retained creative rights over her work, including her right to approve any changes made to the Original Book.

57. Following its April 17, 2011, preview performance, *Spider-Man* shut down for approximately three weeks in order to facilitate the book rewrites and restaging that Defendants had been planning without Taymor's approval. During the shut-down period, Berger and Aguirre-Sacasa, at the urging and direction of Cohl and Harris, continued to make changes to the Original Book. These changes included reducing or eliminating the role of certain characters and revising certain plot lines. The changes were made without Taymor's approval or consultation. The changes resulted in a revised book (the "Infringing Book"), which was adapted and derived from Taymor's Original Book.

58. On May 12, 2011, *Spider-Man* re-opened in previews using the Infringing Book.

59. The Infringing Book, which has been used in the Musical since it re-opened on May 12, 2011, is copied and derived from Taymor's copyrighted 2004 Treatment and her Original Book. As detailed below, the Infringing Book is substantially similar to both works. In addition, the producers have copied portions of Taymor's Original Book without authorization

in, among other things, merchandise sold in connection with the Musical since the May 12, 2011, re-opening.

60. Taymor has been billed as co-bookwriter of the Musical since the Musical opened in previews in November 2010. Even after the producers removed Taymor in March 2011 as the director, they have continued to acknowledge that Taymor is a co-bookwriter of the Musical and have publicized that fact to capitalize on Taymor's name and reputation, while refusing to compensate Taymor as she is entitled.

61. As of the date of this Complaint, for example, the Musical's website continues to bill Taymor as a co-bookwriter, among other things. A copy of Taymor's biography as it currently appears on the Musical's website is attached hereto as Exhibit H. In addition, a building-size billboard currently hanging from the Foxwoods Theater, where *Spider-Man* is playing, advertises Taymor as co-bookwriter and director of the Musical. A photograph of that billboard as it currently is displayed is attached hereto as Exhibit I. Furthermore, on the Musical's current website, the producers tout a recent review stating:

It [the Musical] was one of the most dazzling theatrical experiences we have ever seen! And, most of that, we think, can be attributed to the bold and inspired work of Julie Taymor, who also helmed Disney's groundbreaking Lion King stage Musical. EVERYTHING about Spider-Man worked!

62. On June 14, 2011, *Spider-Man* officially opened on Broadway using the Infringing Book.

63. In the opening night credits for the Musical, the producers continued to list Taymor as co-bookwriter of the Musical. As a consequence, Taymor will be eligible to be nominated for a 2012 Tony Award as co-writer of the book of the Musical.

64. On November 3, 2011, further acknowledging Taymor's work on the Musical, the Tony Awards Administration Committee ruled that Taymor also will be eligible to be nominated



for a 2012 Tony Award in the category of Best Direction of a Musical. In so ruling, the Tony Awards Administration Committee rejected the producers' contention that Philip William McKinley had transformed the Musical into a "new" production and therefore should be eligible for the Best Direction award along with, or instead of, Ms. Taymor.

65. *Spider-Man* continues to play in the Foxwoods Theater, Broadway's largest house, and regularly grosses in excess (sometimes far in excess) of \$1.4 million per week. The Foxwoods Theater seats 1,930 people. Current ticket prices average over \$100 per seat, and capacity averages over 90% for each of the Musical's eight performances every week.

66. Upon information and belief, Cohl, Harris, Berger, 8 Legged, Hello, Goodbye, and Savior have derived and continue to derive substantial revenues, profits, fees, and other benefits and advantages from the Musical and from the use therein of Taymor's copyrighted works. To date, the producers have derived over \$60 million in revenues from public performances of the Musical, including preview performances.

67. On November 4, 2011, the producers' counsel belatedly sent Taymor a check for \$52,880, purporting to represent payment of her co-bookwriter royalties for performances of the Musical through April 17, 2011, when the Musical had its last public performance before Cohl, Harris, Berger, and Aguirre-Sacasa implemented their revisions to the Original Book. The producers, however, continue to refuse to pay Taymor any royalties for performances after April 17, 2011.

68. Despite repeated requests, and despite the fact that they have filed with the New York State Department of Law financial statements indicating that author royalties have been paid, Cohl, Harris, and 8 Legged have refused to pay Taymor and LOH the royalties they are due, including royalties for public performances of the Musical after April 17, 2011. A total of

over \$70,000 in co-bookwriter royalties is due to date, in addition to the \$52,880 that was belatedly paid on November 4, 2011, for pre-April 17, 2011 performances. Continuing royalties of at least \$2,917.50 per week (a minimum based on each eight-performance week) are owed from April 17, 2011, to the present, as the Musical continues public performances.

### **Substantial Similarity Between the Infringing Book and the Original Book**

69. The Infringing Book copies, is derived from, and is substantially similar to many novel and unique elements of the Original Book co-authored and approved by Taymor. The Infringing Book copies entire scenes, dialogue blocks, themes, plot lines, narrative arcs, characters, and descriptions of stage activity. In total, over 350 lines of dialogue and descriptions of stage activity—nearly one quarter of the Infringing Book—are copied verbatim from Taymor’s Original Book. Hundreds of additional lines and descriptions of stage activity are copied in sum and substance from the Original Book. Indeed, upon the Musical’s official opening with the Infringing Book in June 2011, Aguirre-Sacasa told the theater publication “Playbill” that his new role as “co-bookwriter” on the Musical had been to “help[] the rest of the team bring forward what was already there, in the DNA of the show.”

### **Descriptions of Stage Activity**

70. Not surprisingly given that the goal in deriving the Infringing Book was to “bring forward what was already there,” the Infringing Book repeatedly copies wholesale, among other things, Taymor’s descriptions of stage activity—which are new and unique contributions in the Original Book that are subject to copyright protection. For example, the initial entrance of “Arachne,” a new character first referenced in Marvel’s comic books but developed by Taymor in the Original Book, is copied in the Infringing Book as shown by the following comparison:

Original Book	Infringing Book (verbatim copying highlighted)
<p>A Time before Time. A Giant “Loom” is revealed--Seven actors swing on vertical silks to form a “tapestry.” Meanwhile, Arachne floats down “on” a “Greek altar-like” Loom Platform . . . . Front projection on the tapestry depict white threads of light, forming an image [of the “moon.”] As Arachne continues to “work at her loom,” MISS ARROW speak/sing-- . . . A projection of “Athena’s Shadow” quickly grows larger and larger upon the tapestry, until CRAAAACK! -- a “lightning bolt” projection and the tapestry is “torn to shreds,” leaving two or three remnants of saffron silk dangling.</p>	<p>A Time before Time. A giant “Loom” is revealed: Seven actors swing on vertical silks to form a “tapestry.” Meanwhile, ARACHNE floats down “on” a “Greek altar-like” loom platform . . . . Front projection on the tapestry depict white threads of light, forming an image [of the “sun”] As ARACHNE continues to “work at her loom,” PETER speak/sing-- . . . A projection of “Athena’s Shadow” quickly grows larger and larger upon the tapestry, then CRAAAACK!. -- a “lightning bolt” projection and the tapestry is “torn to shreds,” leaving two or three remnants of saffron silk dangling.</p>

71. The Original Book brings Spider-Man to life on stage through a newly created scene entitled “Spider-Man’s New York Debut,” in which the Musical’s famous high-flying acrobatics first appear and several new characters, including gangsters, a mugger, an old lady, and a chorus of mothers, are introduced. The scene is copied in the Infringing Book as shown by the following comparison:

Original Book	Infringing Book (verbatim copying highlighted)
<p>STIRRING MUSIC. The forced-perspective Cityscape is now in daylight.</p> <p>Spider-Man (#1) suddenly appears upstage, flips (in a gainer), and lands all the way downstage.</p> <p>He then backflips and flies off SR [stage right].</p> <p>Spider-Man (#2) makes a swing across from</p>	<p>STIRRING MUSIC. The forced-perspective Cityscape is now in daylight.</p> <p>SPIDER-MAN #1 (BRANDON) suddenly appears upstage, flips (in a gainer), and lands all the way downstage.</p> <p>HE back flips, as, from offstage, we hear the OFF-STAGE SOUND OF A SIREN -- SPIDER-MAN flies off SR [stage right] --</p> <p>SPIDER-MAN #2 (MARCUS) makes a swing</p>

SR to SL [stage left].

In an explosive jump, Spider-Man (#3) leaps from the floor, lands, jumps onto the SL proscenium, crawls up the wall, then swings hand from hand, exiting SR.

Spider-Man (#4) is an acrobat who utilizes a tumble-track to tumble and jump.

Spider-Man (#5) is another tumbling acrobat.

Spider-Man (#6) is another tumbling acrobat.

The music transmutes into rousing SPIDER-MAN CRIME-FIGHTING MUSIC.

Three gangsters with sacks of money on their backs and holding Tommy guns run down the ramp. From above, Spider-Man (#1) makes a double swing, drops a web-net over them. The gangsters roll down into the trap.

Another Spider-Man (#7) SR, swings over the audience, lands onto the balcony HL [house left].

A mugger snatches a purse from an old lady. Spider-Man (#7) swings back to the stage, lands in front of the purse-snatcher. Spidey gives the purse back to the lady, the mugger runs away, Spider-Man shoots a web and

across from SR to SL [stage left]

SPIDER-MAN #3 (GERALD) makes a swing across from SL to SR

From SR, SPIDER-MAN #4 (CRAIG) enters. HE is an acrobat who utilizes a tumble-track to tumble and jump.

SPIDER-MAN 5# (DOLLAR) is another tumbling acrobat, going SL to SR.

SPIDER-MAN #6 (MANNY) is another tumbling acrobat, going SR to SL.

The music transmutes into rousing SPIDER-MAN CRIME-FIGHTING MUSIC.

Three gangsters with sacks of money on their backs and holding Tommy guns run down the ramp. From above, SPIDER-MAN (#1) makes a double swing, drops a web-net over them. The GANGSTERS roll down into the trap.

SPIDER-MAN (V.O) (as he swings): Special today! Free webbing!

Another SPIDER-MAN (#7) SR, swings over the audience, lands onto the balcony HL [house left].

MJ, entering SR, walking with her nose in a script, crosses the stage, stops, looks up, and sees . . . SPIDER-MAN, swinging around.

SPIDER-MAN (V.O): Hi . . . just passing through!

SHE is transfixed. Love at first sight . . . SHE exits SL.

A MUGGER snatches a purse from an OLD LADY. SPIDER-MAN (#7) swings back to the stage, lands in front of the PURSE-SNATCHER. SPIDEY gives the purse back to the LADY, the MUGGER runs away,

tosses the mugger offstage (SR). Spider-Man then exits SL.	SPIDER-MAN shoots a web and tosses the MUGGER offstage (SR). SPIDER-MAN then exits SL.
A Burning Building. A Chorus of Mothers appear and an off-stage voice screams “My Baby!”	SPIDER-MAN (V.O): Spider Airlines – the safest way to fly!
Two Pop-Ups depict a baby falling into Spidey’s arms.	A Burning Building. A Chorus of Mothers appear and an off-stage voice screams “My Baby!”
	Two Pop-Ups depict a baby falling into Spidey’s arms.

72. The Infringing Book also copies inventive staging techniques critical to the Original Book. For example, a key confrontation between Peter Parker and bullies in his high school is copied in the Infringing Book as shown by the following comparison:

Original Book	Infringing Book (verbatim copying highlighted)
Utilizing “black theater” puppet techniques, a Comic fight between Peter and the Bullies ensues, with Peter delivering effortless punches into the Bullies which send them flying high in the air and bouncing off the walls.	Utilizing “black theater” puppet techniques, a Comic fight between PETER and the BULLIES ensues, with PETER delivering effortless punches into the BULLIES which send them flying high in the air and bouncing off the walls.

### **Dialogue**

73. The Infringing Book also copies extensive dialogue from the Original Book, in some cases copying entire scenes almost verbatim. For example, both books feature an early scene introducing Peter Parker and his classmates. In both books, Peter asks a question, prompting the teacher to assign work to the class and incurring the wrath of Peter’s classmates. The Infringing Book copies from the Original Book as shown by the following comparison:

Original Book	Infringing Book (verbatim copying highlighted)
<p>TEACHER: Well! I guess I'll be letting you out for lunch early today.</p> <p>CHEERS from class.</p> <p>TEACHER (CONT'D) (adding--): That is, unless anyone has something to add?</p> <p>Pause.</p> <p>Then Peter Parker raises his hand. A GROAN from the students. Flash leans toward Peter with menace-</p> <p>FLASH: You are so gonna to [sic] get it, Parker.</p> <p>PETER (eagerly): Well I found this really interesting footnote in Bullfinch's Mythology. Apparently, Athena used aconite to turn Arachne into a spider, and I was just wondering if that was referring to the compound made from the roots of wolfsbane, containing the alkaloid pseudaconitine?</p> <p>TEACHER: Peter, I teach Classics, not Chemistry.</p> <p>PETER: Well I was just wondering, because—</p> <p>FLASH: --because you're a dork.</p> <p>General laughter from class. Peter soldiers on—</p> <p>PETER: Well it's just that the possibility of metamorphosis-</p>	<p>TEACHER: Why don't we wrap up a bit early--</p> <p>CHEERS from class.</p> <p>PETER (raising hand): Uhm, Mrs. Gribrock?</p> <p>FLASH (sotto to PETER; anger, disbelief): Oh, you are <i>such</i> dead meat, Parker!</p> <p>TEACHER: Yes, Peter?</p> <p>PETER (eagerly): I found this interesting footnote. Apparently, Athena used aconite to turn Arachne into the spider, and I was curious if that's the same compound as the alkaloid pseudaconitine?</p> <p>TEACHER: Peter, I teach Classics, not Chemistry.</p> <p>PETER: Well I was just wondering, because --</p> <p>FLASH: --because you're a dork.</p> <p>TEACHER: Class, class --</p> <p>PETER: I was wondering because . . . (back to TEACHER) . . . I don't know if you're familiar with the work of Norman Osborn. A lot of his projects -- About evolution, genetic splicing, metamorphoses--</p>

TEACHER (gasps): Metamorphosis-I almost forgot! (announcing sternly) Ovid's Metamorphoses! It's ancient, it's full of myths, and I want a ten-page paper on it by Monday! Thanks for reminding me Peter— (chuckling))--you kids almost got off scot-free this weekend!	TEACHER (cutting him off): Metamorphoses-I almost forgot! Ovid's Metamorphoses! It's ancient, it's long, it's dense and I want a ten-page paper on it by Monday! Thanks for reminding me Peter -- you kids almost got off scott-free this weekend! Have a nice lunch.
The BELL RINGS.	SCHOOL BELL RINGS

74. Likewise in both books, Peter Parker and his classmates visit Oscorp Labs, whereupon the character Dr. Osborn—soon to become the Green Goblin—is introduced. The Infringing Book copies from the Original Book as shown by the following comparison:

Original Book	Infringing Book (verbatim copying highlighted)
NORMAN (calling out to assistants): Newts! Where are those newts!?	NORMAN (calling out to ASSISTANTS): Newts! It came to me in the night-newts!
EMILY: Norman, can you just stand still for a moment --	EMILY: Norman, can you just stand still for a minute --
NORMAN (rushing off to another station): I'm sure I <i>can</i> stand still, honey, I just don't see the point.	NORMAN: I'm sure I <i>can</i> stand still, I just don't see the point.
EMILY: We need to talk about our funding problem—	EMILY: We need to talk about our <i>EXTREME</i> funding problem—
NORMAN (now engrossed in newspaper, on high horse): See! Now Emily, here's what I'm talking about. Climate change in North America -- it's gonna make the cloud-cover so thick we'll need bigger eyes just to compensate. Or no no no -- (snaps fingers)—Infra-red! Honey, what are those—	NORMAN (now engrossed in newspaper, on high horse): See! Now Emily, here's what I'm talking about. Climate change in North America -- it's gonna make the cloud-cover so thick we'll need bigger eyes just to compensate. Or no no no -- (snaps fingers)—Infra-red! What species has infra-red? (to EMILY) Oh, come on Honey, what --

EMILY (knowing what he's going to ask):  
Pit Vipers.

NORMAN: Bingo! (yelling to lab-coat-clad assistant) Danny!, that genome sequence we isolated on that rattlesnake?, get me the printout!, human beings are gonna see in the dark!, oh and hey -- splice in a little luciferin from the glowworm and...geez louise, I'm gonna be Norman Osborn who turned night into day! Let there be Light I say! Or no no no, wait, somebody else said that.

EMILY: God?

NORMAN: Who? No no, Edison.

EMILY: Rattlesnakes.

NORMAN: Bingo! (yelling to lab-coat-clad assistant) Danny!, that genome sequence we isolated on that rattlesnake?, get me the printout!, human beings are gonna see in the dark!, oh and hey -- splice in a little luciferin from the glowworm and...I swear Emily, I'm gonna be Norman Osborn who turned night into day! Let there be Light I say! Or no no no, wait, somebody else said that.

EMILY: God?

NORMAN: Who? No no, Edison.

75. In both books, newspaper publisher "JJ" Jameson is introduced in his newsroom, where he is discussing news coverage of Spider-Man. The Infringing Book copies the original scene as shown by the following comparison:

Original Book	Infringing Book (verbatim copying highlighted)
JAMESON: "Masked Man Foils Robbery"?! Well that's a typo! Masked men don't foil robberies, they commit robberies!	JAMESON: "Masked Man Foils Robbery"?! Well that's a typo! Masked men don't foil robberies, they commit robberies!
(to Buttons): Buttons, did you edit this? You're fired!	ALL SECRETARIES: That's right, JJ. JAMESON (to Buttons): Buttons -- BUTTONS: Yeah JJ? JAMESON: Did you edit this? BUTTONS: You bet. JAMESON: You're fired!
(to Bud): You -- whatcha got?	(to Bud): You, Bud -- whatcha got?



BUD (reading report): “Man in Tights saves Child”!

JAMESON: That’s the plot to the Nutcracker!—Get me news!

STOKES (reading headline of his report): “Stick-up Man gets Mysteriously Stuck.”

JAMESON: What do you mean. Stuck in what?

MAXIE (referring to her notes): “Goo.”

JAMESON: “Goo”? What kind of goo?!

STOKES (struggling): A sort of web-like...

MAXIE (helpfully clarifying): *Goo* goo-

TRAVIS (helpfully adding--): Webby goo goo!

JAMESON: Have you all turned into infants?!! What’s wrong with you people!? This is the Daily Bugle! I ask for answers and what do I get?!

(reading a headline on his desk--): “Heister gets Hoisted by Whosits.” Once and for all, Who’s Whosits!? I want a name, I want a motive, I want a glossy eight by ten!

BUD (reading report): “Man in Tights saves Child”!

JAMESON: That’s the plot to the Nutcracker!—Get me news!

STOKES (reading headline of his report): “Stick-up Man gets Mysteriously Stuck.”

JAMESON: What do you mean? Stuck in what?

MAXIE (referring to her notes): “Goo.”

JAMESON: “Goo”? What kind of goo?!

STOKES (struggling): A sort of web-like goo...

MAXIE (helpfully clarifying): Goo goo.

TRAVIS (helpfully adding--): Webby goo goo!

STOKES/MAXIE/TRAVIS: Yeah, goo goo!

JAMESON: Have you all turned into infants?? What’s wrong with you people?! This is the Daily Bugle! Not the Herald! Not the Times! And God knows it’s not the Post!

ROBERTSON: Hey, JJ, take a look at this.

Hands him the paper.

JAMESON: “Heister gets Hoisted by Whosits!” You call that a headline, Robertson?! For the millionth time, who’s Whosits?! And where are all the photographs!? You! Where!

### **Plot Developments and Narrative Arcs**

76. The Infringing Book also copies specific plot developments and narrative arcs from the Original Book. For example, in both the Original Book and the Infringing Book:

- Peter is harassed by his classmates who are upset about the nearly-avoided homework assignment and who play a “game” with him called “bullying by numbers”; Peter and Mary Jane then walk home from school together and she consoles him; Peter is then consoled by his Aunt May and Uncle Ben who encourage him to “Rise Above” his petty classmates and their bullying.
- Peter awakens after having been bitten by a spider to discover he is “bouncing off the walls,” which is depicted through substantially similar descriptions of stage activity.
- Meanwhile, Dr. Osborn is approached by an evil force seeking to buy his science for nefarious purposes; Dr. Osborn rejects their advances and instead plans to use his science on himself; Dr. Osborn then transforms himself into the Green Goblin, not by accident, but instead through a dangerous procedure which results in the death of his wife, Emily.
- Mary Jane, an actress, invites Peter to the opening of her new, off-Broadway play, “The Fly,” which Peter misses because he falls asleep and dreams of Arachne; Peter, disgusted at himself for letting Mary Jane down, decides to give up being Spider-Man and gets rid of his Spider-Man costume; Peter and Mary Jane end up in a dance club where Peter, yelling over a U2 song blaring in the background, confesses his love for Mary Jane and then kisses her, “causing” a city-wide blackout; Peter ultimately decides he has to return to being Spider-Man, even if it keeps him away from those he loves.
- The Green Goblin appears at a grand piano atop the Chrysler building where he plots to take over New York; Spider-Man confronts the Green Goblin atop the Chrysler building, leading to their dramatic battle; Spider-Man defeats the Green Goblin, sending him and the Grand Piano tumbling to the sidewalk.

77. These represent just a few examples of the many new, copyrighted elements in the Original Book—including some of the book’s most critical moments—that are entirely or substantially copied by the Infringing Book.

#### **Substantial Similarity Between the Infringing Book and Taymor’s 2004 Treatment**

78. The Infringing Book also is derived from, and substantially similar to, Taymor’s copyrighted Treatment of the book of the Musical. For example, Taymor’s Treatment details the following proposed story line:

The Dream: a city devastated [sic], a huge battle is raging – we see glimpses of Spiderman flying from one burning sky scraper to another – we see Mary Jane pushed from the heights of a giant bridge – Spiderman tries to unleash his web shooter – it fails as he leaps after MJ – but he has lost his powers and begins to fall.

79. The Infringing Book contains the same scene, depicted as follows:

SCENE 7: BROOKLYN BRIDGE NIGHTMARE

MJ is dangling from the Brooklyn Bridge.

SPIDER-MAN appears Upstage on the bridge and runs toward MJ.

The large Goblin cut-out “slices” through the cable MJ is tethered to. SHE SCREAMS as she disappears into the abyss.

Peter’s web-shooter fails him.

PETER: MARY JANE!!

He impulsively leaps after MJ.

A stunt double tumbles over and over in slow-motion.

[ . . . ]

PETER is tossing and turning in his bed UC.  
It was a nightmare.

80. The Infringing Book also copies from broader narrative arcs introduced in Taymor’s Treatment. For example, the Treatment states:

Peter, distrusted and maligned by the press and also unable to find the balance with his human needs and desires (in Act One), finally seems to be able to put those two worlds together in Act Two: After he decides to give up being Spiderman he is forced by the onslaught of the Sinister Six/Seven attacks to utilize his Spiderman powers to save his aunt. Finally, Mary Jane realizes who he is and is ready

to accept him as both Spiderman and Peter, her love.

81. The Infringing Book copies virtually every detail of that narrative arc. For example, in the Infringing Book:

- The press (in particular, JJ Jameson and his Daily Bugle) reports that Spider-Man is a villain, not a hero, harshly criticizing him much to Peter Parker's dismay.
- Peter finds himself "unable to find the balance" between his "human needs and desires"—specifically, his need to care for his aunt and his desire to spend time with MJ—on the one hand, and his need to be Spider-Man on the other. For example: (a) Peter is unable to spend time with his aunt because he is off fighting crime; (b) Peter misses his girlfriend's play because he is caught up in a Spider-Man dream sequence with the character Arachne; and (c) Peter and Mary Jane fight frequently about Peter's inability to be present for her as a boyfriend when she needs him.
- Peter decides to give up being Spider-Man and turns his costume over to JJ Jameson in an effort to save his family and Mary Jane from harm and to spend more time with them.
- Peter is then forced back into the Spider-Man role due to mayhem caused by the "Sinister Six" and the responsibility he feels to save the city.
- Peter is ultimately able to "reconcile" his two worlds by learning to live with both and by disclosing his true identity to Mary Jane.
- At the book's dramatic height at the end of Act Two, Mary Jane realizes that Spider-Man, who has just rescued her from the Green Goblin, is in fact Peter Parker. She accepts him in both roles as the two kiss and agree to go forward as boyfriend and girlfriend.

#### **Defendants' Merchandise Copies Protected Aspects of Taymor's Original Book**

82. The producers also have used Taymor's copyrighted works without her permission in connection with the marketing and sale of *Spider-Man* merchandise, including a souvenir program that copies portions of Taymor's copyrighted works.

83. For example, the souvenir program contains a picture of the classroom scene described above and reproduces the following exchange from the Original Book:

FLASH: YOU ARE SO GONNA GET IT, PARKER!

PETER: WELL, I WAS JUST WONDERING, BECAUSE-

FLASH: -- BECAUSE YOU'RE A DORK.

84. The souvenir program contains a picture of the newspaper scene described above and reproduces the following dialogue taken from the Original Book:

STICK-UP MAN GETS MYSTERIOUSLY STUCK!

WELL THEY ALL SAY HE LOOKS LIKE A SPIDER!

MASKED MAN FOILS ROBBERY?!

MAN IN TIGHTS SAVES CHILD.

85. Upon information and belief, Defendants have exploited and intend to continue exploiting Taymor's copyrighted works in the creation, marketing, and sale of other merchandise in addition to the souvenir program.

#### **FIRST CLAIM FOR RELIEF**

##### **Copyright Infringement, 17 U.S.C. § 501 – Original Book (Against 8 Legged, Hello, Goodbye, Savior, Cohl, and Harris)**

86. Taymor and LOH repeat and reallege the allegations set forth in paragraphs 1 through 85 as if fully set forth herein.

87. Taymor is the owner of a valid copyright in the Original Book, which includes her original and unique contributions and which constitutes copyrightable subject matter under the laws of the United States. Under the parties' agreements, all rights to prepare or license derivative works were, and were intended to be, exclusively owned and controlled by Taymor.

88. Taymor's copyright in the Original Book was registered by the United States Copyright Office effective October 11, 2011, under registration number PAu 3-576-391.

89. Without authorization, Defendants intentionally and willfully copied unique and original portions of Taymor's Original Book, including by reproducing and publicly performing the work; by using such portions in the preparation of an unauthorized derivative work that is substantially similar to Taymor's Original Book; and by using such portions in advertisements and merchandise in connection with the current Broadway production of *Spider-Man*.

90. Defendants' alteration of Taymor's work, without her approval or consent, and their failure to pay her the royalties she is due, rescinded any license they had to use her work.

91. Through their actions, Defendants have directly, contributorily, and vicariously engaged, and threaten further to engage, in willful infringement of Taymor's exclusive rights, among other things, to: (a) reproduce her Original Book under 17 U.S.C. § 106(1); (b) prepare a derivative work based upon and substantially similar to her Original Book under 17 U.S.C. § 106(2); and (c) publicly perform her Original Book under 17 U.S.C. § 106(4).

92. Cohl and Harris, as lead producers and Managers of Goodbye, are personally liable for Defendants' infringing activities. Cohl and Harris, and the entities they manage and control, were instrumental in the decision to remove Taymor from the production, alter her copyrighted work without authorization, and publicly perform her work without payment of royalties. By removing Taymor and instructing others to make changes to the Original Book without her consent, Cohl and Harris knew of and caused, induced, and materially contributed to the infringing activities. Similarly, Cohl and Harris had the right and ability to control the infringing conduct, and they received, and continue to receive, a direct financial benefit from the infringement.

93. 8 Legged, as the production company performing the revised Musical, knew of and caused, induced, and contributed to the infringing activities. 8 Legged has the ability to direct and control the infringing activities in its role as the Musical's lead production company.

94. Savior and Goodbye, through their principals Cohl and Harris, and through their respective positions as Member and Manager of 8 Legged, knew of and caused, induced, and contributed to Defendants' infringing activities. By acting through their principals Cohl and Harris, Savior and Goodbye have the ability to direct and control the infringing activities.

95. Hello, as a Manager of 8 Legged and a Board member under the Hello-Goodbye joint venture amendment, knew of and caused, induced, and contributed to Defendants' infringing activities. As a Manager of 8 Legged and through its rights and powers in the Hello-Goodbye joint venture, Hello has the ability to direct and control the infringing activities.

96. Defendants continue to perform the Musical using the Infringing Book eight times per week and intend to do so indefinitely without compensating Taymor for their infringement.

97. Defendants' continued infringement of Taymor's copyright in the Original Book is causing Taymor irreparable harm for which Taymor has no adequate remedy at law, including but not limited to: (a) harm to Taymor's future business prospects and commercial reputation; (b) loss of control over Taymor's creative work; and (c) prospective harm attributable to continuing performances of the Musical, which cannot readily or precisely be calculated.

98. With respect to the current Broadway production of the Musical, Taymor is entitled to a permanent injunction barring Defendants from using copyrighted elements of her Original Book without compensating her for such use and honoring their contracts with her, or upon such terms as the Court finds to be just and equitable.

99. Taymor is entitled to a permanent injunction barring Defendants from any future use of copyrighted elements of her Original Book in any medium whatsoever, including any future production of the Musical in venues other than on Broadway and any “making-of” film or video, without Taymor’s written consent.

100. As a direct and proximate result of Defendants’ infringement, Taymor has suffered actual damages in an amount not yet determined or ascertainable but believed to be in excess of \$1 million.

101. Taymor is entitled to disgorgement of Defendants’ profits attributable to their unauthorized use of Taymor’s copyrighted Original Book.

102. Taymor is entitled to attorneys’ fees, costs, and disbursements under 17 U.S.C. § 505.

### **SECOND CLAIM FOR RELIEF**

#### **Copyright Infringement, 17 U.S.C. § 501 – Treatment (Against 8 Legged, Hello, Goodbye, Savior, Cohl, and Harris)**

103. Taymor and LOH repeat and reallege the allegations set forth in paragraphs 1 through 102 as if fully set forth herein.

104. Taymor is the owner of a valid copyright in the Treatment, which includes her original and unique contributions and which constitutes copyrightable subject matter under the laws of the United States. Only Taymor has the right to authorize derivative works based on the Treatment.

105. Taymor’s copyright in the Treatment was registered by the United States Copyright Office on March 17, 2005, under registration number PAu002942150.

106. Without authorization, Defendants intentionally and willfully copied unique and original portions of Taymor’s Treatment, including by reproducing and publicly performing the



work and by using such portions in the preparation of an unauthorized derivative work that is substantially similar to Taymor's Treatment.

107. Defendants' alteration of Taymor's work, without her approval or consent, and their failure to pay her the royalties she is due, rescinded any license they had to use her work.

108. Through their actions, Defendants have directly, contributorily, and vicariously engaged, and threaten further to engage, in willful infringement of Taymor's exclusive rights, among other things, to: (a) reproduce the Treatment under 17 U.S.C. § 106(1); (b) prepare a derivative work based upon and substantially similar to the Treatment under 17 U.S.C. § 106(2); and (c) publicly perform the Treatment under 17 U.S.C. § 106(4).

109. Defendants continue to perform the Musical using the Infringing Book eight times per week and intend to do so indefinitely without compensating Taymor for their infringement.

110. Defendants' continued infringement of Taymor's copyrighted Treatment is causing Taymor irreparable harm for which Taymor has no adequate remedy at law, including but not limited to: (a) harm to Taymor's future business prospects and commercial reputation; (b) loss of control over Taymor's creative work; and (c) prospective harm attributable to continuing performances of the Musical, which cannot readily or precisely be calculated.

111. With respect to the current Broadway production of the Musical, Taymor is entitled to a permanent injunction barring Defendants from using copyrighted elements of her Treatment without compensating her for such use and honoring their contracts with her, or upon such terms as the Court finds to be just and equitable.

112. Taymor is entitled to a permanent injunction barring Defendants from any future use of copyrighted elements of her Treatment in any medium whatsoever, including any future

production of the Musical in venues other than on Broadway and any “making-of” film or video, without Taymor’s written consent.

113. As a direct and proximate result of Defendants’ infringement, Taymor has suffered actual damages in an amount not yet determined or ascertainable but believed to be in excess of \$1 million.

114. Taymor is entitled to disgorgement of Defendants’ profits attributable to their unauthorized use of Taymor’s copyrighted Treatment.

115. Taymor is entitled to attorneys’ fees, costs, and disbursements under 17 U.S.C. § 505.

### **THIRD CLAIM FOR RELIEF**

#### **Breach of Contract (Against Hello and 8 Legged)**

116. Taymor and LOH repeat and reallege the allegations set forth in paragraphs 1 through 115 as if fully set forth herein.

117. The Author Deal Memo and 2010 Amendment are valid and enforceable contracts with Taymor and LOH requiring Hello and 8 Legged, among other things, to: (a) pay weekly royalties to Taymor and LOH; and (b) obtain Taymor’s approval prior to making changes to the Original Book.

118. Taymor and LOH have performed all of their obligations under the Author Deal Memo and the 2010 Amendment.

119. Hello and 8 Legged have breached their obligations under the Author Deal Memo and 2010 Amendment by, among other things: (a) failing to pay royalties owed to Taymor and LOH, including, at a minimum, Taymor’s continuing guaranteed minimum weekly royalty of

\$2,917.50 per eight-performance week; and (b) failing to obtain Taymor's approval prior to making changes to the Original Book.

120. The Berger Deal Memo is a valid and enforceable contract for Berger's services as co-author of the Original Book.

121. Taymor is a third-party beneficiary of the Berger Deal Memo. Taymor's benefits under the Berger Deal Memo include the requirement that "Berger shall collaborate with Julie Taymor on bookwriter related and other creative decisions for the Musical; provided, however, Julie Taymor, in her sole and absolute discretion, shall have final approval on all such decisions." (Emphasis added.) The benefits to Taymor of this provision were substantial and immediate, rather than incidental.

122. Berger and Hello intended to benefit Taymor under the Berger Deal Memo, and Taymor relied on the Berger Deal Memo to her detriment.

123. Hello and 8 Legged breached their obligations under the Berger Deal Memo by failing to obtain Taymor's approval of changes made to the Original Book.

124. As a direct and proximate result of Hello's and 8 Legged's breaches, Taymor and LOH have suffered and will continue to suffer actual damages in an amount not yet determined or ascertainable but believed to be in excess of \$1 million.

#### **FOURTH CLAIM FOR RELIEF**

##### **Declaratory Judgment and Injunction – Non-Broadway Productions (Against Hello and 8 Legged)**

125. Taymor and LOH repeat and reallege the allegations set forth in paragraphs 1 through 124 as if fully set forth herein.

126. The Author Deal Memo requires Hello and 8 Legged to obtain Taymor's and LOH's approval over dispositions of rights to the Musical such as production of the Musical in venues other than on Broadway.

127. Neither Taymor nor LOH has authorized or approved any disposition of rights to the Musical that would permit a production of the Musical in a venue other than on Broadway.

128. Upon information and belief, Hello and 8 Legged are preparing to produce or license to be produced, without Taymor's approval, a version of the Musical to be performed in venues other than on Broadway.

129. An actual, present, and justiciable controversy exists as to whether Hello and 8 Legged have the right to produce or license to be produced a version of the Musical to be performed in a venue other than on Broadway.

130. The production or licensing of a production of the Musical to be performed in a venue other than on Broadway would cause Taymor and LOH to suffer irreparable harm for which they have no adequate remedy at law, including but not limited to: (a) harm to Taymor's future business prospects and reputation; (b) loss of control over Taymor's creative work; and (c) prospective harm attributable to continuing performances of the Musical, which cannot readily or precisely be calculated.

131. Taymor and LOH are entitled to a declaratory judgment under 28 U.S.C. § 2201 that the production or licensing of a production of the Musical to be performed in a venue other than on Broadway, without Taymor's written consent, would breach the Author Deal Memo.

132. Taymor and LOH are entitled to a permanent injunction barring Defendants from producing or licensing a version of the Musical to be performed in a venue other than on Broadway without Taymor's written consent.

### **FIFTH CLAIM FOR RELIEF**

#### **Declaratory Judgment and Injunction – NY Civil Rights Law §§ 50 and 51 (Against 8 Legged, Cohl, and Harris)**

133. Taymor and LOH repeat and reallege the allegations set forth in paragraphs 1 through 132 as if fully set forth herein.

134. Upon information and belief, 8 Legged, Cohl, Harris, and others are in the process of producing a promotional “making-of” film or video using, among other things, Taymor’s name and likeness (the “Promotional Film”). 8 Legged, Cohl, and Harris intend to use the Promotional Film as, among other things, an advertising tool for the Musical and for purposes of trade.

135. Taymor has not granted permission to the producers to use her name and likeness in connection with a Promotional Film.

136. Taymor’s counsel has notified the producers’ counsel that Taymor has not waived her approval rights over a Promotional Film.

137. 8 Legged’s counsel has notified Taymor’s counsel that 8 Legged does not intend to recognize or comply with Taymor’s approval rights over a Promotional Film.

138. An actual, present, and justiciable controversy exists as to whether 8 Legged has the right to produce or market a Promotional Film without Taymor’s consent.

139. The production or marketing of a Promotional Film without Taymor’s consent would cause Taymor to suffer irreparable harm for which she has no adequate remedy at law, including but not limited to: (a) harm to Taymor’s future business prospects and commercial reputation; (b) harm to Taymor’s ability to control the use of her name and likeness; and (c) prospective harm attributable to sales of a Promotional Film, which cannot readily or precisely be calculated.

140. Taymor is entitled to a declaratory judgment under 28 U.S.C. § 2201 that the use of her name or likeness in connection with a Promotional Film without her written consent would violate her right of privacy under Sections 50 and 51 of the New York Civil Rights Law.

141. Taymor is entitled to a permanent injunction barring 8 Legged, Cohl, and Harris from using her name or likeness in connection with a Promotional Film without her written consent.

### **SIXTH CLAIM FOR RELIEF**

#### **Copyright Accounting (Against Berger)**

142. Taymor and LOH repeat and reallege the allegations set forth in paragraphs 1 through 141 as if fully set forth herein.

143. As set forth in the registration certificate for Taymor's copyright in the Original Book (Exhibit G), Taymor and Berger are joint authors of the Original Book. Each made independently copyrightable contributions to the work.

144. Berger, however, did not have the power or authority to license or transfer any right to prepare derivative works based on the Original Book or to make changes to the Original Book. Under the Author Deal Memo and the Berger Deal Memo, all rights to prepare or license derivative works were, and were intended to be, exclusively owned and controlled by Taymor.

145. As an alternative to her copyright infringement claim based on infringement of the Original Book, if Berger is held to have validly effected the license or transfer of any rights in the Original Book (including but not limited to any license or transfer to the producers), Taymor, as a joint author, is entitled to an accounting and half of any proceeds obtained by Berger as a result of such license or transfer.

### **JURY DEMAND**

146. Taymor and LOH demand a jury trial.

### **PRAYER FOR RELIEF**

WHEREFORE, Taymor and LOH respectfully request judgment against 8 Legged Productions, LLC, Hello Entertainment, LLC, Goodbye Entertainment, LLC, Savior Productions, LLC, Michael Cohl, Jeremiah Harris, and Glen Berger as follows:

1. On their First and Second Claims for Relief, for copyright infringement:
  - (a) a full and complete accounting from Defendants of the profits, gains, and advantages derived from their infringing use of Taymor's copyrighted Original Book and Treatment;
  - (b) damages in an amount to be determined at trial but believed to be in excess of \$1 million, including Plaintiffs' actual damages and Defendants' profits pursuant to 17 U.S.C. § 504(b), or, in the alternative, enhanced statutory damages pursuant to 17 U.S.C. § 504(c);
  - (c) disgorgement of profits attributable to Defendants' unauthorized use of Taymor's copyrighted Original Book and Treatment;
  - (d) with respect to the current Broadway production of the Musical, a permanent injunction barring Defendants from using copyrighted elements of Taymor's Original Book or Treatment without compensating Taymor for such use and honoring their contracts with her, or upon such terms as the Court finds to be just and equitable; and
  - (e) a permanent injunction barring Defendants from any future use of copyrighted elements of Taymor's Original Book or Treatment in any medium

whatsoever, including any future production of the Musical in venues other than on Broadway and any “making-of” film or video, without Taymor’s written consent;

2. On their Third Claim for Relief, for breach of contract:

(a) a full and complete accounting from Defendants of the revenues and profits derived from the Musical, as well as the fees, advances, royalties, and other payments owed to Plaintiffs under the parties’ contracts; and

(b) damages in an amount to be determined at trial but believed to be in excess of \$1 million;

3. On their Fourth Claim for Relief, for declaratory judgment:

(a) a declaration that the production or licensing of a production of the Musical to be performed in a venue other than on Broadway, without Taymor’s written consent, would breach the Author Deal Memo; and

(b) a permanent injunction barring Defendants from producing or licensing a version of the Musical to be performed in a venue other than on Broadway without Taymor’s written consent;

4. On their Fifth Claim for Relief, for declaratory judgment:

(a) a declaration that the use of Taymor’s name or likeness in connection with a “making of” Promotional Film without Taymor’s written consent would violate Taymor’s right of privacy under Sections 50 and 51 of the New York Civil Rights Law; and

(b) a permanent injunction barring 8 Legged, Cohl, and Harris from using Taymor’s name or likeness in connection with a Promotional Film without Taymor’s written consent;



5. On their Sixth Claim for Relief, in the alternative, for a copyright accounting:

(a) a full and complete accounting of all profits, gains, and advantages derived by Berger from any license, transfer, sale, or lease of any rights in the Original Book; and

(b) damages in the amount of half of all profits, gains, and advantages derived by Berger from any license, transfer, sale, or lease of any rights in the Original Book;

6. Attorneys' fees, costs, and disbursements, including but not limited to fees, costs, and disbursements under 17 U.S.C. § 505;

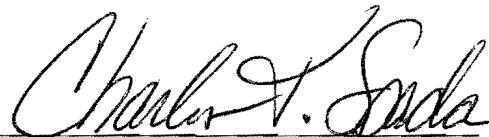
7. Pre-judgment and post-judgment interest, to the fullest extent available, on the foregoing; and

8. Such other and further relief as may be just and proper.

Dated: New York, New York  
November 8, 2011

LANGLER SIFFERT & WOHL LLP

By:



Charles T. Spada ([cspada@lswlaw.com](mailto:cspada@lswlaw.com))

Matthew G. Coogan ([mcoogan@lswlaw.com](mailto:mcoogan@lswlaw.com))

500 Fifth Avenue  
New York, NY 10110  
(212) 921-8399

*Attorneys for Plaintiffs*