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Jane O'Donnell

1 PAUL S. BERRA (BAR NO. 186675)  
LAW OFFICES OF PAUL S. BERRA  
2 1404 Third Street Promenade, Suite 205  
Santa Monica, CA 90401  
3 Telephone: (310) 394-9700  
Facsimile: (310) 394-9755  
4 paul@berra.org  
5 Attorneys for Plaintiff  
HAROLD EUGENE JOHNS

**FILED**  
LOS ANGELES SUPERIOR COURT

UTC 3-2008

JOHNS CLARKE, CLERK  
BY MARY GARCIA, DEPUTY

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES - CENTRAL DISTRICT

10  
11 HAROLD EUGENE JOHNS, a California  
resident;  
12  
13 Plaintiff,  
14  
15 v.  
16 NBC UNIVERSAL, INC., a Delaware  
corporation; KATHIE LEE GIFFORD, a  
New York resident; REVIELLE LLC, a  
17 Delaware corporation; HOWARD OWENS,  
a California resident; and DOES 1-10,  
18  
19 Defendants.

CASE NO. BC403114

COMPLAINT BY HAROLD EUGENE  
JOHNS AGAINST NBC UNIVERSAL,  
INC., KATHIE LEE GIFFORD,  
REVIELLE LLC, AND HOWARD  
OWENS BASED ON:

- 1. BREACH OF IMPLIED CONTRACT
- 2. INTENTIONAL INTERFERENCE WITH CONTRACT
- 3. UNJUST ENRICHMENT

[DEMAND FOR JURY TRIAL]

21 Plaintiff HAROLD EUGENE JOHNS ("Johns") hereby alleges as follows:

22 INTRODUCTION

23 1. This is an idea misappropriation case. Throughout October and November 2008,  
24 KATHIE LEE GIFFORD ("Gifford") and the producers of *The Today Show* proudly presented to  
25 their millions of viewers a touching segment titled *Everyone Has a Story* about ordinary people  
26 dealing with extraordinary circumstances. As explained by Gifford, "We decided how awesome  
27 it would be if Americans sent in their stories, and then David and I would write the songs of their  
28 story and bring them here to New York and give them an opportunity to let the world know their

CITIZENS: BOBOLIO, CLEANSTEIN  
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DATE FILED: 3/10/08 03:32:00 PM  
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1 story." What Gifford fails to mention is that she and her co-defendants, including NBC  
2 UNIVERSAL, INC. ("NBC"), REVIELLE LLC ("Reville") and HOWARD OWENS ("Owens"),  
3 misappropriated the ideas and concept behind the show from Plaintiff Johns. Adding insult to injury,  
4 Gifford now takes credit for them.

5 2. As discussed further below, Johns conceived of the ideas and concept behind  
6 *Everyone Has a Story* well before Gifford joined *The Today Show* and developed marketing  
7 materials to explain his vision. Defendant Owens, a principal of Reveille during all times relevant  
8 hereto, openly negotiated with Johns in early 2007 regarding the commercial exploitation of these  
9 ideas and offered him a substantial amount of money if Reveille decided to develop them. Johns is  
10 informed and believes and based thereon alleges that Owens, after misrepresenting to Johns that  
11 Reveille was "passing" on the project, communicated Johns' ideas to NBC, with whom Reveille had  
12 entered into a first-look deal, and Gifford ultimately adopted the ideas as her own. Johns files this  
13 lawsuit against Defendants, and each of them, to recover the substantial damages caused thereby and  
14 hold them fully accountable for their egregious conduct.

#### 15 THE PARTIES

16 3. Plaintiff HAROLD EUGENE JOHNS ("Plaintiff" or "Johns") has been a resident  
17 of the County of Los Angeles, State of California, during all times material hereto. Johns is a  
18 talented musician who released his solo album debut through Capitol Records in March 2006.

19 4. Plaintiff is informed and believes and based thereon alleges that Defendant NBC  
20 UNIVERSAL, INC. ("NBC") has been a Delaware corporation doing business in the County of Los  
21 Angeles, State of California, during all times material hereto. Plaintiff is informed and believes and  
22 based thereon alleges that NBC has been a worldwide entertainment production, distribution and  
23 marketing company during all times material hereto.

24 5. Plaintiff is informed and believes and based thereon alleges that Defendant KATHIE  
25 LEE GIFFORD ("Gifford") has been a resident of the State of New York during all times material  
26 hereto. Plaintiff is informed and believes and based thereon alleges that Gifford has been a host of  
27 *The Today Show* on NBC, or otherwise acting on behalf of or in concert with NBC, during all times  
28 material hereto.



1 to work with Johns and was interested in developing the idea further. After several months of  
2 communications back and forth, including an in-person meeting between Johns and Owens, the  
3 attorneys for Reveille drafted and circulated a collaboration agreement, a true and correct copy of  
4 which is attached hereto as Exhibit "A," which contemplated the development of *Your Song* into a  
5 television pilot and series. According to the terms of the deal, in the event that Reveille accepted  
6 a firm written commitment from either a network, studio, or other buyer to develop the idea, Johns  
7 would make up to \$15,000 per episode, as well as contingent compensation, earn credit as an  
8 executive producer, and realize other valuable consideration.

9 12. While the parties were negotiating the collaboration agreement, Owens informed  
10 Johns that he and Reveille were "passing" on the project and abruptly cut off any further  
11 communications with him. Johns never consented to Owens, Reveille or anyone else exploiting  
12 *Your Song* or the ideas behind it.

13 13. In September 2008, Johns learned for the first time that Reveille and Owens sold,  
14 exchanged or otherwise gave NBC and Gifford the ideas developed by Johns for *Your Song*. The  
15 similarities between *Your Song* and *Everybody Has a Story* are stark and undeniable. In both shows,  
16 the subject is an everyday person whose life has been shaped by extraordinary circumstances who  
17 has been selected based upon the letter he submitted. Furthermore, the subjects in both shows share  
18 their stories with a famous person who puts them to song, and a famous artist ultimately performs  
19 the song in front of the subject and the audience. The primary purpose of both shows is to inspire  
20 the subjects, as well as the audience.

21 14. Johns believes that the evidence will show, after a reasonable opportunity for further  
22 investigation or discovery, that the theft of his ideas was facilitated by the extremely close  
23 relationship between the higher-ups at NBC and Reveille. Ben Silverman, the founder of Reveille,  
24 was hired by NBC to run its entertainment business, and Reveille had a first-look deal with NBC  
25 during all times relevant thereto. Most recently, the senior producer of *The Today Show* recently  
26 joined Reveille as a Vice President. Plaintiff is informed and believes and based thereon alleges that  
27 Silverman, Owens, and the other executives at Reveille continued to share a close business  
28 relationship after Silverman sold the company in early 2008.

1 **FIRST CAUSE OF ACTION**

2 **(Breach of Implied Contract against Reveille and Owens)**

3 15. Plaintiff repeats, realleges, adopts and incorporates each and every allegation  
4 contained in paragraphs 1 through 14, inclusive, as though fully set forth herein.

5 16. By engaging in the wrongful conduct described above, Reveille and Owens materially  
6 breached the parties' implied contract. Johns formulated the ideas and concept behind *Your Song*  
7 and disclosed them to Reveille and Owens for sale. Based upon all of the circumstances attending  
8 Johns' disclosure it is clear that Reveille and Owens accepted the disclosure knowing the conditions  
9 on which it was tendered, namely, they could not use the ideas or concept without compensating  
10 Johns and providing him with the proper credit with respect thereto. This was further evidenced by  
11 their drafting and circulation of the collaboration agreement, which includes specific compensation  
12 and credit provisions, shortly thereafter.

13 17. Plaintiff has been damaged in an amount in an amount according to proof, believed  
14 to be in excess of One Million Dollars (\$1,000,000), as a direct and proximate result of Reveille and  
15 Owens' wrongful conduct alleged herein. The harm suffered by Johns was expressly contemplated  
16 by the parties per the terms of the implied contract and was reasonably foreseeable to Reveille and  
17 Owens during all times material hereto.

18 **SECOND CAUSE OF ACTION**

19 **(Intentional Interference with Contract**  
20 **Against NBC and Gifford)**

21 18. Plaintiff repeats, realleges, adopts and incorporates each and every allegation  
22 contained in paragraphs 1 through 14, inclusive, and paragraph 16 as though fully set forth herein.

23 19. Johns, on one hand, and Reveille and Owens, on the other hand, entered into a valid  
24 implied contract. Johns believes that the evidence will show, after a reasonable opportunity for  
25 further investigation or discovery, that NBC and Gifford knew of the contract during all times  
26 material hereto and intended to induce its breach. Specifically, Johns believes that the evidence will  
27 show, after a reasonable opportunity for further investigation or discovery, that NBC and Gifford  
28 knew that Johns brought the ideas and concept behind *Your Song* to Reveille and Owens and was

1 to be compensated and credited for its use, and took actions to intentionally induce Reveille and  
2 Owens to disclose and exploit his ideas without compensation. In that regard, Johns believes that  
3 the evidence will show, after a reasonable opportunity for further investigation or discovery, that  
4 Gifford took credit for Johns' ideas and concept knowing full well that she had absolutely no basis  
5 to do so.

6 20. Plaintiff is informed and believes and based thereon alleges that Reveille and Owens,  
7 as a direct and proximate result of NBC's and Gifford's wrongful conduct alleged herein, breached  
8 their implied contract with Johns by disclosing his ideas and concepts to NBC and Gifford, and then  
9 selling, exchanging or otherwise giving those ideas to them without compensating or crediting Johns  
10 with respect thereto.

11 21. Plaintiff has been damaged in an amount in an amount according to proof, believed  
12 to be in excess of One Million Dollars (\$1,000,000), as a direct and proximate result of NBC and  
13 Gifford's wrongful conduct alleged herein. Plaintiff is further informed and believes that the  
14 aforementioned acts of NBC and Gifford were done intentionally or with a conscious disregard of  
15 Plaintiff's rights and with the intent to vex, injure or annoy Plaintiff such as to constitute oppression,  
16 fraud, or malice. Thus, Plaintiff is entitled to exemplary and punitive damages in an amount  
17 appropriate to punish or set an example of NBC and Gifford and to deter such conduct by NBC,  
18 Gifford and others in the future, the amount of which shall be proven at trial.

19 **THIRD CAUSE OF ACTION**

20 **(Unjust Enrichment Against All Defendants)**

21 22. Plaintiff repeats, realleges, adopts and incorporates each and every allegation  
22 contained in paragraphs 1 through 14, inclusive, paragraph 16, and paragraphs 19 through 20,  
23 inclusive, as though fully set forth herein.

24 23. As a result of the wrongful conduct described above, Defendants, and each of them,  
25 have unjustly received benefits at Plaintiff's expense and continue to retain those benefits. As such,  
26 Plaintiff seeks an order from the court requiring Defendants, and each of them, to immediately  
27 disgorge to Plaintiff all advertising revenue, sponsorship revenue, and other benefits resulting from  
28 their misconduct, in an amount according to proof, believed to be in excess of One Million Dollars

1 (\$1,000,000).

2 WHEREFORE, Plaintiff prays for a judgment as follows:

3 **AS TO THE FIRST CAUSE OF ACTION:**

4 1. For damages against Reveille and Owens, and each of them, in an amount according  
5 to proof, believed to be in excess of One Million Dollars (\$1,000,000);

6 **AS TO THE SECOND CAUSE OF ACTION:**

7 2. For damages against NBC and Gifford, and each of them, in an amount according to  
8 proof, believed to be in excess of One Million Dollars (\$1,000,000);

9 3. For exemplary and punitive damages against NBC and Gifford, and each of them, in  
10 an amount sufficient to punish and deter them and others from committing similar acts in the future;

11 **AS TO THE THIRD CAUSE OF ACTION:**

12 4. For an order from the court requiring Defendants, and each of them, to immediately  
13 disgorge to Plaintiff all advertising revenue, sponsorship revenue, and other benefits resulting from  
14 their wrongful conduct alleged herein, in an amount according to proof, believed to be in excess of  
15 One Million Dollars (\$1,000,000);

16 **AS TO ALL CAUSES OF ACTION:**

17 5. For all costs of suit incurred by Plaintiff;

18 6. For pre-judgment and post-judgment interest; and

19 7. For such other relief as the Court deems just and appropriate.

20 DATED: December 2, 2008

LAW OFFICES OF PAUL S. BERRA

21 By: Paul Berra

22 PAUL S. BERRA  
23 Attorneys for Plaintiff  
24 HAROLD EUGENE JOHNS  
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## COLLABORATION AGREEMENT

This collaboration agreement (the "Agreement") is made and entered into as of June 28, 2006, by and between Harold Eugene Johns II and Dennis Lee Duncan (collectively, "Artist"), on the one hand, and Ben Silverman Productions, LLC d/b/a Reveille 2 ("Reveille"), on the other hand, with respect to the development, production and potentially the grant of rights in the concept currently entitled "Your Song" (the "Concept"). For good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), Artist and Reveille hereby agree as follows:

1. Artist and Reveille shall collaborate in the development of the Concept, which is presently intended to be the basis for a television pilot and/or series ("Pilot" and "Series", each a "Project").

2. The parties agree that during the period commencing as of the date of execution by Artist and Reveille of this Agreement and continuing for six (6) months thereafter ("Development/Pitch Period"), Reveille shall exclusively control the Concept with respect to any sale, option, license and/or other disposition (the "Disposition") of any and all rights in and to the Concept and to negotiate any and all deals relating to the Concept and/or any programs based thereon on behalf of itself and Artist, subject to the terms hereof. In the event that Reveille accepts a firm written commitment from any third party network, studio, or other buyer or licensee (collectively, "Licensee") for the development or production of a Pilot and/or Series during the Development/Pitch Period, then the terms of this Agreement shall apply. In the event of a Disposition hereunder, the Development/Pitch Period shall be extended for the length of the Licensee's development period plus thirty (30) days to set the Project up elsewhere if such development period expires without a production order (for purposes of this paragraph, production of a program based on the Concept in any territory shall qualify as a production order). If there is no Disposition during the Development/Pitch Period (as it may be extended), then the parties shall have no further obligation to each other hereunder, and all rights in and to the Concept (excluding rights in any material created or furnished by Reveille) shall revert to Artist, subject to a lien in favor of Reveille in the amount of Reveille's actual costs in connection with Reveille's development hereunder, plus interest thereon (which amounts shall be reimbursed to Reveille upon commencement of pre-production of any Project based on the Concept).

3. The parties agree that in the event of a Disposition of the Concept during the Development/Pitch Period (as it may be extended), Artist shall be attached to the Project as an executive producer, with Reveille attached as executive producer, distributor, the production studio and copyright owner of record of the Project and any Program(s) based on the Concept. As such, Reveille shall also be the owner in perpetuity of all rights in and to the Project, Concept and any subsequent Program(s) based on the Concept. In the event a Project based on the Concept, or subsequent versions thereof of any nature, is produced, Artist and Reveille shall render services customarily rendered by executive producers in the television industry with Reveille acting as the production company, distributor, and studio as those terms are customarily used in the television industry.

4. Subject to Artist's execution of Reveille's standard agreement for Artist's services (which, except for such terms as are set forth herein, shall be subject to good faith negotiation within Reveille's customary parameters), Artist shall be locked to render services and receive compensation as denoted in this agreement on any U.S. television Project produced by Reveille based on the Concept for as long as any such Project based on the Concept is in production.

5. Subject to the terms hereof, Reveille shall negotiate the terms of the engagement of all parties hereto, in their respective capacities as set forth above, by any Licensee in connection with any Project based on the Concept. The parties agree that the fees payable to Artist for Artist's non-exclusive but meaningful, in-person executive producing services shall be as follows: \$15,000 per episode (including a Pilot [50% of such amount for a non-airable pilot]) for a primetime network (i.e., ABC, CBS, FBC, NBC, CW) television production; with such

fees reduced to \$10,000 per episode (including a Pilot [50% of such amount for a non-airable pilot]) for a cable or first run syndication production. All fees for cable or syndication shall be per episode for a once per week series, but shall be per stripped week if the series is produced on a "strip" basis. In the event of a network primetime "strip" or other order pattern by which such network airs the Series two or more times in a week, then Artist shall be entitled to a fee equal to two times Artist's episodic fee for each week of episodes, regardless of how many episodes air during said week. Artist's fees shall be subject to five percent (5%) cumulative annual increases in each broadcast season commencing with the second broadcast season.

6. While Artist is rendering services in connection with the Series, Artist shall receive "executive producer" credit on a single card. Reveille's executive producers shall each receive "executive producer" credits on their own cards. Artist's credit shall appear immediately after the appearance of the Reveille executive producer credits and the executive producer credit to any "showrunner" engaged on the Project. Artist shall also receive "created by" credit (which may be shared with one or two Reveille executives, provided Reveille determines in its discretion that Reveille has contributed significantly to the format of the Series that is ultimately created based on the Concept). In the event Artist is required to share "created by" credit and another person or entity is given "Developed By" credit, then Artist shall be entitled to share such "Developed By" credit. All aspects of credit not specifically described herein shall be at Reveille's discretion. Notwithstanding the foregoing, the type, duration, size and existence of credits are subject to network approvals and credit policies and any applicable collective bargaining agreements.

7. If the application of any collective bargaining agreement would require an additional payment to Artist as a result of any of the foregoing credits, then such payment shall be deemed included in, and 100% recoupable by Reveille from, the payments to Artist set forth herein, to the fullest extent permissible by such collective bargaining agreement.

8. The parties acknowledge and agree that all contingent compensation shall be computed pursuant to Reveille's standard MAGR definition and policies, attached hereto, after all third party participations are taken off the top. Provided Artist is not in material breach of this Agreement or any other agreement with Reveille, Artist shall receive ten percent (10%) of Reveille's MAGR with such amount vesting twenty five percent (25%) on completion of Artist's executive producing services for the Pilot (if any), twenty five percent (25%) on completion of Artist's executive producing services for year 1 of the Series (if any), and fifty percent (50%) on completion of Artist's full time executive producing services for year 2 of the Series (if any).

9. As between Artist and Reveille, all creative and business decisions, including, without limitation, any and all agreements with the Licensee, shall be made by Reveille, following meaningful consultation with Artist as to creative matters.

10. Artist and Reveille each hereby make all customary representations and warranties with respect to their respective contributions to the Concept and the Project (and any later revisions or derivative works thereof).

11. Artist and Reveille each hereby agree to execute and deliver to the other all documents or do any actions which may be deemed reasonably necessary and which are consistent with this Agreement.

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12. All disputes which may arise between Arist and Reveille under or with respect to this Agreement shall be determined solely by arbitration in accordance with the rules of the American Arbitration Association, applying California law. The arbitration shall be held in Los Angeles, California. Such determination by the arbitrators or by the sole arbitrator, whatever the case may be, shall be final, binding, and conclusive upon the parties.

BEN SILVERMAN PRODUCTIONS, LLC D/B/A REVEILLE 2

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
HAROLD EUGENE JOHNS II

\_\_\_\_\_  
DENNIS LEE DUNCAN

10/10/2008