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9 p/k/a TONI BASIL, an individual

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

12 STILLWATER LTD., A United Kingdom  
13 Company

14 Plaintiffs,

15 v.

16 ANTONIA BASILOTTA, p/k/a TONI  
17 BASIL, an individual,

18 Defendant.

19 -----  
20 ANTONIA BASILOTTA, p/k/a TONI  
21 BASIL, an individual,

22 Counterclaimant,

23 v.

24 STILLWATER LTD., A United Kingdom  
25 Company

26 Counterclaim-Defendants

CASE NO: 2:16-cv-1895 SK

**DEFENDANT/  
COUNTERCLAIMANT’S NOTICE  
OF MOTION AND MOTION FOR  
COSTS AND ATTORNEYS’ FEES  
PURSUANT TO FRCP RULE  
54(d)(2) AND APPLICATION TO  
BILL COSTS; MEMORANDUM OF  
POINTS AND AUTHORITIES;  
DECLARATION OF ANTONIA  
BASILOTTA p/k/a TONI BASIL;  
DECLARATION OF PATRICIA  
BONGEORNO; AND  
DECLARATION OF F. EDIE  
MERMELSTEIN**

Honorable Steve Kim

HEARING DATE: March 24, 2021  
HEARING TIME: 10:00 AM  
COURTROOM: 540

27 //

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1 **TO THE COURT AND TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on March 24, 2021, at 10:00 AM or as soon after  
3 through the Zoom Webinar ID: 161 598 9949; Passcode: 466951 or physically present if  
4 restrictions have been lifted at the Roybal Federal Building and United States Courthouse  
5 located at 255 E. Temple Street, Courtroom 540, 5th Floor, Los Angeles, California 90012,  
6 Antonia Basilotta p/k/a TONI BASIL (“Basil” or “Defendant”) will move the Court for an  
7 Attorney Fee Award pursuant to FRCP Rule 54(d)(2). Pursuant to L.R.7-3 *et seq.* Counsel for  
8 Antonia Basilotta p/k/a TONI BASIL attempted to meet and confer, however was  
9 unsuccessful. Stillwater Limited’s Counsel’s stated position on the fee motion is that Basil is  
10 not entitled to fees because she is not the prevailing party. For the foregoing reasons Basil  
11 firmly rejects Stillwater’s position and asserts that she is the prevailing party entitled to her  
12 attorney fees. This motion is based upon the previously filed documents in this case including  
13 the Judgment that was entered on February 11, 2021, as well as the accompanying  
14 declarations of Basil, F. Edie Mermelstein and Patricia Bongeorno in support of this motion.

15  
16 DATED: February 24, 2021

FEM LAW GROUP  
/s/ F. Edie Mermelstein  
F. Edie Mermelstein  
Attorney for Antonia Basilotta p/k/a Toni Basil  
Defendant/Counterclaimant

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

It is unquestioned that “prevailing plaintiffs and prevailing defendants in the copyright context are to be treated alike” with respect to the awarding of attorneys' fees under section 505 of the Copyright Act. *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 534 (1994). And under the newer standard announced in *Kirtsaeng v. John Wiley & Sons*, 136 S. Ct. 1979, 1983 (2016), an award of fees is appropriate “even when the losing party advanced a reasonable claim or defense.” Here, Defendant and Counterclaimant Antonia Basilotta p/k/a Toni Basil (“Defendant”) moves for an award of her costs, including attorneys’ fees, incurred in the defense and litigation of this action. The amount of such fees and costs are set forth in the accompanying Declarations of F. Edie Mermelstein, Patricia Bongeorno, and Defendant/Counterclaimant Antonia Basilotta p/k/a Toni Basil (“Defendant” or “Basil”).

After nearly five years of costly litigation, this action culminated in a bench trial overwhelmingly in favor of Defendant, and the entry of a Declaratory Judgment wholly vindicating Defendant’s rights under the Copyright Act of the United States to recapture her copyright interests in her iconic single *Mickey* in addition to the nine other sound recordings on her *Word of Mouth* album. The U.S. Copyright in *Mickey*, as well as, *You Gotta Problem*, *Be Stiff*, *Space Girls*, *Nobody*, *Thief on the Loose*, *Little Red Book*, *Time after Time*, *Rock On and Shoppin’ From A to Z* are hereinafter referred to as the “RSR”s - Reverted Sound Recordings. Defendant further prevailed in establishing her sole authorship of *Mickey* and the other RSRs and thereafter prevailed on her accounting counterclaim. Given Basil’s resounding victory, and the procedural and substantive nature of this action, Basil is now entitled to an award of her costs and attorneys fees incurred in this action.

**II. PROCEDURAL HISTORY**

Basil served a Notice of Terminaton on March 20, 2013, on Plaintiff as well as numerous other persons and entities, including various Razor & Tie entities. (Mermelstein

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1 Declaration, ¶3, Exh 1) This Notice of Termination was a recorded document with the U.S.  
2 Copyright Office in Volume 3616, Document 30.

3 Stillwater filed suit against Basil on March 18, 2016, the complaint (ECF 001)  
4 alleging the Notice of Termination was ineffective as to *Mickey* and the RSRs claiming that  
5 the RSRs were works made for hire and exempt from termination under 17 USC §203. In the  
6 alternative, Stillwater alleged that Basil was a joint author of *Mickey* and the RSRs and would  
7 only be entitled to partial reversion, while allowing Stillwater to continue to license and retain  
8 control over the RSRs. Stillwater also made a claim that Basil was not entitled to reversion  
9 for a Club Mix and a Spanish Version of *Mickey* (the “Derivative Works”), as well as a claim  
10 regarding a Razor & Tie assignment of the RSRs.

11 On May 27, 2016, Basil answered Stillwater’s complaint and brought counterclaims  
12 seeking an accounting. (ECF 018) Shortly thereafter, on July 20, 2016, Basil amended her  
13 counterclaims. (ECF 025) On August 9, 2016, Stillwater filed a Motion to Dismiss (ECF  
14 029). Before ruling on the Motion to Dismiss, on January 27, 2017, this Court scheduled the  
15 trial to begin on August 8, 2017, with pretrial documents due on June 30, 2017. (ECF 046)

16 Prior to the Court’s ruling on the Motion to Dismiss, Basil filed a temporary restraining  
17 order after discovering Stillwater’s principal Clive Solomon affirmatively represented to  
18 Mars, Inc. that it was the owner of *Mickey* and had the right to issue all rights necessary for  
19 Mars to release a Snickers commercial utilizing *Mickey* as the punchline in the latest of its  
20 series of ads surrounding ‘hungry people whose work suffers’, following on the heels of a  
21 highly popular Super Bowl spot. (*See* ECF 049-1 and 049-2) In a March 8, 2017, the Court  
22 warned, “Plaintiffs are cautioned that any action impairing the ability to afford defendant  
23 complete relief may result in the imposition of sanctions.” (ECF 050) On March 17, 2017, the  
24 Court denied Stillwater’s Motion to Dismiss and ordered Stillwater to answer Basil’s  
25 counterclaims.

26 Stillwater filed its answer to Basil’s counterclaims on March 27, 2017. On April 5,  
27 2017, the Court denied Basil’s request for a temporary restraining order citing *Cartridge*

1 *Twins, LLC v. Wildwood Franchising, Inc.*, 2009 WL 1690728, \*1 (N.D. Cal. 2009) “ for the  
2 fact that although “monetary damages are difficult to calculate does not demonstrate that  
3 plaintiff will suffer irreparable harm in the absence of an injunction.” (ECF 056)

4 On May 4, 2017, cross motions for summary judgment were filed. On May 25, 2017,  
5 Basil filed a second request for a temporary restraining order based on knowledge that  
6 Stillwater had again licensed *Mickey* this time for an AMC promotion of *Preacher*, a popular  
7 television series. (See ECF 67-2, Page ID#1639, ¶9) On May 26, 2017, the Court denied  
8 Basil’s second request for a temporary restraining order on the same basis as it denied her first  
9 request. Meanwhile, the parties prepared for a jury trial set for August 8, 2017, including  
10 preparing and filing a memorandum of contentions of fact and law; witness lists; their Pretrial  
11 Exhibit Stipulation; and joint motions in limine due June 30, 2017. (ECF 046)

12 From July 1, 2017 to July 5, 2017, Basil’s legal team worked diligently to prepare for  
13 trial. On July 5, 2017, at 12:36 PM, the Court notified the party that all dates were vacated  
14 pending the ruling on the pending cross-motions for summary judgment. (ECF 078) After  
15 more than eight months, on March 24, 2018, the Court denied both motions, except that the  
16 denial was without prejudice as to the accounting counterclaims. (ECF 079)

17 On April 28, 2018, each party filed renewed summary judgment motions on the basis  
18 of the accounting counterclaims and standing issues. (ECF 80 and 81) On March 6, 2018, the  
19 Court ruled on the renewed motions for summary judgment, denying the motions except for  
20 granting Stillwater’s Motion regarding pretermination accounting only for Basil’s second and  
21 third accounting counterclaims. (ECF 89) The Court then set the matters for jury trial to  
22 begin August 13, 2019. (ECF 090) Thereafter, the parties prepared for the jury trial.

23 For all the reasons included in the June 12, 2019 meet and confer letter sent to  
24 Stillwater’s counsel regarding the *Work for Hire* claim, Stillwater could no longer advance its  
25 untenable claim that *Mickey* and the other nine RSRs were works made for hire. (Memrelstein  
26 Declaration, ¶4, Exh. 2) Thereafter, on June 18, 2019, Stillwater abandoned its primary legal  
27 theory, re-focused the litigation on its alternative claim and proffered a purportedly newly



1 discovered Producer’s Agreement that Stillwater was holding back. Stillwater shifted its  
2 focus and ultimately failed to prevail on the theory that Basil was merely a vocalist entitled to  
3 only a portion of the reversion. (ECF 121) On July 11, 2019, Basil filed a Motion for  
4 Sanction pursuant to FRCP §37(c) alleging concealment of evidence, namely the purportedly  
5 newly discovered Producer’s Agreement. (ECF 100)

6 The parties continued to prepare for trial. On July 26, 2019, the Court did not hold the  
7 scheduled pretrial conference, but held a status conference and requested the parties consider  
8 consenting to a magistrate for trial due to the Court’s impacted calendar. (ECF 117). Due to  
9 Stillwater’s concession of the work made for hire position, on August 7, 2019, Basil filed a  
10 Motion to Amend her counterclaims to add now ripe indirect infringement claims that  
11 ovvurred during the pendency of the action (i.e. Snicker’s commercial and AMC Preacher  
12 promotion) as well as a claim that matured on June 10, 2019 when Stillwater disclosed  
13 evidence that it was using revenue from the RSRs to pay its attorneys to prosecute the claims  
14 against Basil. (ECF 121).

15 The parties consented to Magistrate Judge Steve Kim, and engaged in additional  
16 settlement efforts. On August 27, 2019, this Court denied Basil’s Motion to add  
17 counterclaims stating, “Basil knew or should have known of these claims at the inception of  
18 this case.” *See Acri v. Int’l Ass’n of Machinists & Aerospace Workers*, 781 F.2d 1393, 1398  
19 (9th Cir. 1986). On September 25, 2019, this Court issued an order on pretrial conference  
20 rulings, including issuing monetary sanctions against Stillwater in the amount of \$11,835.00  
21 in legal fees incurred by Basil for litigating the sanction motion and setting the remaining  
22 matters for a bench trial. (ECF 133) On October 2, 2019, this Court set the trial for  
23 December 9, 2019 and scheduled dates for witness lists, exhibits and the date for submission  
24 of the [Proposed] Final Pretrial Conference Order. (ECF 137) On October 15, 2019,  
25 Stillwater sought reconsideration of the sanction motion. (ECF 140) On October 28, 2019,  
26 the Court denied Stillwaters reconsideration of the sanction motion award. On November 13,  
27 2019, Defendant brought a 12(c) Motion (ECF 152) regarding Plaintiff’s Third Claim, which



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1 this Court denied without prejudice on November 18, 2019 (ECF 154). The third claim was  
2 thereafter abandoned by Stillwater.

3 The case was bifurcated with the accounting counterclaims to be heard only after the  
4 issues were resolved with respect to how much copyright ownership reverted to Basil for the  
5 RSRs. The first phase of the trial was heard on December 9 and 10, 2019. The Court issued  
6 its Findings of Fact and Conclusions of Law on February 5, 2020. Through the efforts at  
7 trial Basil prevailed where the U.S. copyrights in *Mickey* and the other nine RSRs were found  
8 to (1) be solely authored by Basil; (2) not be joint works; and (3) have 100% reverted to Basil  
9 as of June 11, 2016. The court further ordered the parties to file a stipulation and proposed  
10 scheduling order to adjudicate Basil’s accounting counterclaims. (ECF 169)

11 The second phase of the trial was litigated. Rule 706 accounting expert Vincent Leoni  
12 was court-appointed and rendered an opinion. Multiple rounds of briefing occurred  
13 surrounding the accounting phase of *Mickey* and the other RSRs. On February 11, 2021, this  
14 Court issued an order on Basil’s accounting counterclaim finding Basil is due \$96,695.00 on  
15 her accounting counterclaim. (ECF 206) On the same date, the Court then entered judgment.  
16 (ECF 207) This fee motion follows.

17 **III. LEGAL ARGUMENT**

18 The Copyright Act, 17 U.S.C. § 505, provides that, “the court in its discretion may  
19 allow the recovery of full costs by or against any party ... [and] may also award a reasonable  
20 attorney's fee to the prevailing party as part of the costs.” The Court may now (1) decide  
21 whether an award of attorneys' fees is appropriate; and (2) calculate the amount of fees to be  
22 awarded. *The Traditional Cat Ass'n v. Gilbreath*, 340 F. 3d 829, 832-33 (9th Cir. 2003). The  
23 Copyright Act provides:

24 In any civil action under this title, the court in its discretion may allow  
25 the recovery of full costs by or against any party other than the United  
26 States or an officer thereof. Except as otherwise provided by this title, the  
27 court may also award a reasonable attorney's fee to the prevailing party  
28 as part of the costs. 17 U.S.C. § 505.

1 “In deciding whether to award attorney's fees, courts can look to five nonexclusive  
2 factors: (1) the degree of success obtained; (2) frivolousness; (3) motivation; (4) the objective  
3 unreasonableness of the losing party's factual and legal arguments; and (5) the need, in  
4 particular circumstances, to advance considerations of compensation and deterrence. *Fogerty*  
5 *v. Fantasy*, 510 U.S. 517, 534 n. 19, 114 S.Ct. 1023, 127 L.Ed.2d 455 (1994). The most  
6 important factor in determining whether to award fees is whether an award will further the  
7 purposes of the Copyright Act. *SOFA Ent., Inc. v. Dodger Prod., Inc.*, 709 F.3d 1273, 1280  
8 (9th Cir.2013). The Act's ‘primary objective’ is to ‘encourage the production of original  
9 literary, artistic, and musical expression for the good of the public.’ *Fogerty*, 510 U.S. at 524.”  
10 *Scorpio Music (Black Scorpio) S.A. v. Willis* (S.D. Cal., Sept. 15, 2015, No. 11CV1557 BTM  
11 RBB) 2015 WL 5476116, at \*3.

12 17 U.S.C. § 505 grants courts wide latitude to award attorney's fees based on the  
13 totality of circumstances in a case. *Kirtsaeng v. John Wiley & Sons, Inc.*, 136 S.Ct. 1979,  
14 1985 (2016) From the outset, Plaintiff sought determination from the Court that Defendant  
15 was a work for hire, not entitled to reversion under the Copyright Act. Although the work for  
16 hire allegation was tenuous, Plaintiff heavily litigated and then withdrew the allegation just  
17 prior to trial. Plaintiff then brought in a previously undisclosed Producer’s Agreement three  
18 years later to purportedly bolster Plaintiff’s position that Stillwater retained at least some  
19 ownership in *Mickey* and the other RSRs through one of the Producer’s on the record. The  
20 introduction of the Producer’s Agreement was sanctionable and sanctioned. Rather than  
21 disallowing the document from being introduced as evidence, this Court allowed the  
22 document to come in, and awarded Basil monetary sanctions for Defendant’s effort in  
23 bringing the sanction motion. The monetary sanctions have been considered as an offset in  
24 the amount requested for attorneys fees in this matter.

25 **A. Defendant Prevailed in this Action**

26 Defendant is certainly the “prevailing party” in this action for purposes of both Local  
27 Civil Rule 54.1, and Section 505 of the Copyright Act, 17 U.S.C. §505, which also provides

1 for the recovery of attorneys’ fees incurred in copyright actions as part of the costs awarded.

2 At the commencement of this action by Plaintiff Stillwater Limited (“Plaintiff”) in  
3 March 2016, Defendant did not have any U.S. Copyright ownership interest in *Mickey* or the  
4 other RSRs. Plaintiff, through the commencement of this action, sought to keep Basil’s  
5 copyright ownership of *Mickey* and the other RSRs at zero, notwithstanding Defendant’s  
6 service of a Notice of Termination of her copyright grants in those 10 sound recordings. Now,  
7 after years of contentious and costly litigation, including significant motion practice instituted  
8 by Plaintiff, Defendant’s rights under copyright law have been vindicated, and 100% U.S.  
9 Copyright ownership interest in *Mickey*, *You Gotta Problem*, *Be Stiff*, *Space Girls*, *Nobody*,  
10 *Thief on the Loose*, *Little Red Book*, *Time after Time*, *Rock On and Shoppin’ From A to Z* has  
11 been confirmed, as well as a declaratory ruling Basil is the sole author of the RSRs.

12 Local Rule 54-1 states, L.R. 54-1 Determination of Prevailing Party. The “prevailing  
13 party” entitled to costs under F.R.Civ.P. 54(d) is the party in whose favor judgment  
14 is entered, unless otherwise determined by the Court. The Judgment entered on February 11,  
15 2021 stated, “IT IS ADJUDGED that Defendant-Counterclaimant Antonia Basilotta is entitled  
16 to declaratory relief in her favor on the first claim of Plaintiff-Counter Defendant Stillwater  
17 Ltd...” Further, the Judgment states, “IT IS ADJUDGED that Defendant-Counterclaimant  
18 Antonia Basilotta is due \$96,695.00 on her accounting counterclaim.” Therefore, Defendant-  
19 Counterclaimant Antonia Basilotta, the person known as Toni Basil is the prevailing party in  
20 this action entitled to fees and costs.

## 21 **B. Equity Favors Imposition of Attorney Fees**

22 “[F]ederal courts, in the exercise of their equitable powers, may award  
23 attorneys’ fees when the interests of justice so require. Indeed, the power  
24 to award such fees ‘is part of the original authority of the chancellor to do  
25 equity in a particular situation,’ *Sprague v. Ticonic National Bank*, 307  
26 U.S. 161, 166, (59 S.Ct. 777, 780, 83 L.Ed. 1184) (1939), and federal  
27 courts do not hesitate to exercise this inherent equitable power whenever  
28 ‘overriding considerations indicate the need for such a recovery.’ *Mills v.*  
*Electric Auto-Lite Co.*, 396 U.S. 375, 391-392, (90 S.Ct. 616, 625, 24  
L.Ed.2d 593) (1970); see *Fleischmann Distilling Corp. v. Maier Brewing*

1 Co., 386 U.S. 714, 718, (87 S.Ct. 1404, 1407, 18 L.Ed.2d 475) (1967).”

2 *K-2 Ski Co. v. Head Ski Co., Inc.*, 506 F.2d 471, 476 (9th Cir. 1974)

3 Any apportionment of success by Stillwater for the Derivative Works claim is dwarfed  
4 by the overwhelming victory obtained by Basil and her legal team. Further, where Stillwater  
5 continues to pay for its legal fees by withholding worldwide royalties due to Basil an inequity  
6 exists. After decades of misrepresentations by Stillwater and its related predecessors, the  
7 collectibility of the money judgment is uncertain and will most certainly require additional  
8 legal fees and costs. (Mermelstein Declaration ¶5) Thus, the totality of factors surrounding  
9 the U.S. Copyright in and to *Mickey* and the nine other RSRs favors an imposition of  
10 attorneys fees to Basil as the prevailing party.

11 **C. Defendant/Counterclaimant is Entitled to an Award of Her Attorneys Fees**

12 With respect to attorneys’ fees, §505 of the Copyright Act provides as follows:

13 In any civil action under this title, the court in its discretion may allow  
14 the recovery of full costs by or against any party other than the United  
15 States or an officer thereof. Except as otherwise provided by this title, the  
16 court may also award a reasonable attorneys’ fee to the prevailing party  
as part of the costs.

17 Following the U.S. Supreme Court’s decision in *Fogerty v. Fantasy*, 510 U.S. 517  
18 (1994), courts must now award attorneys fees evenhandedly to both prevailing plaintiffs and  
19 defendants. The factors identified by the Court in *Fogerty* that a district court may consider in  
20 awarding fees, include: (1) the degree of success obtained, (2) frivolousness, (3) motivation,  
21 (4) the objective unreasonableness of the losing party’s factual and legal arguments, and (5)  
22 the need, in particular circumstances, to advance considerations of compensation and  
23 deterrence. *Id.* at 534, n.19; see also *Omega S.A. v. Costco Wholesale Corp.*, Nos. 11-57137,  
24 12-56342, 2015 WL 235479 (9th Cir. Jan. 20, 2015).

25 Here, when analyzing these factors an award of attorneys’ fees to Defendant is  
26 warranted. First, Defendant has obtained an overwhelming victory in this action. Here,  
27 Stillwater filed a Complaint seeking a declaration that the Notice of Termination was

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1 ineffective and any reversion was void. Only after more than three years of litigation did  
2 Stillwater shift all its focus to its alternative theory to determine what percentage of ownership  
3 Defendant would recapture in *Mickey* and the nine other RSRs. Defendant completely  
4 prevailed on defending joint authorship and establishment of *Mickey* and the other RSRs as  
5 joint works at trial. Conversely, the two Derivative Works were a non-issue at trial and were  
6 not the subject of intense litigation.

7 On a purely quantitative basis, Defendant thus prevailed on 10/12 or 83.33% of the  
8 issues to be decided in this action. Of course, Defendant also prevailed on the most important  
9 song in the action, winning a 100% authorship and ownership interest in *Mickey*. Such an  
10 overwhelming degree of success in this copyright action mandates an award of attorneys’ fees  
11 to Defendant. Moreover, many of Plaintiffs’ positions put forth in this action bordered on, if  
12 not crossed, the line of frivolousness, and, at the least, reflected objective unreasonableness, if  
13 not bad faith, and require an award of fees to advance considerations of compensation and  
14 deterrence. Commencing with the Complaint filed in this action, Plaintiffs/Counterclaim  
15 Defendants have attempted to thwart Defendant’s federally mandated rights to recapture her  
16 copyright interests in the sound recordings at issue. Indeed, the attempt to bolster the work  
17 for hire language in the 1982 contract over the 1979 contract in a failed attempt to nullify the  
18 effectiveness of the Notice of Termination and block Basil from obtaining reversion in *Mickey*  
19 and the other RSRs was clearly intended to diminish Defendant’s rights under copyright law  
20 and to take advantage of Defendant’s inexperience and naivete concerning the music industry.  
21 Stillwater and its predecessors have successfully profited from their actions for 35 years.  
22 Thus, the interests of compensation and deterrence mandate an award of attorneys’ fees in this  
23 action.

24 Moreover, the complaint alternative theory relied upon, in large part, a frivolous  
25 argument that Defendant, as merely a vocalist and one of many credited authors on the *Word*  
26 *of Mouth* album, would water down Basil’s entitlement to revenue and allow Stillwater to  
27 maintain control as a joint author. Stillwater commenced this action, perhaps in the hopes that

1 Defendant would not be able to endure a long litigation, attempting to thwart her rights to  
2 regain any copyright interests in *Mickey* and the other RSRs.

3 Stillwater’s complaint further contended, without any factual or legal basis, that  
4 “*Mickey* was created as an audiovisual work pursuant to a ‘work for hire’ contractual  
5 provision and is therefore not subject to reversion.” That unsupportable contention was then  
6 abandoned just before trial, but only after Defendant was forced to excessively litigate it but  
7 before the Court could rule on it. Additionally, the alternative claim in the complaint alleged  
8 that, “[e]ven if the right of reversion were applicable, which it is not, Defendant’s grant under  
9 the 1979 Agreement, the 1980 Amendment, and the 1982 Agreement was only as to her vocal  
10 performance and therefore the reversion would only apply to that grant, and not the remainder  
11 of the musical performances in *Mickey* by the musicians hired by Radialchoice.” As the trial  
12 evidenced, there was simply no factual or legal basis for that argument. Between Stillwater’s  
13 “work for hire” argument, in which it attempted to bootstrap the 1982 contract to Basil’s  
14 iconic sound recording of *Mickey* which was recorded years earlier, then switching focus to an  
15 alternate joint authorship argument using a late discovered producer’s agreement is evidence  
16 of frivolousness and gamesmanship Basil had to endure.

17 Stillwater’s litigation tactics and combined with withholding worldwide royalties due  
18 Basil, then using those funds to pay Stillwater’s legal pursuits against Basil has caused  
19 financial hardship to Defendant during the course of this action. The diversion of the  
20 worldwide revenue stream of which Basil is entitled, is a transparent attempt to strangle  
21 Defendant’s ability to see this litigation through.

22 The underlying purposes of the Copyright Act’s termination provisions to provide  
23 authors with a second opportunity to obtain proper compensation for their creative endeavors,  
24 further mandates an award of attorneys’ fees to Defendant in this action. Notwithstanding that  
25 purpose, Stillwater has attempted at every turn to deprive Basil of her rights and copyrights  
26 under the law, including openly representing 100% ownership of *Mickey* for a Snickers  
27 Commercial and an AMC Preacher promo video collecting \$75,000 and \$18,000 respectively



1 *during the pendency of this action.* Plaintiff has forced Basil to engage in costly litigation to  
2 vindicate those rights. The Copyright Act provides for an award of attorneys’ fees to  
3 prevailing parties to ensure that a party’s valid copyrights can be vindicated through the courts  
4 when necessary. Such was the case here. Accordingly, it is respectfully submitted that this  
5 Court should award Ms. Basil attorneys’ fees incurred in obtaining that victory.

6 **IV. CONCLUSION**

7 For all of the foregoing reasons, Defendant/Counterclaimant Antonia Basilotta p/k/a  
8 Toni Basil respectfully requests that she be awarded her costs and attorneys’ fees incurred in  
9 this action in the total amount of **\$794,010.00**, and that she be granted such other and further  
10 relief as the Court deems necessary and proper.

11 In addition, as prevailing party, Ms. Basil is entitled to a Bill of Costs (submitted  
12 concurrently herewith) and the Clerk of the Court should be directed to tax the costs as set  
13 forth in the application.

14 Respectfully Submitted,

15 DATED: February 24, 2021

FEM LAW GROUP

/s/ F. Edie Mermelstein

F. Edie Mermelstein

Attorney for Antonia Basilotta p/k/a Toni Basil

Defendant/Counterclaimant

FEM LAW GROUP

1811 HUNTINGTON STREET, SUITE 240  
HUNTINGTON BEACH, CALIFORNIA 92648  
TEL.: (213) 986-4300 – FAX: (714) 596-8810



**PROOF OF SERVICE**

I am employed in the City of Huntington Beach, California and County of Orange, California. I am over the age of 18 and not a party to the within action. My business address is 18811 Huntington Street, Suite 240, Huntington Beach, California 92648.

On February 24, 2021, I served the following document:

**DEFENDANT/ COUNTERCLAIMANT ANTONIA BASILOTTA p/k/a TONI BASIL'S NOTICE OF MOTION FOR COSTS AND ATTORNEYS' FEES PURSUANT TO FRCP 54(d)(2) AND APPLICATION TO BILL COSTS**

on the persons below as follows:

Attorney	Address/Email	Party
Anthony Motta ( <i>pro hac vice</i> )	64 Fulton Street, Suite 305 New York, NY 10038 Email: amotta@anthonymotta.com	<i>Counsel for Plaintiff/Counter-Defendant</i>
Frank Gooch III (SBN:70966) COZEN O'CONNOR	1299 Ocean Avenue, Suite 900 Santa Monica, CA 90401-1000 Email: fgooch@cozen.com	<i>Counsel for Plaintiff/Counter-Defendant</i>
Shari Mulrooney Wollman Manatt Phelps and Phillips LLP	11355 West Olympic Boulevard Los Angeles, CA 90064-1614 Email:swollman@manatt.com	<i>ADR Neutral</i>
F. Edie Mermelstein FEM LAW GROUP	18811 Huntington Street, Suite 240 Huntington Beach, CA 92648 Email:edie@femlawyers.com	<i>Counsel for Defendant/Counterclaimant</i>

(CM/ECF ELECTRONIC FILING) I caused the above document(s) to be transmitted to the office(s) of the addressee(s) listed above by electronic mail at the e-mail address(es) set forth above pursuant to Fed.R.Civ.P.5(d)(1). "A Notice of Electronic Filing (NEF) is generated automatically by the ECF system upon completion of an electronic filing. The NEF, when e-mailed to the e-mail address of record in the case, shall constitute the proof of service as required by Fed.R.Civ.P.5(d)(1). A copy of the NEF shall be attached to any document served in the traditional manner upon any party appearing pro se."

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on February 24, 2021, at Huntington Beach, California.

F. Edie Mermelstein  
\_\_\_\_\_  
(Type or print name)

/s/ F. Edie Mermelstein  
\_\_\_\_\_  
(Signature)

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