

FILED

2013 JUN 17 PM 4:55  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY \_\_\_\_\_

**KRONENBERGER ROSENFELD, LLP**  
Karl S. Kronenberger (Bar No. 226112)  
Virginia A. Sanderson (Bar No. 240241)  
Alison B. Kwan (Bar No. 267884)  
150 Post Street, Suite 520  
San Francisco, CA 94108  
Telephone: (415) 955-1155  
Facsimile: (415) 955-1158  
karl@KRInternetLaw.com  
ginny@KRInternetLaw.com  
alison@KRInternetLaw.com

Attorneys for Plaintiff

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

**VISIONS OF AMERICA, LLC**, a  
California limited liability company,

Plaintiff,

vs.

**BOSTON SYMPHONY  
ORCHESTRA, INC.**, a  
Massachusetts nonprofit corporation,

Defendant.

Case No. **CV 13-04355** -JEM

**COMPLAINT FOR DAMAGES**

**DEMAND FOR JURY TRIAL**

RECEIVED  
CLERK, U.S. DISTRICT COURT  
JUN 14 2013  
CENTRAL DISTRICT OF CALIFORNIA  
BY DEPUTY

Case No.

**COMPLAINT**

KRONENBERGER ROSENFELD

150 Post Street, Suite 520, San Francisco, CA 94108



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



## COMPLAINT

1  
2 Plaintiff Visions of America, LLC, a California limited liability company  
3 (“VOA”), by and through its undersigned counsel, states and alleges as  
4 follows:

### INTRODUCTION

5  
6 1. The 2011–12 concert season marked the 127th anniversary of  
7 the Boston Pops (the “Pops”). At the same time, other notable and national  
8 events occurred, such as the 225th Anniversary of the U.S. Constitution, the  
9 150th Anniversary of the Civil War, and the 2012 Presidential Election.  
10 Accordingly, “America’s Orchestra” chose to mark these occasions with a  
11 patriotic-themed season that honored this nation through music and picture.  
12 To do so, the Pops collaborated with VOA to present “Visions of America: A  
13 Photo Symphony” (the “Photo Symphony”) eight times during the season.  
14 This collaboration was so important that the Pops even named their entire  
15 concert season “Visions of America” after VOA.

16 2. The Photo Symphony is a multimedia production ten years in the  
17 making. Its centerpiece is a montage of photographs by Joseph Sohm  
18 (“Sohm”) depicting the history, places, people, and culture of the United  
19 States. Over the course of his thirty-year career, Sohm has documented  
20 America’s visual history by photographing everything from U.S. Presidents  
21 and magnificent landscapes and monuments down to the freedoms enjoyed  
22 by average citizens. When one encounters a stunning photograph depicting  
23 the beauty of this country, there is a strong likelihood it was taken by Sohm,  
24 as he has been published more than 200,000 times in the worldwide media.  
25 VOA is headed by Sohm, who owns all rights to his photographs.

26 3. The Photo Symphony also includes an original instrumental  
27 score, songs, and narration to accompany the photo montage. VOA  
28 collaborated with celebrated award-winning American artists to develop



1 these components of the Photo Symphony.

2 4. The Pops is operated by Defendant Boston Symphony  
3 Orchestra, Inc. (“BSO”). VOA’s efforts in working with BSO to bring the  
4 Photo Symphony to the Pops and promote the 2011–12 season were  
5 tireless. In addition to its contribution of the Photo Symphony itself,  
6 including an edited montage of hundreds of Sohm’s most recognized  
7 photographs, VOA incurred substantial out-of-pocket expenses related to  
8 travel, video and sheet music copying expenses, and photo shoots in and  
9 around Boston, to take pictures, including aerial photographs, of the Boston  
10 Red Sox, the New England Patriots, and so forth. VOA provided its name  
11 and Sohm’s photographs for use in a significant amount of promotional,  
12 print, electronic and other materials that seemed to paper all of Boston  
13 during the season. On behalf of VOA, Sohm appeared in media interviews  
14 promoting the season and managed and judged a photography contest  
15 promoting the season.

16 5. At all times, VOA and BSO operated with the mutual  
17 understanding that, as with any artist or vendor, VOA would be  
18 compensated for the use of its intellectual property and its considerable and  
19 important contribution to the season.

20 6. By all accounts, the “Visions of America” season was a success.  
21 Noteworthy guest performers included Bernadette Peters, Alan Bergman,  
22 Steve Martin and the Stone Canyon Rangers, Patti Austin, Steve Tyrell, U.S.  
23 Senator Alan Simpson, conductor John Williams, and many other names.  
24 Every performance of the Photo Symphony was to a packed house and  
25 culminated in a standing ovation.

26 7. Suffice it to say that, without VOA’s contribution, the 2011–12  
27 Pops season would not have been the same. Regardless, when VOA  
28 approached BSO regarding payment after the close of the season, BSO



1 flatly refused to pay a cent.

2 8. Thus, it appears that BSO believes that the title “America’s  
3 Orchestra” has endowed the Pops with the decidedly un-American right to  
4 accept the benefits of an agreement and then renege on its payment  
5 obligations, trampling the intellectual property and other rights of the  
6 opposing party in the process.

7 9. Despite an endowment and operating budget that towers that of  
8 most symphonies, BSO continues to refuse to pay VOA for its performance  
9 of the Photo Symphony, the use of VOA’s trademark and copyrighted  
10 materials in its promotional items, or the out-of-pocket expenses VOA  
11 incurred in working to bring the Photo Symphony to the Pops. Accordingly,  
12 VOA now seeks relief through the Court.

### 13 **PARTIES**

14 10. Plaintiff Visions of America, LLC is a California limited liability  
15 company with its principal place of business in Oak View, California.

16 11. On information and belief, Defendant Boston Symphony  
17 Orchestra, Inc. is a Massachusetts nonprofit corporation with its principal  
18 place of business in Boston, Massachusetts.

### 19 **JURISDICTION AND VENUE**

20 12. This Court has subject matter jurisdiction over this action under  
21 28 U.S.C. §§1331 and 1338 for VOA’s claims under the Lanham Act, 15  
22 U.S.C. §1125(a), and the Copyright Act, 17 U.S.C. § 501 et seq. This Court  
23 has supplemental jurisdiction over VOA’s remaining claims under 28 U.S.C.  
24 §1367.

25 13. This Court also has subject matter jurisdiction over this action  
26 under 28 U.S.C. §1332 because the matter in controversy exceeds the sum  
27 or value of \$75,000, exclusive of interest and costs, and the action is  
28 between citizens of different States. To wit, BSO is a citizen of



1 Massachusetts and VOA is a citizen of California.

2 14. Venue is proper under 28 U.S.C. §1391 because VOA is located  
3 in this judicial district and because this is a judicial district in which a  
4 substantial part of the events or omissions giving rise to the claim occurred.

5 15. This Court has personal jurisdiction over BSO because BSO has  
6 done business with California residents, including VOA and individuals  
7 referenced within this Complaint, and because BSO purposefully directs  
8 substantial and pervasive activities at the residents of California such that  
9 BSO can and should reasonably expect to be haled into the Courts of  
10 California. For example, BSO's musical groups, including the Boston Pops,  
11 regularly tour California and perform at venues within California. BSO  
12 regularly holds auditions for musicians and performers within California.  
13 BSO's musical groups, including the Boston Pops, often feature California  
14 residents—including singers, composer and conductor John Williams, and  
15 other celebrities—in their performances and, on information and belief, BSO  
16 enters into contracts with each for the same. On information and belief,  
17 BSO has solicited donations from California patrons and, according to its  
18 own website, BSO has rewarded select patrons by permitting them to  
19 accompany BSO on a trip through California. On information and belief,  
20 BSO has solicited broadcasting and other contracts within California and  
21 with California-based entities, including as specifically alleged herein.

## 22 **FACTUAL ALLEGATIONS**

### 23 **Visions of America and the Photo Symphony**

24 16. At the helm of VOA is renowned photographer and historian  
25 Joseph Sohm ("Sohm"). Originally an American history teacher, Sohm has  
26 spent the last thirty (30) years photographing all aspects of the fifty states  
27 and in so doing, the American story. Sohm is known for his photographs of  
28 U.S. Presidents—for example, his photograph of Bill Clinton is featured on



1 the back of Clinton’s autobiography, *My Life*, and his photographs of Ronald  
2 Reagan are featured in Frederick J. Ryan’s *The Great Communicator*, a  
3 biographical book about Ronald Reagan. Sohm’s work is displayed by the  
4 U.S. Department of State in more than eleven embassies worldwide.  
5 Sohm’s images have been featured more than 200,000 times in publications  
6 such as *National Geographic*, *Time*, *The New York Times*, *The Washington*  
7 *Post*, and *The Wall Street Journal*. In 2009, Sohm published the Gold &  
8 Silver Medal winning tabletop book *Visions of America—Photographing*  
9 *Democracy*, which was re-released on July 4, 2012 by *Readers Digest*.

10 17. VOA owns the copyrights for Sohm’s photographs, including  
11 U.S. Copyright Office (“USCO”) Registration Nos. VA0001074964,  
12 VAu000358546, VAu000344544, VAu000346439, VAu000359475,  
13 VAu000390162, TX006993974, VAu000684449, and VAu000740477  
14 (collectively, the “Sohm Photographs”). Together, these registrations cover  
15 tens of thousands of photographs.

16 18. VOA also owns the trademark VISIONS OF AMERICA (the  
17 “Mark”), which it has used continuously in commerce in conjunction with its  
18 goods and services, including the Sohm Photographs and all derivative  
19 works, since 1987.

20 19. VOA’s predecessor, ChromoSohm Media, Inc., registered the  
21 Mark with the U.S. Patent and Trademark Office (“USPTO”) in 1997,  
22 Registration No. 2038771. In 2007, VOA neglected to file the necessary  
23 renewal paperwork with the USPTO, and registration of the Mark was  
24 subsequently cancelled. Regardless, VOA has continuously used the Mark  
25 in commerce since 1987 and has, at all relevant times, maintained a valid  
26 trademark therein.

27 20. Over the years, VOA has partnered with other individuals and  
28 entities to create patriotic multimedia works that feature Sohm’s



1 photographs in tandem with other artistic elements. Partnering organizations  
2 include but are not limited to: the Bicentennial of the U.S. Constitution, Peter  
3 Nero and the Philly Pops Orchestra, the New West Symphony Orchestra,  
4 the National Archives, the Clinton Presidential Library, the U.S. Department  
5 of State, the Democratic National Committee, the Presidential Inaugural  
6 Committee, *National Geographic*, *Readers Digest*, the President’s  
7 Committee on the Arts and the Humanities, Philadelphia’s “We the People”  
8 Bicentennial Celebration of the U.S. Constitution, Washington D.C.’s The  
9 Close Up Foundation, and Newseum Museum, etc.

10 21. In 2002, VOA began creation of a collaborative, multimedia  
11 work, the centerpiece of which was a video montage of Sohm’s patriotic  
12 photos (“the Montage”). VOA selected the images to be used in the  
13 Montage and edited them together in a video presentation.

14 22. Beginning in or about 2008, VOA commissioned Grammy-  
15 winning, Oscar-nominated composer and pianist Roger Kellaway  
16 (“Kellaway”) to compose an instrumental score (the “Score”) to accompany  
17 the Montage.

18 23. Subsequently, VOA and Kellaway partnered with award-winning  
19 songwriters Alan and Marilyn Bergman (the “Songwriters”) to compose  
20 songs (the “Songs”), including a finale piece entitled “We the People,” to  
21 accompany portions of the Montage. Kellaway composed the music, while  
22 the Songwriters were responsible for the lyrics.

23 24. Subsequently, Sohm wrote a narrative script (the “Script”) to be  
24 read during certain portions of the Score, which was recorded in 2009 by  
25 Oscar-winner Clint Eastwood.

26 25. When performed together, the Montage, the Score, the Songs,  
27 and the Script constitute an artistic work—namely, the Photo Symphony.  
28 The Photo Symphony, which was ten (10) years in the making, was



1 completed in 2009 and re-edited and re-orchestrated in 2011 at the Boston  
2 Pops' request for its 2012 season.

3 26. In addition to the Montage included in the Photo Symphony,  
4 VOA provided images for two shorter video montages that the Boston Pops  
5 performed multiple times during their Holiday Pops Season in December  
6 2011 and the 2012 VOA Season. These videos (the "VOA Videos") featured  
7 George Gershwin's "Love is Sweeping the Country" and "Prayer for  
8 Thanksgiving" by Adriaen Valerius.

### 9 **BSO and The Boston Pops**

10 27. BSO is a nonprofit organization.

11 28. BSO owns and operates the Boston Symphony Orchestra and  
12 the Pops, as well as the venues at which they perform—Symphony Hall and  
13 Tanglewood.

14 29. On information and belief, compared to other orchestras, BSO  
15 has by far one of the largest endowments in the country. According to  
16 BSO's Annual Report for the 2011–12 season, its total endowment was  
17 approximately \$380 million.

18 30. BSO's 2012 operating revenues—that is, revenues derived from  
19 concerts, tours, and merchandising—exceeded \$40 million, which marked  
20 an increase from the previous two years.

21 31. Although BSO's operating revenues are substantial, they are  
22 insufficient to cover its operating expenses. Accordingly, BSO relies heavily  
23 on personal charitable donations and corporate sponsorship.

24 32. In 2012, BSO expended over \$7 million in fundraising and  
25 sponsorship drives, resulting in annual contributions totaling over \$20  
26 million. This money, coupled with the operating revenue and an endowment  
27 allocation, permitted BSO to cover its annual operating expenses totaling  
28 nearly \$74 million, with a net surplus of \$288,000.







1 projected on a large screen at Symphony Hall, the Pops performed the  
2 Score and Songs, as illustrated in the following photograph taken during one  
3 performance:



4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16 41. Pursuant to the Agreement, VOA arranged for Kellaway to serve  
17 as solo pianist during the Photo Symphony performances, for singers Patti  
18 Austin and Steve Tyrell to perform the Songs, and for actor Clint Eastwood  
19 to narrate according to the Script. Additionally, Alan Bergman agreed to  
20 perform additional songs as a guest soloist.

21 42. Pursuant to the Agreement, VOA also provided substantial  
22 materials and services in support of the Pops' publicity for the Season.

23 43. For example, Sohm's photographs were used throughout the  
24 print materials and other media promoting the Season, including a photo  
25 installation in Symphony Hall and Prudential Shopping Center, billboard  
26 advertising, buses and bus stops with wrap-around advertisements, and  
27 lamppost banners promoting the Season, which were placed throughout the  
28 streets of Boston.



1           44. Sohm, on behalf of VOA, conceived, managed, and judged a  
2 photography contest for the Pops entitled “What’s *Your* Vision of America.”

3           45. Sohm, on behalf of VOA, participated in several media  
4 interviews, along with Lockhart, to promote the Season. Additionally, he was  
5 asked to speak for group-ticket sellers in October of 2011 and present a  
6 video-preview.

7           46. Apple iTunes has, and is currently, advertising the Season in the  
8 iTunes Store using VOA images, photographs of Sohm, and audio  
9 references to VOA.

10          47. Finally, VOA’s Mark, which the Pops employed as the name of  
11 the Season, was used throughout the Season.

12          48. VOA also incurred significant expenses in fulfilling its obligations  
13 under the Agreement, including without limitation travel expenses for Sohm  
14 and costs associated with preparation of copies of the Score, the Montage,  
15 multiple photographic shoots focusing on Boston, and the VOA Videos.

16          49. Under the Agreement, VOA was to be paid in consideration for  
17 the materials, licenses, and services rendered by VOA throughout the  
18 Season.

19          50. Initially, the parties sought to procure television broadcast  
20 sponsorship for the Season (“the Television Sponsorship”), with an eye  
21 towards having VOA paid directly from the Television Sponsorship. To this  
22 end, pursuant to the Agreement and BSO’s approval, VOA enlisted the  
23 services of third-party George P. Johnson Marketing (“Johnson”) to procure  
24 and negotiate the Television Sponsorship. VOA also engaged television  
25 executive Herman Rush to develop and pay for a broadcast budget.

26          51. By April 2012, it became clear that Johnson would be unable to  
27 procure the Television Sponsorship; however, BSO chose to proceed with  
28 the “Visions of America” Season, performance of the Photo Symphony, and



1 acceptance of all other benefits provided by VOA under the Agreement.  
2 Accordingly, the Agreement was modified in that VOA would be paid from  
3 BSO's general revenue and sponsorship funds.

4 52. On information and belief, Fidelity Investments was the primary  
5 sponsor of the Season.

6 53. On information and belief, other significant sponsors of the  
7 Season included Harvard University, Boston University, Tufts University,  
8 and Partners HealthCare. Indeed, each of these institutions sponsored a  
9 "bought house" concert during which the Photo Symphony was performed.

10 54. On information and belief, other significant sponsors and  
11 business partners of the Season included United Healthcare, American  
12 Airlines, John Hancock Financial Services, Liberty Mutual, UBS, State Street  
13 Corporation, Common Wealth Worldwide, and Fairmont Copley Plaza.

14 55. On information and belief, a BSO patron also donated an  
15 unrestricted gift of more than \$6 million during the Season. On May 31,  
16 2012, Presidents at Pops raised an estimated \$1 million.

17 56. On information and belief, audiences for the entire Season  
18 totaled approximately 40,000 and those for the concerts featuring the Photo  
19 Symphony exceeded 16,000 persons.

20 57. According to BSO's Annual Report for 2011–12, total operating  
21 revenues for 2012 increased over the previous year, reversing a two-year  
22 trend of declining revenues.

23 58. The Season saw packed houses and standing ovations at every  
24 performance of the Photo Symphony.

### 25 **BSO's Breach of the Agreement**

26 59. The Season ended on or about June 16, 2012.

27 60. Shortly after the end of the Season, VOA contacted BSO to  
28 arrange for payment under the Agreement.



1           61. Despite the time and money expended by VOA in support of the  
2 Season, and the substantial artistic work and other materials VOA provided  
3 to BSO for use in the Season, BSO expressly refused to pay any amount to  
4 VOA.

5           62. BSO's refusal to pay VOA constituted a breach of the  
6 Agreement.

7           63. In addition, after the close of the Season, VOA learned that BSO  
8 had permitted select concerts in the Season, including those featuring the  
9 Photo Symphony, to be broadcast nationally on WGBH Classical New  
10 England (the "Radio Broadcast") as well as on New England 89.7 WGBH  
11 Boston Public Radio and 90.7 Classical Radio. Subsequently, the Radio  
12 Broadcast was uploaded to and made available on the Internet for anyone in  
13 the world to hear. On information and belief, the Radio Broadcast was  
14 available on the Internet for several months and perhaps longer. VOA is  
15 aware of persons in Missouri, Florida, California and Europe who listened to  
16 the Radio Broadcast via Internet playback.

17           64. BSO never asked for, and VOA never granted, permission for  
18 use of VOA's Mark and the Photo Symphony in the Radio Broadcast,  
19 whether by radio transmission or via Internet playback.

20           65. Accordingly, BSO's actions with respect to the Radio Broadcast  
21 exceeded the scope of any licenses granted by VOA to BSO in the  
22 Agreement.

23           66. Quizzically, while BSO did pay Alan Bergman, Patti Austin, and  
24 Steve Tyrell directly for their vocal performances during the Season, BSO  
25 has refused to pay Kellaway for his many featured soloist performances as a  
26 pianist.

27           67. As a result of BSO's breaches of the Agreement, VOA has been  
28 significantly damaged. Not only has VOA born the burden of its substantial



1 out-of-pocket expenses, but VOA has been deprived of the monetary benefit  
2 it expected to receive pursuant to the Agreement.

### 3 **BSO's Copyright and Trademark Infringement**

4 68. Because the Agreement was never committed to writing, VOA is  
5 informed and believes that, despite the obvious and valuable benefit BSO  
6 received from VOA during the Season, BSO may argue that a valid  
7 agreement was never formed. To wit, in responding to VOA's demand for  
8 payment under the Agreement, BSO contended that the Agreement did not  
9 exist.

10 69. If, during the course of this action, it is determined that the  
11 Agreement was invalid or was never formed, then any copyright and/or  
12 trademark licenses granted by VOA to BSO pursuant to the Agreement are  
13 also invalid and/or never existed.

14 70. Accordingly, **in the alternative** to its contractual claims asserted  
15 in this complaint, VOA has asserted claims for copyright infringement and  
16 trademark infringement.

17 71. BSO infringed VOA's copyrights in the **hundreds** of Sohm  
18 Photographs used in (1) the Montage, (2) the VOA Videos, and (3) the  
19 promotional materials for the Season by using the same without license from  
20 VOA.

21 72. BSO infringed VOA's copyright in the Script by using the same  
22 throughout the Season without license from VOA.

23 73. BSO also infringed VOA's Mark by using it to advertise and in  
24 conjunction with BSO's goods and services throughout the Season without  
25 license from VOA.

26 74. As a result of BSO's copyright and trademark infringement, VOA  
27 has been significantly damaged.

28 //





1 conduct of each party.

2 86. The conduct of VOA, BSO, and each of them in entering into the  
3 Agreement was, at all relevant times, intentional, and each knew or had  
4 reason to know that the other party would interpret the conduct as an  
5 agreement to enter into a contract—namely, the Agreement.

6 87. The Agreement is a valid, binding contract supported by  
7 adequate consideration.

8 88. Among other things, the Agreement, as modified by the parties,  
9 required BSO to directly reimburse VOA's out-of-pocket expenses and pay  
10 VOA for the value of VOA's contributions to the Season, including the  
11 provision of the Photo Symphony and its components, the securing of talent  
12 for concert performances, and the materials provided and appearances  
13 made in promotion of the Season.

14 89. VOA has fulfilled all of its obligations under the Agreement.

15 90. BSO breached the Agreement by refusing to make any payment  
16 to VOA.

17 91. BSO's actions and inactions constitute material breaches of the  
18 Agreement.

19 92. As a direct and proximate result of BSO's breach of the  
20 Agreement, VOA has been damaged and continues to be damaged in an  
21 amount to be proven at trial.

### 22 **THIRD CLAIM FOR RELIEF**

#### 23 **(Quantum Meruit)**

24 93. VOA repeats and re-alleges Paragraphs 1–74, as if fully set forth  
25 herein.

26 94. VOA asserts this Third Claim for Relief **in the alternative** to the  
27 First and Second Claims for Relief.

28 95. VOA has conferred a valuable benefit on BSO in the form of the





1 time, effort, money, and materials contributed by VOA to the Season,  
2 including without limitation, the provision of the Photo Symphony and its  
3 components, the securing of talent for concert performances, the materials  
4 provided and appearances made in promotion of the Season, and the out-  
5 of-pocket travel and copying expenses borne by VOA.

6 96. BSO accepted the benefit provided by VOA with the reasonable  
7 expectation of compensating VOA.

8 97. VOA provided the benefit with the reasonable expectation of  
9 receiving compensation.

10 98. BSO has not compensated VOA for the benefit provided.

11 **FOURTH CLAIM FOR RELIEF**  
12 **(Restitution/Unjust Enrichment)**

13 99. VOA repeats and re-alleges Paragraphs 1–74, as if fully set forth  
14 herein.

15 100. VOA asserts this Fourth Claim for Relief **in the alternative** to the  
16 First, Second, and Third Claims for Relief.

17 101. BSO has been enriched by its receipt of and benefit from the  
18 time, effort, money, and materials contributed by VOA to the Season,  
19 including without limitation, the provision of the Photo Symphony and its  
20 components, the securing of talent for concert performances, the materials  
21 provided and appearances made in promotion of the Season, and the out-  
22 of-pocket travel and copying expenses borne by VOA.

23 102. Likewise, VOA has been impoverished by the time, effort,  
24 money, and materials it has contributed to the Season without receiving  
25 payment in return from BSO.

26 103. A causal relationship exists between BSO's enrichment and  
27 VOA's impoverishment in that VOA's impoverishment is directly and  
28 proximately caused by BSO's refusal to pay VOA for the benefits conferred



1 on BSO.

2 104. BSO has no reasonable justification for its failure to compensate  
3 VOA for the enrichment it has received.

4 105. VOA lacks an adequate remedy provided by law and therefore  
5 seeks restitution for BSO's unjust and unlawful conduct.

## 6 FIFTH CLAIM FOR RELIEF

### 7 (Copyright Infringement, 17 U.S.C. § 501 et seq.)

8 106. VOA repeats and re-alleges Paragraphs 1–74, as if fully set forth  
9 herein.

10 107. VOA asserts this Fifth Claim for Relief **in the alternative** to the  
11 First, Second, Third, and Fourth Claims for Relief.

12 108. Sohm's Photographs are original, creative works in which VOA  
13 owns protectable copyright interests.

14 109. VOA owns the copyrights for Sohm's Photographs, USCO  
15 Registration Nos. VA0001074964, VAu000358546, VAu000344544,  
16 VAu000346439, VAu000359475, VAu000390162, TX006993974,  
17 VAu000684449, and VAu000740477. Together, these registrations cover  
18 tens of thousands of photographs.

19 110. VOA owns the copyright for the Script.

20 111. Absent a valid agreement for compensation, VOA has not  
21 licensed BSO to use the Sohm Photographs or the Script in any manner, nor  
22 has VOA assigned any of its exclusive rights in the copyrights to BSO.

23 112. Without valid permission or authorization from VOA, and in willful  
24 violation of VOA's rights under 17 U.S.C. § 106, BSO reproduced and/or  
25 displayed the Sohm Photographs during its concerts and in its promotional  
26 and other printed and electronic materials for the Season.

27 113. BSO's reproduction and display of the Sohm Photographs and  
28 the Script constitute copyright infringement.



1 114. On information and belief, tens of thousands of people have  
2 viewed the unlawful copies of the Sohm Photographs reproduced and  
3 displayed by BSO and heard the Script performed in conjunction with the  
4 Season.

5 115. On information and belief, BSO had knowledge of the copyright  
6 infringement alleged herein and had the ability to stop the reproduction and  
7 display of VOA's copyrighted material.

8 116. BSO's copyright infringement has damaged VOA in an amount  
9 to be proven at trial.

### 10 SIXTH CLAIM FOR RELIEF

#### 11 (Trademark Infringement Under the Lanham Act, 15 U.S.C. § 1125)

12 117. VOA repeats and re-alleges Paragraphs 1–74, as if fully set forth  
13 herein.

14 118. VOA asserts this Sixth Claim for Relief in the alternative to the  
15 First, Second, Third, and Fourth Claims for Relief.

16 119. VOA owns the VISIONS OF AMERICA trademark, or the Mark.

17 120. Absent a valid agreement for compensation, VOA has not  
18 licensed BSO to use the Mark in any manner, nor has VOA assigned any of  
19 its exclusive rights in the Mark to BSO.

20 121. Without valid permission or authorization from VOA, BSO  
21 repeatedly used the Mark throughout the Season, including during its  
22 concerts and in its promotional and other printed and electronic materials, to  
23 designate BSO's products and services. Indeed, BSO used the Mark as the  
24 name for the entire Season.

25 122. BSO's actions constitute the knowing use of an infringing mark  
26 and false designation of origin, false and misleading description of fact, and  
27 false and misleading representation of fact, all in violation of 15 U.S.C. §  
28 1125(a).



1 123. BSO's unauthorized and repeated uses of the Mark, and  
2 confusingly similar terms, in commerce to falsely represent, describe, and/or  
3 designate the origin of BSO's products and services is likely to cause  
4 confusion as to: (a) the source of BSO's products and services, (b) an  
5 affiliation or connection between BSO and VOA, and/or (c) the origin,  
6 sponsorship, or approval of BSO's products or services.

7 124. BSO at all times was aware of VOA's Mark and its conduct has,  
8 at all times, been willful and intentional, and BSO engaged in the actions  
9 alleged herein with the purpose of confusing consumers and trading on the  
10 goodwill associated with VOA's Mark. Accordingly, VOA respectfully  
11 requests damages in an amount three times actual damages, and an award  
12 of attorneys' fees and costs pursuant to 15 U.S.C. § 1117.

13 125. As a direct result of BSO's willful and unlawful actions, VOA has  
14 suffered and continues to suffer irreparable harm, including damage to and  
15 diminution in value of VOA's Mark, for which there is no adequate remedy at  
16 law. Accordingly, VOA is entitled to injunctive and equitable relief.

### 17 PRAYER FOR RELIEF

18 **WHEREFORE**, VOA respectfully requests judgment as follows:

19 1. That the Court enter a judgment against BSO that it is liable to  
20 VOA for breach of contract or, in the alternative, that BSO is liable to VOA  
21 under either (1) the legal theories of unjust enrichment or quantum meruit, or  
22 (2) for copyright and trademark infringement in violation of the Copyright Act  
23 and the Lanham Act;

24 2. That the Court award damages and monetary relief as follows:

25 a) On VOA's breach of contract claims, compensatory  
26 damages, together with appropriate interest thereon, against  
27 BSO and according to proof at trial;

28 b) In the alternative, on VOA's unjust enrichment/restitution or



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

quantum meruit claims, the reasonable value of the benefit conferred against BSO;

c) In the alternative, on VOA's copyright infringement claim, statutory damages against BSO pursuant to 17 U.S.C § 504(c) of \$150,000 per infringement;

d) In the alternative, on VOA's trademark infringement claim, actual damages and disgorgement of BSO's profits pursuant to 15 U.S.C. § 1117;

e) VOA's attorneys' fees pursuant to 17 U.S.C. § 505 and 15 U.S.C. § 1117;


f) VOA's costs; and

Such other relief that the Court determines is just and proper.

Respectfully Submitted,

DATED: June 13, 2013

**KRONENBERGER ROSENFELD, LLP**

By:   
Virginia Sanderson

Attorneys for Plaintiff

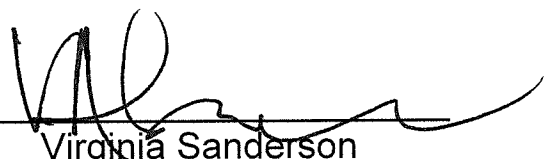
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**REQUEST FOR JURY TRIAL**

Plaintiff hereby demands a trial of this action by jury.

DATED: June 13, 2013

**KRONENBERGER ROSENFELD, LLP**

By:   
Virginia Sanderson

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
for the

VISIONS OF AMERICA, LLC, a California limited liability company,

Plaintiff(s)

v.

BOSTON SYMPHONY ORCHESTRA, INC., a Massachusetts nonprofit corporation,

Defendant(s)

Civil Action No. CV 13-04355-JEM

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

BOSTON SYMPHONY ORCHESTRA, INC.  
301 Mass Ave.  
Boston, MA 02115

A lawsuit has been filed against you.

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

Virginia Sanderson  
150 Post Street, Suite 520  
San Francisco, CA 94108

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

CLERK OF COURT

*Marilyn D...*  
Signature of Clerk or Deputy Clerk

Date: JUN 17 2013

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



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

<b>I. (a) PLAINTIFFS</b> ( Check box if you are representing yourself <input type="checkbox"/> ) Visions of America, LLC	<b>DEFENDANTS</b> ( Check box if you are representing yourself <input type="checkbox"/> ) Boston Symphony Orchestra, Inc.
---	--

<b>(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)</b> KRONENBERGER ROSENFELD, LLP 150 Post Street, Suite 520 San Francisco, CA 94108 (415) 955-1155	<b>(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)</b>
---	---

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1. U.S. Government Plaintiff <input type="checkbox"/> 2. U.S. Government Defendant <input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only</b> (Place an X in one box for plaintiff and one for defendant) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input checked="" type="checkbox"/> 4</td> <td align="center"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

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

<input checked="" type="checkbox"/> 1. Original Proceeding	<input type="checkbox"/> 2. Removed from State Court	<input type="checkbox"/> 3. Remanded from Appellate Court	<input type="checkbox"/> 4. Reinstated or Reopened	<input type="checkbox"/> 5. Transferred from Another District (Specify)	<input type="checkbox"/> 6. Multi-District Litigation
--	--	---	--	---	---

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

**CLASS ACTION under F.R.Cv.P. 23:**  Yes  No      **MONEY DEMANDED IN COMPLAINT:** \$ > \$75,000

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
 28 U.S.C 1332. Breach of contract or, in the alternative, copyright & trademark infringement.

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

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	<b>TORTS</b>	<input type="checkbox"/> 530 General	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	<b>TORTS</b>	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 535 Death Penalty	<b>SOCIAL SECURITY</b>
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 330 Fed. Employers' Liability	<b>BANKRUPTCY</b>	<b>FORFEITURE/PENALTY</b>	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<b>FEDERAL TAX SUITS</b>
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<b>REAL PROPERTY</b>	<input type="checkbox"/> 350 Motor Vehicle	<b>CIVIL RIGHTS</b>	<b>LABOR</b>	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 210 Land	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 740 Railway Labor Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision		<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 751 Family and Medical Leave Act	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 444 American with Disabilities-Employment	<input type="checkbox"/> 790 Other Labor Litigation	
		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	
		<input type="checkbox"/> 370 Other Personal Injury	<input type="checkbox"/> 448 Education		

FOR OFFICE USE ONLY: Case Number: CV 13-04355

AFTER COMPLETING PAGE 1 OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED ON PAGE 2.

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

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

If yes, list case number(s): \_\_\_\_\_

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

If yes, list case number(s): \_\_\_\_\_

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

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

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

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

<b>County in this District:*</b>	California County outside of this District; State, if other than California; or Foreign Country
Ventura County, CA	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

<b>County in this District:*</b>	California County outside of this District; State, if other than California; or Foreign Country
	Massachussets

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

<b>County in this District:*</b>	California County outside of this District; State, if other than California; or Foreign Country
Ventura County, CA	

**\*Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties**

**Note:** In land condemnation cases, use the location of the tract of land involved

**X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT):**  DATE: 6/11/13

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

Key to Statistical codes relating to Social Security Cases:

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