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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057241
Party	Plaintiff Daniel M. Goodman
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Submission	Testimony For Plaintiff
Filer's Name	Sawnie R. Aldredge
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Signature	/Sawnie R Aldredge/
Date	12/27/2015
Attachments	Declaration of Daniel M. Goodman With Exhibits.pdf(1838495 bytes ) Declaration of Rick Clark.pdf(40345 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE  
THE TRADEMARK TRIAL AND APPEAL BOARD**

Petitioner: Daniel M. Goodman c/o P.O. Box 120713, Nashville, Tennessee  
37212

Registrant: Steven Berlin, Suite 224, 3439 N.E. Sandy Blvd. Portland,  
Oregon 97232.

Proceeding Number 92057241

**DECLARATION OF DANIEL M. GOODMAN**

I am Daniel M. Goodman. I have extensive experience as an artist manager in the entertainment industry. In 1997 I conceived of the idea of creating a musical performing group that would record and perform a genre of music known as Mexican-American music. My idea was to recruit a rotating cast of performers to record and perform songs in this genre.

On June 29, 1998 I signed a recording agreement with RCA records where I agreed to deliver an album featuring "Latin American-influenced Texas music of the 1920's through 1940's". A copy of the agreement is attached hereto as Exhibit 1. The musicians selected by me for the album included Joe Ely, Freddie Fender, Flaco Jimenez, Doug Sahm and David Hidalgo from the popular recording group Los Lobos. I engaged the services of registrant Steve Berlin, also a member of Los Lobos as producer of the first recording.

The album "Los Super Seven" was released on September 15, 1998. The album was extremely successful and won a "Grammy" for "Best Mexican-American album of 1999". On March 3, 2001, I released a second "Los Super Seven" album on RCA records called "Canto". On January 22, 2002 I secured the release of a DVD featuring the performances of some of the above-referenced musicians and other musicians performing as "Los Super Seven". On

March 22, 2005 I released a third album by "Los Super Seven" called "I Heard It on the X". Registrant Steve Berlin had no involvement with this album whatsoever.

As the creator of a live performing group "Los Super Seven", I first produced a concert in Los Angeles, California on September 14, 1998 and produced other concerts in New York, Lexington, Kentucky, Austin, Texas and Nashville, Tennessee as well as other cities. I also scheduled performances of the group on such television shows as "Late Night with Conan O'Brien", "Austin City Limits", and "The Tonight Show".

On February 8, 2000 I received U.S. Trademark Registration No. 2316298 for the mark "Los Super Seven" for "Entertainment Services in the nature of live musical performances". A copy of this registration certificate is attached as Exhibit B. On March 5, 2002, I received U.S. Trademark Registration No. 2543714 for "Musical sound recordings, pre-recorded compact discs, videotapes and audiovisual discs all featuring music." A copy of this registration certificate is attached as Exhibit C.

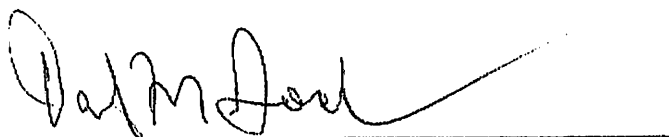
I had been diligent in trying to protect against the unauthorized use of my trademark. Specifically when I heard that registrant Steve Berlin was attempting to use the name "Los Super Seven" to promote a series of unauthorized concerts in 2010, I instructed my attorney to send him a cease and desist letter threatening legal action unless he ceased and desisted any use of the trademark. A copy of this letter dated June 28, 2010 is attached as Exhibit D.

My delay in renewing my initial trademark registration for "Los Super Seven" in the category live performances was due to inadvertence and mistake. I was unaware of the fact that Steve Berlin filed a service mark registration application on October 11, 2010 and as soon as I became aware of this fact I began taking steps to protect my rights in the service mark. Further, the poster that Steve Berlin submitted as a specimen in connection with his application advertised a show on April 29, 2012 in San Antonio, Texas which was not authorized by me. As stated above, any time that I have become aware of unauthorized uses of my trademark, I have taken steps to stop such uses.

I have never abandoned the use of the mark. Specifically, the related goods, the three record albums I produced as "Los Super Seven" are still commercially available and I am in the planning stages of the fourth "Los Super Seven" recording which will be supported by a promotional tour.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and accurate.

Executed on December 23, 2015.

A handwritten signature in black ink, appearing to read "Daniel M. Goodman", written over a horizontal line.

Daniel M. Goodman

As of 6-29, 1998

Mr. Dan Goodman  
c/o Kenneth L. Kraus, Esq.  
MANATT, PHELPS, PHILLIPS  
1233 17th Avenue South  
Nashville, TN 37212

Dear Dan:

When signed by you and The RCA Records Label, a Unit of BMG Entertainment, One Music Circle North, Nashville, Tennessee 37203 ("RCA"), the following shall constitute an agreement between you and RCA.

✓ 1. Term and Services.

(a) The Term shall commence as the date hereof, and expire on the delivery of the Masters hereunder.

(b) During the term ("Term") of this agreement you (sometimes, hereinafter the "Executive Producer") shall perform non-exclusively for RCA as the Executive Producer of Master Recordings (the "Masters" or "Subject Masters") for an as yet untitled album featuring Latin-influenced Texas music of the 1920's to 1940's (the "Album") embodying the performances of David Hidalgo, Cesar Rosas, Joe Ely, Flaco Jiminez, Rick Trevino and Freddy Fender (each, individually, an "Artist" and collectively, the "Artists") subject to recording agreements with RCA ("Artists' Agreements").

✓ 2. Executive Producer Services.

You shall be available to provide and shall provide all services reasonably and customarily rendered by executive producers in the record industry in connection with the Album. If, for any reason other than RCA's failure to request your performance hereunder, you do not perform such services, RCA, by written notice to you, may suspend its obligations to you hereunder and during such suspension elect to (i) extend the Term; or (ii) terminate the Term by written notice to you, in which case all of RCA's to you under this agreement shall be extinguished without affecting RCA's rights which survive the Term and any rights RCA may have by reason of your failure to perform.

✓ 3. Credit.

Provided you satisfactorily render all of your services hereunder, RCA shall accord you credit on the Album cover, label and/or liner notes (if any) in respect of LPs embodying the Masters in substantially the following form:

"Executive Producer Dan Goodman "

in accordance with RCA's customary policies and subject to spacing limitations in each particular circumstance where such credit is to be accorded. Additionally, RCA shall accord you such credit in all one-half (1/2) page or larger trade and consumer advertisements and wherever executive producer credits are customarily given or wherever producer credits are given pertaining solely to the Subject Masters placed by or under the control of RCA in the United States, provided that a failure to do so shall not be deemed a breach hereof, but, upon written notice of any such failure, RCA agrees to use reasonable efforts to prospectively cure such failure.

✓ 4. Recording Costs.

(a) "Recording Costs" shall mean all costs incurred in connection with the pre-production and/or production of Masters embodying Artist's performances, including, without limitation, union scale, the costs of all instruments, musicians, vocalists, conductors, arrangers, orchestrators, copyists, payments to a trustee or fund based on wages to the extent required by any labor organization or trustee, sampling costs, all studio costs, tape costs, the costs associated with editing, mixing, remixing, mastering, engineering, travel, dubbing, cartage and trademark searches and registrations, the costs of cutting references, per diems, all advances and fees paid to you or any third party who renders performances or services in connection with the Subject Masters, rehearsal hall rentals, the cost of non-studio facilities and equipment, and all other costs and expenses incurred in producing any Masters hereunder which are customarily recognized as recording costs in the record industry.

(b) The Recording Fund for the Album is One Hundred Fifty Thousand Dollars (\$150,000.00) (the "Fund"). RCA shall be responsible for the Recording Costs up to the amount of the Fund. If RCA elects to pay any such costs which exceed the Fund, RCA shall have the Offset Right with respect thereto. In the event that the Recording Costs are less than the Fund, the balance will be paid to you and will constitute an advance hereunder. RCA acknowledges that the Recording Costs did not exceed the Fund. The Fund shall be recoupable as described in paragraph 5 below.

✓ 5. Royalties

Provided you have performed in accordance with the material terms hereof, RCA agrees to pay you a royalty (the "Producing Royalty") computed at the applicable percentage indicated below, of the applicable Royalty Base Price with respect to the Records concerned, it being agreed that such royalties will be computed and paid in accordance with the provisions set forth herein and in Exhibits "A" and "B" hereto. The Producing Royalty

payable to you with respect to Records sold embodying the Masters, by RCA or its licensees, for distribution through normal retail channels in the United States will be two percent (2%) for albums (one and one-half percent (1.5%) for Singles) which are sold at a Top-Line price through Normal Trade Channels in the United States (the "Basic Rate"). The Producing Royalty will not be payable until RCA has recouped the Fund at the Artists' gross rate (i.e. twelve percent (12%)). After such recoupment, the Producing Royalty will be computed and paid retroactively from the first record sold.

✓ 5A. Favored Nations.

The method of computing, adjusting and paying royalties pursuant to this agreement and pursuant to Exhibits A and B hereto are no less favorable to you than the terms provided to the Producer of the Masters and to the Artists (or such Artist's record companies) whose performances are embodied in the Album. If RCA accords any such other party more favorable terms regarding the method of computing, adjusting and paying royalties than those provided to you herein, then this agreement shall be deemed automatically amended to provide such more favorable terms to you. (This paragraph does not apply to the basic royalty rate, but only to the method of computing, adjusting, and paying royalties.)

✓ 6. Mechanical Royalties.

Executive Producer hereby grants to RCA an irrevocable license under copyright to reproduce each Controlled Composition on Records derived from the Masters delivered hereunder and to distribute such Records in the United States and Canada, subject to the following terms:

(a) (i) Mechanical royalties for Controlled Compositions in the United States and Canada will be payable at seventy-five percent (75%) of the Statutory Rate with respect to NTC Sales of Records.

(ii) Mechanical royalties for Controlled Compositions in the United States and Canada will be payable at seventy-five percent (75%) of the Statutory Rate with respect to Records Sold through record clubs, Records Sold as Mid-Price Records or Records Sold to military exchanges.

(iii) For all exploitations of Records other than those described in paragraphs 6(a)(i) or (ii) above and 6(c) below, mechanical royalties will be payable at fifty percent (50%) of the Statutory Rate.

(b) The maximum copyright royalty that RCA shall have to pay with respect to the Album shall be an amount determined in the following formula:  $(A \times B) + (.75A)(C - B)$ , where "A" equals the Statutory Rate, "B" equals the actual number of non-Controlled Compositions on the LP and "C" equals the total number of Compositions on such LP. Without limiting RCA's rights, it is agreed that RCA may exercise its Offset Right with respect to mechanical royalties in excess of the above amounts if such excess is the result of a breach by Executive Producer of this paragraph 6 and not as a result of any Artist's failure to comply with any mechanical royalty provision in the applicable Artist Agreement.

(c) No copyright payments shall be payable for any more than one use of any Controlled Composition on a particular Record or for Controlled Compositions which are (A) non-musical, (B) embodied in Records which are not Records Sold, and/or (C) arrangements of selections in the public domain except that if such arrangement is credited by ASCAP or BMI, then the mechanical royalty rate for such Controlled Composition in the United States shall be determined by multiplying the applicable mechanical royalty with respect to such Controlled Composition by that percentage which is used by the applicable performing rights society (ASCAP or BMI) in determining the credits to be given the publisher of such Controlled Composition for public performances thereof and further provided that Executive Producer shall furnish RCA with a copy of a letter or other satisfactory evidence from the appropriate performing rights society setting forth the said percentage upon delivery to RCA of the Master embodying such Controlled Composition. In the event Executive Producer fails to provide RCA with such letter or satisfactory evidence of the percentage as aforesaid, then RCA shall not be obligated to pay any mechanical royalty whatsoever with respect to such arranged material. In the event that RCA's USNTC Sales of the Album exceed two hundred fifty thousand (250,000) units (as determined in accordance with RCA's standard accounting procedures as reflected on statements rendered hereunder), then mechanical royalties for Controlled Compositions shall be paid on fifty percent (50%) of all copies of the Album which would otherwise not be Records Sold, to the extent such copies were shipped after the date such sales level is achieved.

✓ 7. RCA's Rights.

Each Master Recording made hereunder is intended to be, and will be a "work made for hire" (as specified in the United States Copyright Act) for RCA and, as between Executive Producer and RCA, RCA shall have the right of copyright in the Masters in RCA's name as owner and author and the right to secure any and all renewals or extensions of such copyright. If the Masters do not constitute a "work made for hire" for any reason, then this agreement will automatically operate as an irrevocable assignment from Executive Producer to RCA of all such rights, including the sound recording copyright therein. The Masters made hereunder and all derivatives manufactured therefrom together with the performances embodied thereon shall be entirely and forever the property of RCA, free of any claims whatsoever by Executive Producer or any person deriving any rights or interests from Executive Producer. Except as otherwise specifically provided for in this agreement, the method, manner and extent of release, packaging, promotion, advertising, distribution and sale relating to reproductions of the Masters shall be within the sole discretion of RCA. Without limiting the generality of the foregoing, RCA shall have the sole and exclusive right throughout the world; (i) to manufacture Phonograph Records embodying the Masters by any method now or hereafter known in any form; (ii) to sell, transfer, advertise, publicize or otherwise deal in the Masters and reproductions thereof; (iii) to permit the public performance thereof by means of radio or television broadcast, or any other method now or hereafter known; and (iv) to reproduce, print, publish or disseminate in any medium Executive Producer's name and approved portraits, approved pictures and approved likenesses (including, without limitation, all professional, group, and other assumed or fictitious names used by Executive Producer) and approved biographical material concerning Executive Producer, as news or information, and for trade and advertising purposes



hereunder. RCA shall have the right, in perpetuity throughout the Universe, to embody the Masters on the Album. RCA may exploit the Album and the Masters embodied therein in any manner by all means and in any and all media now or hereafter known.

✓ 8. Your Rights.

In the event of a breach by RCA of any provision hereof, your sole right and remedy shall be the right to seek monetary damages, if any, in an action at law for breach of contract and, in no event, shall you have the right to seek or obtain injunctive or other equitable relief with respect to the production, distribution or other exploitation of the Master or any Records derived therefrom or the exercise of any rights granted herein. Moreover, you shall not be entitled to recover damages or to terminate this agreement by reason of any breach by RCA of its material obligations hereunder, unless RCA has failed to remedy (a) a non-monetary breach within thirty (30) days following receipt of your notice thereof, or if such breach cannot be cured within such thirty (30) day period, if RCA does not commence to cure such breach within such thirty (30) day period, and diligently proceed to complete the same or (b) a monetary breach within such fifteen (15) days following your notice thereof, or if such breach cannot be cured within such fifteen (15) day period, if RCA does not commence to cure such breach within such fifteen (15) day period, and diligently proceed to complete the same.

8A. Release Obligation.

Provided that all of the Artists have fulfilled their material obligations under the Artists' Agreements and that Producer and Executive Producer have fulfilled their material obligations under the Producer Agreement and this agreement, respectively, RCA agrees to release the Album through Normal Trade Channels in the United States within six (6) months after final delivery of the Album. If RCA fails to release the Album in the United States, Executive Producer, on behalf of the Artists, the Producer and himself (collectively, the "Parties") may notify RCA, within sixty (60) days after the end of such six (6) month period, that the Parties intend to exercise their termination right under this paragraph 8A. unless RCA releases the Album in the United States within ninety (90) days (the "Cure Period") - after RCA's receipt of Executive Producer's notice. If RCA fails to release such Album before the end of the Cure Period, Executive Producer shall have the right, on behalf of the Parties to give RCA notice (the "Termination Notice") within sixty (60) days after the end of the Cure Period, of termination of this agreement. On receipt by RCA of the Termination Notice, and provided that RCA has not released the Album prior to its receipt of such notice, this agreement shall end and all parties will be deemed to have fulfilled all of their obligations under the agreement. Upon termination of this agreement as aforesaid, and upon receipt by RCA of an amount equal to all of RCA's actual unrecouped Recording Costs (as defined herein), attributable to the Album, plus an amount equal to RCA's actual costs of producing Album artwork, RCA agrees to convey all of its right, title and interest in and to the Masters which are owned by RCA to Executive Producer, or his designee. The Parties' only remedy for the failure of RCA to release the Album in the United States will be termination in accordance with this paragraph. If Executive Producer fails to give RCA either of the notices set out in this paragraph 8A., the Parties' right to terminate will lapse. The running of the periods referred to in this paragraph 8A. will be suspended (and the expiration date of each

of those periods will be postponed) for the period of any allowable suspension under this Agreement, the Artists' Agreements or the Agreement with the Producer.

9. Warranties and Indemnities.

You warrant and represent that:

(a) (i) You are possessed of the full right to enter into this agreement, that you are and shall at all times remain possessed of all rights necessary for you to completely fulfill all of your material obligations hereunder, and that your entering into this agreement and fulfilling such obligations does not and shall not infringe upon the rights of any Person whatsoever.

(ii) Neither the Masters nor the performances embodied therein, nor any other Materials (as hereinafter defined and to the extent that such materials are customarily supplied by Executive Producer) nor any authorized use thereof by RCA or its affiliates or licensees will violate or infringe upon the rights of any third party, and all Personnel Lists furnished hereunder are and will be true, accurate and complete.

(iii) Except as expressly provided herein to the contrary, RCA shall have no monetary obligation whatsoever to you, or any other Party for or in connection with this agreement or services performed hereunder by you or RCA's exercise of its rights hereunder.

(b) You hereby indemnify RCA and hold RCA harmless against any and all losses and damages (including reasonable attorneys' fees) arising out of any claim by any one (1) or more third parties or any act or conduct by you which is inconsistent with any warranty, representation, promise or covenant herein made by you, provided that said claim has been settled with your consent, not to be unreasonably withheld, or has been reduced to final judgment. Notwithstanding anything to the contrary contained herein, RCA shall have the right to settle without your consent any claim involving sums of Seven Thousand Five Hundred Dollars (\$7,500.00) or less, and this indemnity shall apply in full to any claim so settled; if you do not consent to any settlement proposed by RCA for an amount in excess of Seven Thousand Five Hundred Dollars (\$7,500.00), RCA shall have the right to settle such claim without your consent, and this indemnity shall apply in full to any claim so settled, unless you obtain a surety bond from a surety acceptable to RCA in its sole discretion, with RCA as a beneficiary, assuring RCA of prompt payment of all expenses, losses and damages (including attorneys' fees) which RCA may incur as a result of said claim. In no event, however, may RCA admit liability on behalf of Executive Producer. You shall pay RCA on demand any sums for which you are liable hereunder and if you fail to do so, RCA shall have the Offset Right. Without limiting the generality of the foregoing, if any claim, action or proceeding is made or brought against RCA which is inconsistent with any warranty or representation herein made by you or which alleges matters which if proven would constitute a breach by you of this agreement or any warranty, representation, promise or covenant herein made by you, then (i) RCA shall give you prompt written notice thereof and you shall have the right to participate in the defense thereof at your expense, and (ii) RCA

shall have the right to withhold from any sums otherwise payable to you hereunder, sums reasonably sufficient to secure RCA for your liabilities hereunder, unless Executive Producer obtains a surety bond from a surety acceptable to RCA in its sole determination, with RCA as a beneficiary, in an amount reasonably consistent with the amount of such claim. If no action is filed within one (1) year following the date on which such claim was first received by RCA, RCA shall release all sums withheld in connection with such claim unless RCA, in its reasonable business judgment, believes an action will be imminently filed.

#### 10. Miscellaneous.

(a) This agreement sets forth the entire understanding between you and RCA with respect to the subject matter hereof, and no amendment to or modification, waiver, termination or discharge of this agreement or any provision hereof shall be binding upon you or RCA unless confirmed by a written instrument signed by your authorized signatory and RCA's authorized signatory. Any process in any action, suit or proceeding arising out of or relating to this agreement may, among other methods, be served upon you by delivering it or mailing it in accordance with paragraph 11 below. No waiver of any provision of or default under this agreement shall affect your or RCA's right, as the case may be, thereafter to enforce such provision or to exercise any right or remedy in the event of any other default, whether or not similar. This agreement is entered into in the State of Tennessee and shall be construed in accordance with the laws of Tennessee applicable to contracts to be wholly performed in Tennessee without regard to conflicts of law principles. Executive Producer agrees that any action, suit or proceeding arising out of, or in connection with, this agreement shall be brought solely in the State or Federal Courts of the State of Tennessee.

(b) If any part of this agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction or by any other legally constituted body having the jurisdiction to make such determination, the remainder of this agreement shall remain in full force and effect provided that the part of this agreement thus invalidated or declared unenforceable is not essential to the intended operation of this agreement.

(c) You shall not have the right to assign this agreement or any of your rights or obligations hereunder. RCA may, at its election, assign this agreement or any of its rights or obligations hereunder to its parent, subsidiary or affiliated company or any Person acquiring all or substantially all of its assets, or with whom RCA may merge. The foregoing shall in no way limit RCA's right to assign or license the Masters in the ordinary course of business.

(d) RCA shall have no obligation whatsoever to make any investigation of the facts relevant to any warranty or representation herein made by you.

#### 11. Notices.

All notices from one party to the other hereunder will, unless herein indicated to the contrary, be addressed as follows:

To you: At your address as set forth on the first page hereof.

To RCA: At RCA's address as set forth on the first page hereof, directed to the attention of RCA's Vice President, Legal and Business Affairs.

or to such other address as the addressee may designate in writing. Any notice shall be sent by certified mail, return receipt requested, or by personal delivery or air express and shall be deemed complete when deposited in any United States mail box addressed as aforesaid, except that (a) all materials personally delivered shall be deemed served when received by the Party to whom addressed, (b) air express materials shall be deemed served one (1) day after delivery to the air express company, (c) notices of change of address shall be effective only from the date of its receipt, and (d) royalty statements shall be sent by regular mail and shall be deemed rendered when deposited in any United States mail box.

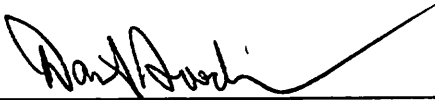
12. Artwork.

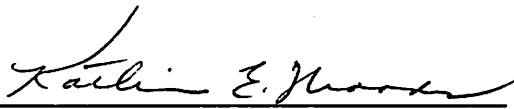
(a) Prior to the initial United States release of the Album delivered hereunder, RCA agrees to submit to Executive Producer for Executive Producer's approval, on behalf of all of the Artists whose performances are embodied in the Album, the artwork and liner copy (jointly hereinafter referred to as "Artwork") which RCA has prepared for use on the United States packaging of the Album. If RCA receives a written disapproval within five (5) business days following submission to Executive Producer, RCA agrees to make any changes mutually approved by Executive Producer and RCA; provided that the cost of such changes does not bring the aggregate cost of the Artwork to an amount in excess of RCA's then standard artwork, manufacturing and/or engraving costs. If the cost of such changes is in excess of said amount, RCA shall have the right not to make the requested changes.

IN WITNESS WHEREOF, Executive Producer and RCA have executed this agreement on the date and year above noted.

AGREED AND ACCEPTED:

THE RCA RECORDS LABEL,  
a Unit of BMG Entertainment

By: 

By: 

131-52-7177  
Social Security Number

**KATHERINE E. WOODS**  
V. P. LEGAL AND BUSINESS AFFAIRS

## EXHIBIT "A"

All paragraph references in this Exhibit "A" and the following Exhibits shall be deemed to refer to the applicable paragraphs in the Main Text unless otherwise specified in the Exhibits.

(1) "Advance" - A prepayment of royalties.

(2) "Audiophile Record" - A Record which is (a) of superior sound quality or has other distinct technical characteristics or which is marketed as either of the foregoing (e.g., a "Mobile Fidelity" Record), (b) embodied in a new configuration (e.g., DCC, digital audio tape, etc.) and/or (c) made for digital playback.

(3) "Budget Record" - A Record bearing an RSP in excess of fifty percent (50%) and equal to or less than sixty-seven percent (67%) of the highest RSP of Top-Line Records of the same type (e.g., whether it is an LP, EP, or Single) and in the same configuration (e.g., whether it is a tape cassette, compact disc, or vinyl Record) in the territory concerned.

(4) "Composition" - Words and/or music, whether in the form of instrumental and/or vocal music, spoken word or otherwise, irrespective of length, including, without limitation, medleys.

(5) "Container Charge" - Twenty-five percent (25%) of the applicable RSP for the Record concerned except: (a) Fifteen percent (15%) of the applicable RSP for vinyl Records and (b) twenty percent (20%) of the applicable RSP for LPs in double fold jackets and for LP jackets which contain an insert.

(6) "Controlled Composition" - That portion of a Composition which is written, owned or controlled in whole or in part by Executive Producer in which Executive Producer has a direct or indirect interest in the income to be derived therefrom or the copyright thereof.

(7) "Default Event" - Any breach by Executive Producer of this agreement, including, without limitation, Executive Producer's failure or inability to fulfill any of Executive Producer's obligations hereunder for any reason.

(8) "Delivery" or "Deliver[ed]" - RCA's receipt of Masters satisfactory to RCA, and all necessary licenses, consents, approvals and other items required under the agreement between RCA and the Executive Producer of the Masters.

(9) "Main Text" - The portion of this agreement which is prior to the Exhibits.

(10) "Master", "Recording", "Master Recording" - Any recording of sound, whether or not coupled with a visual image, by any method and on any substance or material, whether now or hereafter known.

(11) "Materials" - The Masters hereunder, all Compositions, and all other musical, dramatic, artistic and literary materials, and other intellectual properties contained in or used in connection with any Masters hereunder or their packaging, sale, distribution, advertising, publicizing or other exploitation thereof if such Materials are created and/or delivered by Executive Producer or if the creation and/or delivery of such Materials falls within the customary responsibility of an executive producer.

(12) "Mid-Price Record" - A Record bearing an RSP in excess of sixty-seven percent (67%) and equal to or less than eighty percent (80%) of the highest RSP of Top-Line Records of the same type and in the same configuration in the territory concerned.

(13) "NTC Sales" - Top-Line Records Sold through normal retail distribution channels and specifically excluding, without limitation, any exploitations described in paragraphs (c)-(e) of Exhibit B, it being understood and agreed that Records Sold in the compact disc configuration shall not be automatically excluded from NTC Sales if all the other requirements of this paragraph 13 are met.

(14) "Offset Right" - RCA's right to (a) demand and immediately receive reimbursement from Executive Producer of monies and/or (b) charge monies against and/or deduct same from any sums accruing or becoming payable hereunder. In the event that any such deduction is effected against an Advance otherwise payable hereunder, such deduction shall not impair RCA's right to charge and recoup, in the manner herein provided, the entirety of the Advance which would otherwise have been payable hereunder.

(15) "Person" - Any individual, corporation, partnership, association, entity or other organized group or combination of any or all of the foregoing, and their legal successors or representatives.

(16) Intentionally Deleted.

(17) "Recording Costs" - All costs incurred in connection with the pre-production and/or production of Masters embodying Artist's performances, including, without limitation, union scale, the costs of all instruments, musicians, vocalists, conductors, arrangers, orchestrators, copyists, payments to a trustee or fund based on wages to the extent required by any labor organization or trustee, sampling costs, all studio costs, tape costs, the costs associated with editing, mixing, remixing, mastering, engineering, travel, dubbing, cartage and trademark searches and registrations, the costs of cutting references, per diems, all advances and fees paid to Executive Producer or any third party who renders performances or services in connection with the Subject Masters, rehearsal hall rentals, the cost of non-studio facilities and equipment, and all other costs and expenses incurred in producing any Masters hereunder which are customarily recognized as recording costs in the record industry.

(18) "Record" - Any form of reproduction, transmission, and/or communication now or hereafter known, manufactured, distributed, transmitted or communicated primarily for home use, school use, juke box use, or use in means of transportation, including, without limitation, a reproduction of a Video (a "Video Record").

- (a) (i) "Single" - A Record embodying no more than three (3) different Compositions.
- (ii) "Long Play Single" - A Single embodying not more than three (3) Sides.
- (b) "EP" - A Record embodying more than three (3) Compositions that is not an LP.
- (c) (i) "LP" or "Album" - A Record containing no fewer than eight (8) Sides, with at least forty (40) minutes of playing time.
- (ii) "Multiple LP" or "Multiple Album" - Two (2) or more LPs packaged together by RCA for marketing as a single unit and/or an LP containing sixteen (16) or more Sides.

(d) In computing the number of Sides or Compositions on any Record hereunder, if any Composition is embodied on the Record concerned more than once, only the first use of Composition shall be included in such computation. In computing the amount of playing time of any Record hereunder, if any Composition is embodied on the Record concerned more than once, only the longest use of the Composition shall be included in such computation.

(e) Notwithstanding the foregoing provisions of paragraphs (18)(a), (b), (c) and (d) of this Exhibit "A" above, it is understood and agreed that in the event that RCA specifically markets a Record as a certain type of Record (e.g., as a Single, EP, LP, etc.) then such Record shall be deemed such type of Record regardless of whether the Record concerned satisfies the definition set forth above for the Record type concerned.

(19) (a) "Records Sold", "Record Sales" and "Sales" - One hundred percent (100%) of those Records shipped by RCA hereunder for which RCA is paid or credited and which are neither returned to nor exchanged by RCA nor (in the case of any record configuration as to which RCA does not identify returns of Records according to selection number) treated as returned to RCA under RCA's then current policy with respect to the percentage of shipped units so treated. The following are specifically not Records Sold:

(i) Standard free or bonus Records given away together with Records Sold for monetary consideration. If Records are shipped subject to a discount or merchandise plan, the number of such Records deemed shipped and Sold shall be determined by reducing the number of Records shipped by the percentage of discount granted. It is understood and agreed that RCA shall not, pursuant to this paragraph 19.(a)(i), exclude from Record sales standard "free" or "bonus" goods in excess of its then standard policy, which currently is fifteen percent (15%) with respect to analog cassettes, twenty percent (20%) with respect to compact discs and twenty-three and eight one-hundredths percent (23.08%) with respect to Singles.

(ii) Free or bonus Records given away pursuant to special sales plans in addition to free and bonus records specifically provided for in paragraph (19)(a)(i) above, not to exceed ten percent (10%).

(b) If Records which are shipped subject to a discount or merchandising plan, or respecting which a discount was granted in the form of "free" or "bonus" Records, are returned to RCA, the returns will be credited between royalty bearing and non-royalty bearing Records in the same proportion as RCA's customer's account is credited.

(c) With respect to sales outside the United States, RCA will account to Executive Producer on the same basis and for the same number of units as RCA is accounted to.

(20) "Restricted Composition" - A Composition embodied on a Master made or delivered to RCA under this agreement.

(21) "Royalty Base Price" - The RSP less the applicable Container Charge. No Container Charge shall apply with respect to the exploitations set forth in paragraph (22)(c)(iv) of this Exhibit "A" below.

(22) "Royalty Selling Price" or "RSP":

(a) (i) With respect to Records Sold in the United States, other than as set forth in paragraph (22)(c) of this Exhibit "A" below, the RSP is the suggested retail list price or its equivalent, less any taxes and duties included in the suggested retail list price or its equivalent.

(ii) When calculating royalties for Records Sold to an independent distributor (i.e., a distributor other than BMG Distribution), the RSP of such Records shall be adjusted by multiplying such RSP by a fraction, the numerator of which shall be RCA's price to the distributor (before taking into account "free" and "bonus" Records) for such Records and the denominator of which shall be the otherwise applicable ppd.

(b) For Records Sold outside the United States, other than as set forth in paragraph (22)(c) of this Exhibit "A" below, the RSP is the primary price to dealers ("ppd"), less any taxes and duties included in the ppd, as the same exists in the country of sale at the time of the sale, multiplied by one hundred and twenty-seven percent (127%).

(c) Notwithstanding the provisions of paragraphs (22)(a) and (b) of this Exhibit "A" above:

(i) For Records Sold by RCA, BMG Music ("BMG") or any of BMG's licensees or affiliates who have the right to exploit the majority of RCA's catalog in the country concerned (a "BMG Label Licensee") via mail order or other direct to consumer sales, excluding Records Sold through Record Clubs, the RSP is the actual selling price to the consumer, less any taxes, duty, shipping and handling charges included in such price.



(ii) For Records Sold by RCA, BMG or a BMG Label Licensee as a premium, promotional item, sales incentive or for a similar purpose ("Premium Records"), the RSP is RCA's, BMG's or the BMG Label Licensee's actual selling price of such Record, less any taxes, duties, shipping and/or handling charges included in such price.

(iii) For Video Records the RSP is the ppd.

(iv) For RCA's, BMG's or BMG's Licensee's: (A) sales of Records through Record clubs, (B) exhibition of Videos or (C) licensing of the Masters, including without limitation, on a "penny rate", "flat fee", synchronization fee or royalty basis, the RSP is RCA's Net Receipts. "Net Receipts" is the gross amount received by RCA which is specifically and exclusively allocable to the Master(s) concerned, less any actual direct out-of-pocket costs incurred by RCA with respect to the exploitation concerned (including, with respect to Videos, all duplication costs) and any amounts which RCA is obligated to pay to third parties (such as, without limitation, mechanical copyright payments, AFM and other union fund payments). With respect to sales of Records through record clubs, whether affiliated or not, royalties will be accrued on all such Records for which RCA is paid or credited.

(d) RCA may change the method by which it computes royalties from one method (e.g., one based on the suggested retail list price) to another (e.g., one based on ppd). If RCA changes to a new royalty computation method in a particular country, the royalty rates shall be adjusted so that, immediately following the change to such new method, the adjusted royalty rate shall result in a net dollars and cents royalty accruable for NTC Sales of the Record type and in the configuration concerned equivalent to the amount accrued prior to the change and all other rates shall be proportionately adjusted.

(23) "Side" - A Master embodying Artist's performance of no less than three (3) minutes of continuous sound.

(24) "Statutory Rate" - The minimum compulsory license rate applicable to a single musical composition, without regard to playing time, in effect pursuant to United States Copyright law (or the recognized equivalent in Canada) as of the date of initial release in the U.S..

(25) "Super-Budget" Record - A Record bearing an RSP equal to or less than fifty percent (50%) of the highest RSP in the territory concerned of Top-Line Records of the same type and in the same configuration in the territory concerned.

(26) "Territory" - The universe.

(27) "Top-Line" Record - A Record bearing an RSP which is greater than eighty percent (80%) of the RSP of the then highest priced Record of the same type and in the same configuration in the territory concerned.

(28) "Video" - Any Master reproducing Artist's performance together with visual images.

## EXHIBIT "B"

RCA will accrue to Executive Producer's royalty account the royalties set forth in paragraph 5 of the Main Text and in this Exhibit B, subject to the terms and conditions set forth below. Royalties will be computed by applying the relevant royalty rate percentage to the applicable Royalty Base Price for the exploitation concerned.

(a) In respect of NTC Sales of Records in the United States, RCA shall accrue a royalty at the rate (the "Basic Rate") set forth in paragraph 5 of the Main Text.

(b) (i) In respect of NTC Sales of Records outside the United States, the royalty shall be the applicable percentage set forth below of the otherwise applicable Basic Rate:

<u>Territory</u>	<u>Percentage of Basic Rate</u>
Canada & The United Kingdom	80%
European Union (other than The United Kingdom)	70%
Argentina, Brazil, Mexico, Portugal	70%
Japan, Australia and New Zealand	66 2/3%
Central and South America (other than those Central and South American countries set forth above)	60%
Rest of the World	50%

(ii) In respect of sales of Records outside the United States, if the maximum royalty rate RCA is entitled to under any country's foreign exchange remittance regulations shall be equal to or less than the aggregate of (A) the royalty rate ("Your Rate") in paragraph (b)(i) of this Exhibit B, (B) the aggregate royalty rate ("Other Rate") accruable to the credit of royalty participants other than Executive Producer and (C) three percent (3%), then in lieu of the royalty rate accruable under paragraph (b)(i) with respect to sales in such country shall be the amount by which the maximum rate of the royalty permissible by such foreign exchange remittance regulations exceeds three percent (3%) multiplied by a fraction ("Your Fraction") with a numerator equal to Your Rate and a denominator equal to the Other Rate plus Your Rate.

(c) The royalties described in paragraphs (a) and (b)(i) of this Exhibit B shall be calculated, prorated, and reduced as set forth below:

(i) With respect to Mid-Price Records, the royalty shall be three-fourths (3/4) of the otherwise applicable rate.

(ii) With respect to (A) Budget Records, (B) Premium Records, (C) Multiple LPs, (D) Intentionally Deleted, (E) Records Sold through television advertisement campaigns, (F) Records described in paragraph (22)(c)(i) of Exhibit "A", and (G) Records Sold through sales channels not otherwise described herein, the royalty shall be one-half (1/2) of the otherwise applicable rate. With respect to Records Sold to any government or its subdivisions, departments or agencies, military exchanges or educational institutions or libraries, the royalty shall be two-thirds (2/3) of the otherwise applicable rate.

(iii) With respect to Super-Budget Records, the royalty shall be one-third (1/3) of the otherwise applicable rate.

(iv) (A) With respect to Sales of Records in the compact disc configuration, the royalty shall be eighty-five percent (85%) of the otherwise applicable rate.

(B) With respect to Sales of Audiophile Records, other than Records in the compact disc configuration, the royalty shall be seventy-five percent (75%) of the otherwise applicable rate.

(v) Intentionally Deleted.

(vi) In the event that RCA sells or licenses third parties to sell Records via telephone, satellite, cable or other direct transmission to the consumer over wire or through the air ("Electronic Transmissions"), the royalty shall be seventy percent (70%) of the otherwise applicable rate. Notwithstanding the foregoing, at Executive Producer's request but subsequent to the later of (A) the date three (3) years after RCA's initial commercial sale in the United States of Records in a particular form of Electronic Transmissions embodying masters recorded hereunder, or (B) the date that the particular form of Electronic Transmission constitutes a minimum of twenty-five percent (25%) of sales of Records embodying masters recorded hereunder, the royalty for Records sold in the particular form of such Electronic Transmissions shall be negotiated in good faith by the parties, taking into account among other things, the then-prevailing industry standards. Notwithstanding anything to the contrary contained herein, RCA shall have the right to release, distribute, sell, or license such Records prior to the completion of such negotiations and to accrue royalties to Executive Producer's account hereunder at the royalty rate set forth herein.

(d) No royalties (including, without limitation, mechanical royalties) shall accrue hereunder with respect to (i) Records distributed to any Person on a no-charge basis, or primarily for purposes of promotion or critique (e.g., Records sent to radio stations or reviewers or distributed to RCA employees), (ii) Records Sold at one-half (1/2) or less of RCA's then current posted wholesale list price (e.g., Records Sold as "scrap", "overstock" or "surplus") and (iii) Records Sold as "cutouts" or as discontinued merchandise.

(e) With respect to the exploitations of Masters described in paragraph (22) (c)(iv) of Exhibit "A", the royalty shall be fifty percent (50%) of the RSP multiplied by Your Fraction.

(f) (i) (A) Royalties will be accrued semi-annually and paid, less all Advances and other allowable charges pursuant to this agreement, within ninety (90) days following the last day of February and August, in accordance with RCA's regular accounting practices. RCA shall have the right to establish reasonable reserves for returns and exchanges. After the first full semi-annual accounting following the release of the Album, the royalty reserve established for the Album shall not be in excess of thirty-five percent (35%) of the aggregate number of units of the Album shipped. Each royalty reserve will be liquidated no later than the end of the fourth full semi-annual accounting period following the period during which such reserve is initially established. If RCA makes any overpayment of royalties (e.g., by reason of an accounting error or by paying royalties on Records returned later), RCA shall have the Offset Right with respect to such overpayment. Except as otherwise allowed herein, mechanical royalties payable with respect to Controlled Compositions shall not be cross-collateralized with royalties payable with respect to the sale or other exploitation of Records hereunder.

(B) Royalties shall be computed in the same national currency as RCA is accounted to, at the rate of exchange in effect at the time of payment to RCA for such Records, and shall not accrue until payment has been received by RCA in the United States or credited to RCA against an earlier advance made to RCA. If RCA is paid for exploitations outside the United States but cannot receive such payment in the United States, then during such period as RCA is unable to receive payment in the United States, RCA's only royalty obligation to Executive Producer in respect of any such exploitations shall be to deposit, but only at Executive Producer's written request and expense, the royalties payable to Executive Producer for such exploitations in the currency in which RCA receives payment, and such deposit shall be made to Executive Producer's account in a depository selected by Executive Producer and located in the country in which payment to RCA is made for such exploitations.

(ii) (A) Each royalty payment shall be accompanied by a statement in accordance with RCA's regular accounting practices. Each statement shall become binding on Executive Producer and Executive Producer shall not make any claim against RCA with respect to such statement, unless Executive Producer advises RCA, in writing, of the specific basis of such claim within two (2) years after the date the statement is rendered. RCA shall have no obligation to furnish statements after the expiration of the Term unless (A) royalties are payable or (B) Executive Producer requests such statement in writing and such request is received by RCA during the semi-annual accounting period following the period concerned.

(B) Executive Producer shall not have the right to sue RCA in connection with any royalty accounting or to sue for royalties accrued by RCA during the period a royalty accounting covers, unless Executive Producer commences the suit within three (3) years after the date when the statement in question was rendered. If Executive Producer commences suit with respect to any royalty accounting due Executive Producer, the scope of the proceeding shall be limited to determination of the amount of royalties due for the accounting periods concerned, and the court will have no authority to consider any other issues or award any relief except recovery of any royalties found owing. Executive Producer's recovery of any such royalties will be the sole remedy available to Executive

Producer by reason of any claim related to RCA's royalty accountings. Without limiting the generality of the preceding sentence, Executive Producer shall not have any right to seek termination of this agreement or avoid the performance of their obligations by reason of any such claim.

(C) All statements hereunder will be deemed conclusively to have been rendered on the due date set forth in paragraph (f)(i)(A) above, unless Executive Producer notifies RCA otherwise, in writing, within sixty (60) days after such due date.

(iii) Royalties accruing hereunder shall be less any taxes the laws of any applicable jurisdiction require to be withheld in connection with such royalties.

(iv) If, on any date, the performances embodied on any Master become property of the public domain in any territory of the world so that Persons may reproduce and/or exploit in such territory Records of such performances without license from and payment to RCA, then, notwithstanding anything herein to the contrary, no monies whatsoever shall accrue hereunder in connection with Records Sold in such territory on and after said date insofar as such performances are concerned unless RCA receives payment with respect to such exploitations.

(v) Executive Producer may only once during any calendar year, and only once with respect to any statement due hereunder, audit RCA's books and records to determine the accuracy of RCA's statements. Executive Producer shall notify RCA at least thirty (30) days prior to the date Executive Producer plans to commence the audit. RCA shall have the right to postpone the commencement of Executive Producer's audit by notice to Executive Producer no later than five (5) days prior to the commencement date specified in Executive Producer's notice; if RCA does so, the running of the time within which the audit may be made will be suspended during the postponement. If an audit is not completed within one (1) month from the time it began, RCA shall have the right to require Executive Producer to terminate it on seven (7) days' notice to Executive Producer at any time; RCA will not be required to permit Executive Producer to continue the examination after the end of that seven (7) day period. Executive Producer shall not be entitled to examine any manufacturing records or any other records which do not specifically report sales of Records or calculation of net receipts on which royalties are accruable hereunder. All audits shall be made during regular business hours, and shall be conducted by an independent Certified Public Accountant ("CPA") who is not compensated on a contingent fee basis, but not if the CPA or the CPA's firm has begun an examination of RCA's books and records for any Person (except Executive Producer), unless the examination has been concluded and any applicable audit issues have been resolved. Each examination shall be made at Executive Producer's own expense at RCA's regular place of business in the United States where the books and records are maintained.

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

Reg. No. 2,316,298

**United States Patent and Trademark Office**

Registered Feb. 8, 2000

**SERVICE MARK  
PRINCIPAL REGISTER**

**LOS SUPER SEVEN**

GOODMAN, DANIEL M. (UNITED STATES  
CITIZEN), DBA DAN GOODMAN MANAGE-  
MENT  
P.O. BOX 120775  
NASHVILLE, TN 37212

FIRST USE 9-14-1998; IN COMMERCE  
9-14-1998.

THE WORDING "LOS" MEANS "THE" IN  
ENGLISH.

FOR: ENTERTAINMENT SERVICES IN THE  
NATURE OF LIVE MUSICAL PERFORM-  
ANCES, IN CLASS 41 (U.S. CLS. 100, 101 AND  
107).

SER. NO. 75-605,030, FILED 12-8-1998.

JEFFREY S. MOLINOFF, EXAMINING ATTOR-  
NEY

**Int. Cl.: 9**

**Prior U.S. Cls.: 21, 23, 26, 36 and 38**

**Reg. No. 2,543,714**

**United States Patent and Trademark Office**

**Registered Mar. 5, 2002**

**TRADEMARK  
PRINCIPAL REGISTER**

**LOS SUPER SEVEN**

**GOODMAN, DANIEL M. (UNITED STATES CI-  
TIZEN), DBA DAN GOODMAN MANAGE-  
MENT  
P.O. BOX 120775  
NASHVILLE, TN 37212**

**FIRST USE 9-15-1998; IN COMMERCE 9-15-1998.**

**OWNER OF U.S. REG. NO. 2,316,298.**

**FOR: MUSICAL SOUND RECORDINGS; AND  
PRE-RECORDED COMPACT DISCS, AUDIO CAS-  
SETTES, VIDEOTAPES, AND AUDIO/VISUAL  
DISCS, ALL FEATURING MUSIC , IN CLASS 9  
(U.S. CLS. 21, 23, 26, 36 AND 38).**

**SER. NO. 75-601,550, FILED 12-8-1998.**

**TRACY CROSS, EXAMINING ATTORNEY**



Via Certified Mail  
Return Receipt Requested  
Copy via regular U.S. Mail

June 28, 2010

**Steve Berlin**  
8416 SW 216 Street  
Vashon, WA 98070

**Re: Los Super Seven Trademark**

Dear Mr. Berlin:

This office represents Dan Goodman. Mr. Goodman, as I am sure you are aware, is the owner of Federal Trademark Number 75605030 for the use of the mark "Los Super Seven" for entertainment services. As you know, Mr. Goodman has continuously exploited the "Los Super Seven" trademark for over twelve (12) years.

It has come to our attention that you and/or your agents are apparently promoting a series of performances in September, purporting to feature a group identified as "Los Supcr Seven." We understand you are advertising performances at the Hollywood Bowl, The Great American Music Hall, The Catalyst and other venues.

Your conduct is infringing my client's trademark rights in numerous ways, including infringement under the Lanham Act, unfair competition under Section 43(a) of the Lanham act, and trademark dilution.

Accordingly, I am writing you on my client's behalf to demand that you cease and desist all of your activities in connection with the "Los Super Seven" mark, including, without limitation, all uses in marketing, advertising, and promotion of personal appearances.

Again, we therefore demand that you immediately cease and desist any and all uses of the "Los Super Seven" name and mark in connection with any of your activities. At this juncture, my client would be satisfied with your written agreement to not engage in any further exploitation of the "Los Super Seven" mark, and your written indication to the venues you have engaged for them to also cease exploitation of these performances using Mr. Goodman's registered mark. Please understand that Mr. Goodman has no objection to you and your associates performing, you simply cannot perform under the mark "Los Super Seven."

I am happy to discuss any of this with you, but I must inform you that if you fail to comply with the terms of this letter within fifteen (15) days from the date hereof, my client may be forced to exercise his legal rights and remedies, which could result in your being liable for monetary damages and/or subject to injunctive relief. This letter is not intended to be a complete recitation of all of my client's rights and claims, all of which are expressly reserved.

Sincerely,

**Sawnie R. (Trip) Aldredge**

SRA/msm

c: *Red Light Management*  
*Monterey Peninsula Artists*

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE**

**THE TRADEMARK TRIAL AND APPEAL BOARD**

Petitioner: Daniel M. Goodman c/o P.O. Box 120713, Nashville,  
Tennessee 37212

Registrant: Steven Berlin, Suite 224, 3439 N.E. Sandy Blvd. Portland,  
Oregon 97232.

Proceeding Number 92057241

**DECLARATION OF RICK CLARK**

I am Rick Clark. I am a musician, journalist, record producer and music supervisor. I worked with Daniel Goodman as one of the producers of the third Los Super Seven album "Heard It on the X". Registrant Steve Berlin was not involved in the production of that sound recording nor was he involved in any of the live performances which followed the release of that sound recording.

To the best of my knowledge, information and belief, Daniel Goodman never abandoned the Los Super Seven service mark.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and accurate.

Executed on December 24, 2015.

A handwritten signature in black ink, appearing to read 'Rick Clark', is written over a horizontal line. The signature is stylized and somewhat cursive.

Rick Clark