

JUDGE GRIESA

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT NEW YORK

DAVID ADJMI,

Plaintiff,

- against -

DLT ENTERTAINMENT LTD.,

Defendant.

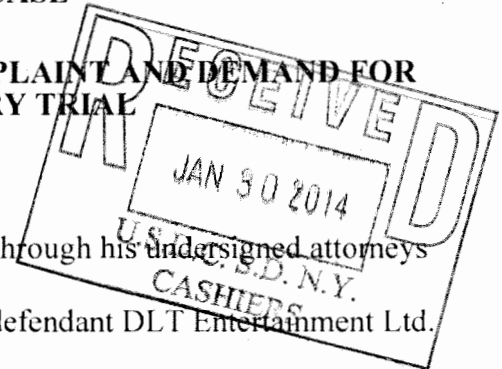
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ECF CASE

COMPLAINT AND DEMAND FOR  
A JURY TRIAL



Plaintiff David Adjmi ("Plaintiff" or "Adjmi"), by and through his undersigned attorneys  
Davis Wright Tremaine LLP, as and for his complaint against defendant DLT Entertainment Ltd.  
("Defendant" or "DLT"), respectfully alleges as follows:

**NATURE OF THE ACTION**

1. DLT has repeatedly insisted that *3C*, an original play by the award-winning American playwright David Adjmi, infringes DLT's copyright in the 1970s television comedy series *Three's Company*, which is parodied in *3C*. DLT sought to halt the only production of *3C* that has been mounted so far, writing to the producer, "we hereby demand that you cease further performances of the Play [and] provide us with an accounting of all revenues derived from the Play to date." The run of that production ended, and a publisher now wishes to include *3C* in a book of Adjmi's plays, while another publisher wishes to prepare an acting edition and license further productions on Adjmi's behalf. DLT has continued to contend that *3C* is an infringing work and has stated that it "will take whatever actions [it] deems necessary to protect its intellectual property rights." Adjmi seeks a declaration that *3C* does not infringe DLT's copyright, so that *3C* can be freely published, read, and performed.

2. *3C* does not infringe the copyright of DLT. It is an original work for the stage that tells its own story with its own characters but employs elements of the iconic television

series *Three's Company* for the purposes of parody and criticism. *3C* comments on the ways the television show presented and reinforced stereotypes about gender, age, and sexual orientation and also comments on the times in which the show flourished – when sexual liberation had begun to reshape American society, and dominant cultural forces like television attempted to channel it in commercially profitable directions, while many forms of sexual oppression continued. A copy of the script of *3C* is annexed hereto as Exhibit A.

3. *3C* copies no dialogue from *Three's Company*. It shares only a premise and some plot points, which have been transformed into parody to comment on the immensely popular television show, a familiar symbol of mainstream culture in the 1970s. While *3C* would not exist in its present form without *Three's Company*, it is in no way a copy of *Three's Company* or a substitute for *Three's Company*.

4. Critics and audiences who saw *3C* at the Off-Broadway Rattlestick Playwrights Theater in New York City in 2012 recognized that Adjmi was not copying anyone's work to pass off as his own or to use as a substitute for his own writing. He was referring to a cultural landmark and evoking its well-known characters and situations only to comment on them and the social and cultural influence they had. One critic described *3C* as an "original if disturbing deconstruction" of *Three's Company*. Another noted "familiar details and stories unspooling with decidedly dark – even venomous – intensity." A third pointed out that *3C* "reworked the original fluffy good humor [of *Three's Company*] into deep dysthymia and near-suicidal depression, using absurdism and existentialism overdosed with Chekhovian angst." A selection of articles about Adjmi and his work, including the aforementioned reviews, is annexed hereto as Exhibit B.

5. Two publishers have invited Adjmi to publish 3C, one in book form as part of a volume of plays he has written, and another in an acting edition to be used in drama schools and licensed for further professional and amateur performances. Adjmi wishes to authorize the publications and the licensing of the play for further productions. He is rightly concerned that DLT will seek to prevent publication of the book and the acting edition and to block further productions by asserting that they would infringe DLT's rights.

### **JURISDICTION AND VENUE**

6. Plaintiff seeks a declaration of his rights, pursuant to 28 U.S.C. §§ 2201(a) and 2202, to resolve an actual controversy within this Court's jurisdiction. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, as this action arises under the copyright laws of the United States.

7. The Court has personal jurisdiction over Defendant because it resides in the State of New York.

8. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) and 1400(a), as Defendant resides in this district.

### **THE PARTIES**

9. Plaintiff David Adjmi resides in New York, New York.

10. Defendant DLT Entertainment Ltd. is a corporation formed under the laws of the State of New York with its principal place of business at 124 East 55th Street, New York, New York 10022.

### **FACTUAL BACKGROUND**

#### **David Adjmi**

11. Adjmi is a playwright whose works include *Strange Attractors*, *The Evildoers*, *Elective Affinities*, *Marie Antoinette*, *3C*, *Caligula*, and *Stunning*. His plays have been performed

at the Royal Court Theatre in London; the Royal Shakespeare Company at Stratford, England; the Yale Repertory Theatre; the American Repertory Theater; Lincoln Center Theater; and the Soho Repertory Theatre, among others.

12. Adjmi graduated from Sarah Lawrence College (1995), the Playwrights Workshop at the University of Iowa (MFA 2001), and the Juilliard School's American Playwrights Program (2003).

13. Among other honors, Adjmi has received a Guggenheim Fellowship (2011), the Whiting Writers' Award (2010), the inaugural Steinberg Playwright Award (2009), a Bush Artists Fellowship (2008-09), the Kesselring Fellowship for Drama (2008-2009), the Marian Seldes-Garson Kanin Prize (2007), and the Jerome Foundation Fellowship (2006-07).

14. Adjmi's work makes wide-ranging cultural references for literary and dramatic purposes. It has been described as "exploratory, marked by a love of intertextuality and encryption." Ex. B at 9. One interviewer wrote, "He smashes together seemingly incompatible genres and delights in pitting raw emotion against extreme artifice." *Id.* at 11. A *New York Times* critic wrote in 2013:

Mr. Adjmi is one of several adventurous young playwrights now (most notably, Thomas Bradshaw) who rather than avoiding clichés are embracing them to find out what enduring truths and lies still lurk beneath their threadbare exteriors. Sometimes, as in Mr. Adjmi's "3C" and Mr. Bradshaw's "Job," this can bear revelatory dividends.

Ex. B at 18.

15. Adjmi's work frequently combines disparate styles and influences. For instance, his play *Strange Attractors* was influenced by Henrik Ibsen's play *A Doll's House*, Luis Buñuel's film *Belle Du Jour*, and Beck's music album *Midnite Vultures*. His play *Marie*

*Antoinette* blends elements of screwball comedy and German Romantic tragedy with the real facts of Marie Antoinette's life.

16. Although Adjmi's mash-ups include elements of popular culture and humor, they are not included for their own sake, but to make broader points. As *The Brooklyn Rail* wrote,

For all Adjmi's mordant humor, his work is intellectually far-reaching and deeply serious. As in Greek tragedy, his characters are tested by suffering and face decisions of ultimate consequence. All of his plays examine on some level the individual's relationship to pain and the often disastrous attempt to eradicate or control suffering. "I think people in general are broken, atomized," he says. "We don't know how to listen to what's actually going on with us, we're not taught how to experience ourselves, that's why we end up inflicting so much harm on people."

Ex. B at 13.

### **Three's Company**

17. *Three's Company* was one of the most popular television shows of the 1970s. From its debut as a mid-season replacement on ABC in the spring of 1977 to its final season in 1984, *Three's Company* was almost continuously among the top ten shows according to the Nielsen ratings, and it was the number one show in the United States in the 1978-1979 season. Because of its immense popularity, *Three's Company* is in many ways emblematic of the mid-to-late 1970s.

18. *Three's Company* was a situation comedy that revolved around three single roommates – Jack, Chrissy, and Janet – who shared an apartment in Santa Monica, California. Because the landlord frowned on male-female co-habitation, the roommates pretended that Jack was homosexual, which led to frequent jokes about his supposed sexual orientation.

19. *Three's Company* was based on a British sitcom called *Man About the House*, which also featured three roommates, two female and one male, in which the male roommate

pretended he was homosexual to avoid being evicted by the disapproving landlord. *Three's Company* was one of several versions of *Man About the House* that aired internationally; others appeared in the Netherlands, Sweden, Norway, Poland, Portugal, Russia, Ecuador, and Chile.

20. *Three's Company* was considered daring television for its time, in that it featured male and female characters living together without being related or married. Even though the relationships were entirely platonic, the idea of single, opposite-sex adults sharing an apartment was considered far more risqué on television in the late 1970s than it would be today. In that sense, *Three's Company* reflected aspects of the sexual revolution.

21. The humor in *Three's Company* similarly reflected a commercially acceptable depiction of changing sexual mores. It involved a great deal of extravagant sexual innuendo. Characters often overheard innocuous conversations between other characters in the next room and assumed that the offstage characters were engaged in a sexual act. For example, in the episode entitled *No Children, No Dogs* (Season 1, Episode 4), Janet overheard Jack and Chrissy in the kitchen playing with a puppy, and misunderstood.

Jack: Yeah, there's nothing a girl likes more than a little tickle on the tummy.

Chrissy: Not like that! Like this.

Jack: Yeah, is that better?

Chrissy: Ooooh, that is much better.

Jack: You are soooo beautiful! (Jack makes a kissing sound.)

Chrissy: Maybe we should get a blanket.

Jack: Oh no, it's warm enough in here.

Chrissy: Oh, oooooohhhh, I love your eyes. Ooooohhh.

Jack: Here you go. This is gonna make you feel so goood.

Chrissy: Oooh, I could kiss every inch of you! (Jack puts the dog's bowl on the table.)

Chrissy: No, Jack! Not on the table!

Jack: On the floor is better.

22. Similarly, in the episode entitled *Chrissy's Hospitality* (Season 4, Episode 9), Jack and Chrissy were installing a shower curtain while their landlord stood outside the bathroom and eavesdropped:

Jack: Okay, Chrissy, I'll get in the tub with you, then we can get it on.

Chrissy: Get next to me, I'll show you what to do.

Jack: This isn't exactly the first time I've ever done this.

Chrissy: Maybe so, but girls are better at this than boys.

Jack: Come on, Chrissy. A little less talk and a little more action, okay?

Chrissy: Okay, you do your part and I'll do mine. I don't think it'll reach!

Jack: Of course not, you've got to unfold it first!

23. The humor may seem forced today, but millions of Americans loved the show. Many television critics did not, considering it lowbrow and deriding the innuendo-laden humor as leering and immature. Some decried the show as a symptom of the erosion of the moral fiber of America.

24. Because the attractive female characters were often scantily clad and braless, the series was criticized by some as a part of the trend of "jiggle" television in the 1970s, along with shows like *Charlie's Angels* and *Wonder Woman*.

25. The fact that *Three's Company* even mentioned homosexuality made it a rarity among television shows at the time, and that was another way the show could be viewed as a

reflection of the sexual revolution, but its mocking treatment of homosexuality could not be considered progressive, even for the time. Nor could its treatment of women and their sexuality.

26. Like many sitcoms of the time, *Three's Company* presented a sunny and superficial view of American life in the 1970s. Nobody was lonely or depressed or anxious or alienated; nobody was *actually* gay or conflicted about his or her sexuality (although Jack pretended to be gay); nobody used illegal drugs or had mental health issues; nobody was worried about rape or domestic abuse – all of which are central topics of *3C*.

### 3C

27. As a child, Adjmi often watched popular television programs such as *Laverne and Shirley* and *Three's Company* for entertainment and to get a sense of the world outside the community in which he was raised. Adjmi grew up in the Syrian-Jewish community of Brooklyn. He has described feeling like an outsider in the insulated community of his childhood:

I felt Other within this Other. . . . Growing up I felt my sense of alterity very excruciatingly. I'm a gay, eccentric, arty person. In the world in general, I feel weird. But in this community – which has a very specific set of codes, values and structure – I felt suffocated.

Ex. B at 8. He has said that he was raised by television, but he found the world depicted in much of popular culture baffling and alienating as well.

28. In writing *3C*, Adjmi wanted to deconstruct the sunny, silly sitcom vision of *Three's Company* and contrast it with the reality of life in the 1970s for many people. He wanted to explore the ideological assumptions about gender and sexuality underpinning the sitcom surface and to highlight the pain that the enforcement of those assumptions could cause. As he acknowledged in an interview,

[F]or me [*3C* is] a very personal play. It's me looking in the mirror of popular culture and going, Oh my God, how can I live



inside of this? I'm juxtaposing the artifice of the sitcom tropes with this raw, personal stuff.

Ex. B at 19.

29. The ideological assumptions underlying “the sitcom tropes” were clear. For example, gay men in *Three’s Company* were presented as effeminate stereotypes. Mr. Roper frequently referred to Jack as a “fairy” or “Tinkerbell.” Of course, the joke was supposedly on Mr. Roper because Jack was a straight man who was only pretending to be gay, but the implication was that real gay men were “fairies” and “Tinkerbells” who deserved to be mocked for their sexual orientation and supposed lack of “real” masculinity. *Three’s Company* did not invent this stereotype, but it reinforced it weekly in millions of American homes.

30. Ironically, while many gay men in America were living closeted lives, pretending to be straight (and even marrying women) for fear of being arrested, losing their jobs, and being rejected by their families, the fictional Jack was perhaps the only straight man in America pretending to be gay.

31. As another example of an underlying assumption, the landlord and his wife, Mr. and Mrs. Roper, were presented as older characters who no longer had sex because Mr. Roper was no longer attracted to his aging wife and preferred to leer at magazine centerfolds or at the young women who lived in the apartment complex. The idea of an older woman as a no-longer-attractive, sex-starved shrew was played for laughs.

32. Chrissy was presented as the stereotypical “dumb blonde,” whose vapidness and innocence led to frequent misunderstandings. She often uttered double entendres without realizing it, and she was unaware of the effect her sexy appearance had on men around her.

33. Adjmi wrote *3C* in part as a parody of *Three's Company*, adapting some stock elements of the series to comment on and criticize the show itself and to expose ways in which the show was based on damaging cultural assumptions about gender and sexuality.

34. Adjmi wanted to use familiar tropes of *Three's Company* to expose the darkness underneath the shiny surface, to expose the ways *Three's Company* promoted a false vision of America and perpetuated harmful values while ignoring and glossing over realities of life.

35. *3C* therefore shares a basic premise with *Three's Company*: a man claims to be gay to fool a strict landlord into letting him live in an apartment platonically with two single women. As in *Three's Company*, the lead male character is a chef; the blonde female lead is ditzy and the daughter of a minister; and the brunette female lead is a florist.

36. But in *3C*, instead of serving as a foundation for leering, silly fun, the premise is shown to be immensely destructive. The stereotypes that defined *Three's Company* are exposed, reversed, and undermined. In *3C*, Brad, the straight man pretending to be gay, actually *is* a closeted gay man who has been rejected by his family. He is tormented by his inability to reveal that he is in love with his male friend Terry, who lives upstairs. Brad's sexual identity crisis causes him deep anguish: "I tried to fix myself but I *can't*," he tells one roommate. "Sometimes I don't even want to live anymore." Ex. A at 70.

37. The sexy blonde roommate in *3C*, Connie, describes herself as "lonely and needy" and worries about getting raped by a man she goes on a date with. Ex. A at 55. She describes a previous relationship with a boyfriend who "wasn't good to her" that left her unable to have a successful romantic relationship. *Id.* at 74.

38. The perky brunette roommate, Linda, suffers from destructively low self-esteem. She makes self-punishing comments such as, “I’m ugly and I look like a dyke!” Ex. A at 13. She allows the landlord, Mr. Wicker, to sexually molest her. *Id.* at 41.

39. The comically sex-starved landlady, Mrs. Wicker, suffers from panic attacks but does not want to take her medication. She also confesses to regretting every moment of her marriage to Mr. Wicker, and she makes comments such as, “*No, seriously, I want to die.*” Ex. A at 39, 83.

40. The tone of *3C* is very different from that of *Three’s Company*. *Three’s Company* was a light-hearted farce; *3C* is heavy and dark. The stage directions contain instructions full of foreboding and pain:

An inexplicable, inescapable horror sets in. They all feel it.

They all seem on the edge of suicide.

Brad bursts into anguished, racking sobs. He sobs and sobs and they just stare at him, blankly.

As they recover, a disquieting, awful dread creeps into the room.

Ex. A at 88, 95, 97-98. Nothing like that happened on *Three’s Company*.

41. The language and themes of the play are very different, as well. The characters in *3C* address serious philosophical and psychological issues, and they do so in language that refers to and sometimes even quotes other literature. Chekhov’s *Three Sisters*, for instance, is evoked, and the influence of 1950s existentialist comedy can also be seen.

42. The device of overheard and misunderstood conversations is used in *3C* to highlight problems that the farce of *Three’s Company* hid. In *3C*, Linda hears a conversation between Terry and Connie and thinks they are talking about a sex act involving the nose, when in fact they are snorting cocaine. Ex. A at 66-67. In contrast to the misunderstood conversations in

*Three's Company*, there is no “innocent” explanation for the overheard dialogue; the characters are using illegal drugs, not playing with a puppy. Another non-comical misunderstanding occurs when Connie reveals her trouble with intimate relationships and Brad erroneously believes she is confessing that she is a lesbian. *Id.* at 74-75.

43. As Adjmi has explained, there is comedy in *3C*, but “[t]he comedy deepens and expands the dark elements . . . the two elements – farce and tragedy – are both there and have equal presence.” Ex. B at 13.

44. As a reviewer for *The New York Times* wrote, the play “tries to excavate the grime lurking underneath the sitcom’s perky, glossy veneer.” Ex. B at 20. Another reviewer noted that the play “quickly takes a turn for the dark, as issues of sexuality, mental stability, suicide and the true meaning of happiness are explored through the characters’ angst-ridden dialogue and emotional outbursts.” *Id.* at 23.

45. The play is no mere spoof of *Three's Company*. Rather, *3C* has its own original dialogue, characters and plot. It refers to elements of *Three's Company* only to explore the disparity between pop culture and reality, and the damage that disparity can do to people who cannot harmonize their own realities with society’s expectations. As Adjmi explained in an interview with the *New York Post*:

I get disappointed when people look at this play as a satire of “Three’s Company.” Some of the reviews stick on that one level and it’s not about that at all. For me there’s a lot of rage and anger and violence and hostility in the world of the play, and these poor souls are orbiting in it. They’re kind of suspended in this limbo because they don’t know how to match the social roles the culture demands with who they are inside. There’s such a disparity that it starts to suffocate them, and it makes them manic. There’s this manic energy inside the play, but also these awful, horrible gaps that punctuate it as they try to navigate this social world. It’s a very existential play in the end.

Ex. B at 19. Playwright Jon Robin Baitz agreed, calling 3C an “exploration of the essential aloneness of the characters, and the toxic suffering they endure.” A copy of Baitz’s open letter regarding 3C is annexed hereto as Exhibit C.

### **Fair Use**

46. Section 107 of the Copyright Act codifies an exception to copyright protection for “fair use” of copyrighted work.

47. Section 107 offers four factors to be considered in determining whether a use is fair:

1. the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for, or value of, the copyrighted work.

48. In analyzing the first factor, courts have focused on whether the use is “transformative” – that is, whether the new work simply supplants the old work or adds something new, with a different purpose or character.

49. While 3C, like any parody, makes use of recognizable features of the work it parodies, it does so in a transformative way. The language, the tone, the characters’ inner lives, the revelations that they make throughout the play, and the denouement are all shockingly different from any episode of *Three’s Company*.

50. 3C adds new insights and understandings – for instance, in illuminating the truth that it was gay people, not straight people, who had to pretend about their sexuality in the 1970s,

while women, rather than merely being carefree and “jiggly” sex objects, struggled with issues of rape, abuse, and insecurity.

51. 3C is not merely a general commentary about the manners and mores of 1970s America, but a specific criticism of – and rejoinder to – the depiction in *Three’s Company* of 1970s America and its social and sexual attitudes. Adjmi, a gay playwright, offers a fresh perspective, showing how alienating *Three’s Company* felt to him and creating his own narrative with sometimes shockingly real characters in place of the smiling cardboard cut-outs of 1970s TV. In the process, he has created a new work of art.

52. In analyzing the second factor, the nature of the allegedly infringed work, courts consider whether the underlying work is a creative rather than a factual work. Here, *Three’s Company* is certainly the type of creative work that falls within the core of the Copyright Act’s protection, but, as the Supreme Court has recognized, this factor is not “ever likely to help much in separating the fair use sheep from the infringing goats in a parody case,” because parodies almost invariably copy a creative work.

53. In analyzing the third factor, courts consider whether the amount used was reasonable, counting only the aspects of the work that are original and protected by copyright. Here, many of the elements that Adjmi used are uncopyrightable ideas rather than copyrightable expression, such as the setting (in the 1970s in Santa Monica); a man who must pretend to be gay to live with two single women; a ditzy blonde woman who “jiggles;” a landlord who makes gay jokes; and slapstick comedy.

54. To the extent that 3C used any copyrightable expression from *Three’s Company*, it copied just enough to conjure up the original that was being parodied. As the Supreme Court

has explained, parody cannot avoid using some characteristic features of the original so that the audience can recognize what is being parodied and understand why.

55. None of the dialogue in *Three's Company* is copied, and the development of the plot is materially different. The characters in *3C* have adventures that have nothing to do with *Three's Company*. They use cocaine; they play a game called “Faces” that involves changing their facial expressions to match an emotion shouted out by another character; Linda helps Mrs. Wicker with calligraphy for party invitations. *3C* creates its own scenes with versions of the *Three's Company* characters. It also revisits familiar scenes from *Three's Company* – the “girls” meet the man who becomes their roommate when they find him sleeping in their bathtub after a party, and they pour wine from party glasses back into a bottle – but these ideas and other, more familiar features, such as comical misunderstandings with sexual undertones and a landlord making gay jokes, are not only stock features that are not protected by copyright but are put to subversive use in *3C* in any event.

56. In analyzing the fourth fair use factor, market impact, courts consider whether the parody will harm the market for the original. As the Supreme Court has explained, a parody and the original usually serve different market functions, and a parody generally will not serve as a substitute for the original in the mind of the consumer.

57. Here, no one seeing or reading *3C* could mistake it for a theatrical version of *Three's Company* authorized by DLT, given the play's tragic tone, different plot and characters, and countless other differences, such as its depiction of illegal drug use and its revelation of Brad's true sexual orientation. No one would purchase tickets for the dark and disturbing *3C* (despite its humor) as a substitute for watching a lighthearted, frothy episode of *Three's Company*.

58. To the extent that 3C copies protectable elements of *Three's Company*, the use qualifies as a fair use under the Copyright Act for purposes of parody and commentary.

59. Because a fair use is by definition a non-infringing use, DLT's permission was not needed for 3C, and DLT may not block productions or the publication of 3C.

### **The Future of 3C**

60. In 2012, a production of 3C was presented at the Rattlestick Playwrights Theater in New York.

61. During the New York run of 3C, the theater received a letter dated June 14, 2012 from lawyers representing DLT. The letter insisted that 3C infringed on DLT's rights under copyright law and demanded that the theater "cease further performances of the Play; provide us with an accounting of all revenues derived from the Play to date; and furnish us with your written assurance that you will fully comply with these demands." 3C's run ended in July 2012, as scheduled.

62. In a letter dated December 21, 2012, prior counsel for Adjmi explained to DLT's counsel why 3C did not infringe DLT's rights.

63. In a letter dated January 3, 2013, counsel for DLT responded that DLT "strongly disagree[d with Adjmi's counsel's] analysis and conclusions" and declined to respond further but reserved "our client's right to take such further actions as may be necessary to protect its interests."

64. In a letter dated January 24, 2013, Adjmi's prior counsel notified DLT's counsel that Adjmi was considering publishing 3C and "taking steps to license the play."

65. In a letter dated March 8, 2013, DLT's counsel responded: "We continue to dispute your legal position, and will take whatever actions our client deems necessary to protect its intellectual property rights in its *Three's Company* television series."



66. In a letter dated December 16, 2013, counsel for Adjmi wrote to DLT's counsel to inform DLT of the offer to publish *3C* and asked DLT to reconsider its stated (and repeated) position that *3C* infringes its rights. On December 20, 2013, DLT responded that it continued to maintain its position. A copy of the correspondence between counsel for Adjmi and DLT is annexed hereto as Exhibit D.

67. Theatre Communications Group ("TCG") has proposed publishing *3C* in book form as part of a volume of Adjmi's works. In addition, Samuel French, Inc. has proposed publishing the acting edition of the play, publishing the play as an e-book, and handling stock and amateur licensing for English-language productions of the play worldwide. Adjmi anticipates that these two publications of the play will lead to sales of the play in book and e-book form and productions of the play, especially at regional and university theaters.

68. DLT has already sought to halt a production of *3C* and, when informed of Adjmi's plans to publish the play and authorize the licensing of further productions, has reiterated its legal position that *3C* infringes its copyright.

69. The production of a play requires significant advance planning and investment. A theater must be rented and a minimum period paid for in advance, or, if a producing organization has its own theater, a period of weeks must be set aside for rehearsals and the run. A director, actors and crew must engaged, and their time reserved for rehearsals as well as previews and performances. Sets and costumes must be designed and created. Lighting and sound must be designed. An advertising campaign must be planned and ads must be prepared and placed, all before opening night. Adjmi reasonably believes that producers and theater companies will be deterred from performing *3C* because of the threat of legal action and will not invest in mounting a production of *3C* if there is a danger that they may become enmeshed in litigation.

70. The publication of a play also requires significant advance planning and investment. Editors and proofreaders must be assigned. A cover must be designed. Any additional material – a foreword, an introduction, an author’s note – must be solicited, written, and edited. The book must be typeset and prepared for printing. Press releases and a publicity campaign must be prepared, all before the publication date. Adjmi reasonably believes that TCG will be deterred from publishing *3C* because of the threat of legal action. Indeed, TCG has informed Adjmi’s counsel that it cannot move forward with publication of *3C* until it is assured “that the rights for publication are available.” A copy of an email message from TCG to counsel for Adjmi is annexed hereto as Exhibit E.

71. Adjmi reasonably believes that Samuel French will be similarly deterred from publishing *3C* because of the threat of legal action. Samuel French has informed Adjmi’s agent that it needs to know when the rights for *3C* are “cleared.” A copy of an email message from Samuel French to Adjmi’s agent is annexed hereto as Exhibit F.

72. If *3C* is not published and not seen, one of Adjmi’s most ambitious and critically successful works will disappear from public view. Not only will Adjmi not earn royalties, but his reputation will be diminished and his career will be forever hampered. People will not be able to produce *3C* or see it, or even read it in book form. It will disappear from our culture.

**AS AND FOR A FIRST CLAIM FOR RELIEF**  
**(Declaratory Judgment as to *3C*)**

73. Plaintiff repeats and realleges paragraphs 1 through and including 72 set forth hereinabove, as if the same were fully set forth herein.

74. An actual controversy has arisen and now exists between Plaintiff and Defendant concerning whether performance or publication of the play *3C* infringes Defendant’s rights in the television series *Three’s Company*.

75. Plaintiff thus desires and requests that a judicial determination be made, pursuant to 28 U.S.C. § 2201, that 3C is an original work and that any copyrightable elements of *Three's Company* that are used are used in a transformative manner for purposes of parody and commentary, and thus represent a non-infringing fair use pursuant to 17 U.S.C. § 107.

76. A judicial determination of the parties' rights and duties is necessary and appropriate at this time and under these circumstances to resolve the controversy between the parties.

### **PRAYER FOR RELIEF**

Wherefore, Plaintiff respectfully requests that this Court enter judgment as follows:

1. A declaration pursuant to 28 U.S.C. § 2201 that 3C is an original work and that any copyrightable elements of *Three's Company* that are employed are used in a transformative manner for purposes of parody and commentary and thus represent a non-infringing fair use pursuant to 17 U.S.C. § 107;

2. Awarding Plaintiff his costs and attorneys' fees, pursuant to 17 U.S.C. § 505; and

3. Granting Plaintiff such other and further relief as to this Court shall seem just and proper.

Dated: New York, New York  
January 30, 2014

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

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Camille Calman

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(*pro hac vice* application pending)

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