

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DAVID ADJMI,

Plaintiff,

v.

DLT ENTERTAINMENT LTD.,

Defendant,

THREE'S COMPANY, A JOINT VENTURE, and
DLT ENTERTAINMENT LTD.,

Counter-Claimants,

v.

DAVID ADJMI,
RATTLESTICK PRODUCTIONS, INC.,
RISING PHOENIX REPERTORY, INC., and
PIECE BY PIECE PRODUCTIONS, INC.,

Counter-Defendants.

Civil Action No. 14 CV 568 (TPG) (JCF)

**ANSWER TO FIRST AMENDED
COMPLAINT AND DEMAND FOR A
JURY TRIAL AND COUNTERCLAIMS**

Defendant DLT Entertainment Ltd. (“DLT” or “Defendant”) hereby answers the allegations contained in the First Amended Complaint and Demand for a Jury Trial (“Amended Complaint”) filed against it by Plaintiff David Adjmi (“Plaintiff” or “Adjmi”), the paragraph numbers below corresponding to those of the Amended Complaint. Counter-Claimants DLT and Three’s Company, a California joint venture (“the Joint Venture”) consisting of NRW Entertainment Properties, LLC f/k/a The NRW Company (“NRW”) and T.T.C. Productions, Inc. (“TTC”) (collectively “Counter-Claimants”), hereby allege against David Adjmi, Rattlestick

Productions, Inc. (“RPI”), piece by piece productions, Inc. (“PBP”), and Rising Phoenix Repertory, Inc. (“RPR”) (collectively “Counter-Defendants”) as follows:

GENERAL DENIAL

To the extent that any allegations of the Amended Complaint are not specifically admitted, DLT denies the same.

NATURE OF THE ACTION

1. As to the first sentence, DLT admits only that *Three’s Company* is a 1970s television comedy series. The remaining allegations in the first sentence are denied. As to the second sentence, DLT admits that on or about June 14, 2012, it alleged that the Counter-Defendants’ production of the play *3C* infringes Counter-Claimants’ copyright in *Three’s Company*, and sought to halt production of the play *3C*. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the third sentence of Paragraph 1, and therefore denies the same. As to the fourth sentence, DLT admits that it maintains its position that *3C* is an infringing work. As to the fifth sentence, DLT further admits that Plaintiff purports to seek a declaration that *3C* does not infringe Counter-Claimants’ copyright.

2. DLT admits only that what purports to be a copy of the script of *3C* is annexed to the Amended Complaint as Exhibit A. DLT denies the remaining allegations of Paragraph 2.

3. DLT admits only that *3C* would not exist without *Three’s Company*. DLT denies the remaining allegations of Paragraph 3.

4. DLT admits only that Exhibit B to the Amended Complaint purports to be a selection of articles about Adjmi and his work. DLT denies the remaining allegations of Paragraph 4.

5. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5, and therefore denies the same.

JURISDICTION AND VENUE

6. DLT admits that Plaintiff seeks a declaration of his right, pursuant to 28 U.S.C. §§ 2201(a) and 2202, to resolve an actual controversy within this Court's jurisdiction. DLT admits that this 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. DLT admits that the Court has personal jurisdiction over DLT.

8. DLT admits that venue is proper pursuant to 28 U.S.C. §§1391(b)(1) and 1400(a).

THE PARTIES

9. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9, and therefore denies the same.

10. DLT admits that it 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. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11, and therefore denies the same.

12. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12, and therefore denies the same.

13. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13, and therefore denies the same.

14. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14, and therefore denies the same.

15. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15, and therefore denies the same.

16. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16, and therefore denies the same.

Three's Company

17. DLT admits only that *Three's Company* was one of the most popular television shows of the 1970s; that from its debut 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 that it was a top show in the United States in the 1978-1979 season. DLT is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 17, and therefore denies the same.

18. DLT admits the first sentence of Paragraph 18. As to the second sentence, DLT further admits that the roommates pretended that Jack was homosexual, but denies the remainder of the allegations.

19. As to the first sentence, DLT admits only that *Three's Company* was based on a British situation comedy called *Man About the House*, which also featured three roommates, two female and one male, in which the male roommate pretended he was homosexual, but the remaining allegations are denied. DLT is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 19, and therefore denies the same.

20. DLT admits that a television show depicting three single, opposite-sex adults platonically sharing an apartment in the late 1970s was daring. DLT is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 20, and therefore denies the same.

21. DLT admits that *Three's Company* contained sexual innuendo and dialogue between characters off-stage, and that the quotation recited in Paragraph 21 of the Amended Complaint is from Season 1, Episode 4 of *Three's Company*, entitled *No Children, No Dogs*. DLT is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 21, and therefore denies the same.

22. DLT admits that the quotation recited in Paragraph 22 of the Amended Complaint is from Season 4, Episode 9 of *Three's Company*, entitled *Chrissy's Hospitality*. DLT admits that during the scene recited in Paragraph 22 of the Amended Complaint, the Jack and Chrissy characters were installing a shower curtain while the landlord character stood outside the bathroom and eavesdropped.

23. DLT admits that millions of Americans loved the show *Three's Company*. DLT is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 23, and therefore denies the same.

24. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24, and therefore denies the same.

25. DLT admits that the subject matter and issues tackled by *Three's Company* were revolutionary. DLT is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 25, and therefore denies the same.

26. DLT denies that *Three's Company* solely presented a sunny and superficial view of American life in the 1970s. DLT further denies that no character was lonely, depressed, anxious, or alienated in *Three's Company*. DLT is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 26, and therefore denies the same.

3C

27. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27, and therefore denies the same.

28. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28, and therefore denies the same.

29. DLT denies the allegations contained in Paragraph 29.

30. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30, and therefore denies the same.

31. DLT admits that the *Three's Company* characters Mr. and Mrs. Roper were older characters who appeared to the audience as no longer having marital sex together. DLT is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 31, and therefore denies the same.

32. DLT admits that the *Three's Company* character Chrissy was blonde and innocent, and frequently involved in misunderstandings. DLT is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 32, and therefore denies the same.

33. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33, and therefore denies the same.

34. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 34, and therefore denies the same.

35. DLT admits that 3C copies the plot premise, characters, sets, and certain scenes from *Three's Company*. DLT also admits that in 3C, as in *Three's Company*, the lead male character is an aspiring chef; the blonde female lead is the daughter of a minister; and the brunette female lead is a florist. DLT is without knowledge or information sufficient to form a

belief as to the truth of the remaining allegations contained in Paragraph 35, and therefore denies the same.

36. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36, and therefore denies the same.

37. DLT admits only that the quotes recited in Paragraph 37 are from the script 3C contained in Exhibit A to the Amended Complaint. DLT is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 37, and therefore denies the same.

38. DLT admits only that the quotes recited in Paragraph 38 are from the script 3C contained in Exhibit A to the Amended Complaint. DLT is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 38, and therefore denies the same.

39. DLT admits only that the quotes recited in Paragraph 39 are from the script 3C contained in Exhibit A to the Amended Complaint. DLT is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 39, and therefore denies the same.

40. DLT admits only that the director notes recited in Paragraph 40 are from the script 3C contained in Exhibit A to the Amended Complaint. DLT denies each of the remaining allegations contained in Paragraph 40.

41. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 41, and therefore denies the same.

42. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 42, and therefore denies the same.

43. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 43, and therefore denies the same.

44. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 44, and therefore denies the same.

45. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 45, and therefore denies the same.

Fair Use

46. Paragraph 46 contains only legal conclusions as to which no response is required.

47. Paragraph 47 contains only legal conclusions as to which no response is required.

48. Paragraph 48 contains only legal conclusions as to which no response is required.

49. DLT denies the allegations contained in Paragraph 49.

50. DLT denies the allegations contained in Paragraph 50.

51. DLT denies the allegations contained in Paragraph 51.

52. Paragraph 52 contains only legal conclusions as to which no response is required.

53. Paragraph 53 contains only legal conclusions as to which no response is required.

54. As to the first sentence, DLT denies that Adjmi copied no more than was necessary to conjure up the original. The second sentence of Paragraph 54 contains only legal conclusions as to which no response is required.

55. As to the first sentence, DLT admits only that 3C copies dialogue from *Three's Company*, but denies that the copied dialogue is *de minimis* or not expressive. DLT denies the second sentence. As to the third sentence, DLT admits only that 3C's characters evoke *Three's Company's* characters, but denies the remaining allegations. As to the fourth sentence, DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore denies the same. As to the fifth sentence, DLT admits only that 3C copies scenes

from *Three's Company*, but denies that the scenes and features that 3C copies from *Three's Company* are mere stock features that are unprotected by copyright, or that they are put to subversive use in 3C. Any remaining allegations contained in Paragraph 55 that are not expressly admitted are therefore denied.

56. Paragraph 56 contains only legal conclusions as to which no response is required.

57. DLT denies the allegations contained in Paragraph 57.

58. DLT denies the allegations contained in Paragraph 58.

59. DLT denies the allegations contained in Paragraph 59.

The Future of 3C

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

61. DLT admits that lawyers representing DLT sent a letter dated June 14, 2012 to the Rattlestick Playwrights Theater, among other parties. DLT admits that the letter asserted 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." DLT is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 61, and therefore denies the same.

62. DLT admits that in a letter dated December 21, 2012, prior counsel for Adjmi attempted to explain to DLT's counsel why it believed 3C did not infringe DLT's rights. DLT denies that 3C does not infringe DLT's rights.

63. DLT admits that 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 reserved "our

client's right to take such further actions as may be necessary to protect its interests." DLT denies that DLT's counsel did not respond further.

64. Admitted.

65. DLT admits that in a letter dated March 8, 2013, DLT's counsel responded in part: "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." DLT denies that DLT's counsel did not respond further.

66. DLT admits that 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 to ask DLT to reconsider its stated (and repeated) position that *3C* infringes DLT's rights. DLT admits that on December 20, 2013, DLT responded that it maintained its position. DLT admits that what appears to be a copy of the correspondence between counsel for Adjmi and counsel for DLT is annexed to the Amended Complaint as Exhibit D.

67. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 67, and therefore denies the same.

68. DLT admits that it has already sought to halt production of *3C* and has reiterated its legal position that *3C* infringes Counter-Claimants' copyright. DLT denies any allegation contained in Paragraph 68 stating that the sole basis for DLT defending its rights is related or in response to Adjmi's plans to publish the play *3C* or authorize the licensing of further productions.

69. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 69, and therefore denies the same.

70. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 70, and therefore denies the same.

71. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 71, and therefore denies the same.

72. DLT is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 72, and therefore denies the same.

AS FOR PLAINTIFF'S FIRST CLAIM OF RELIEF

73. Defendant repeats and re-alleges Paragraphs 1 through and including 72 set forth above, as if the same were fully set forth herein.

74. Admitted.

75. DLT admits that Plaintiff desires and requests a judicial determination to be made in Paragraph 75.

76. Admitted.

AFFIRMATIVE DEFENSES

77. The Amended Complaint fails to state a claim upon which relief can be granted.

78. Plaintiff's claims are barred by the doctrines of waiver and/or license.

79. The play *3C* is not entitled to claim the benefit of the fair use doctrine with respect to infringement of the copyright in *Three's Company*.

AS FOR PLAINTIFF'S PRAYER FOR RELIEF

1. DLT denies that Plaintiff is entitled to any of the relief requested in Paragraph 1 on page 19 of the Amended Complaint.

2. DLT denies that Plaintiff is entitled to any of the relief requested in Paragraph 2 on page 19 of the Amended Complaint.

3. DLT denies that Plaintiff is entitled to any further relief requested in Paragraph 3 of page 20 of the Amended Complaint.

COUNTERCLAIMS

Counter-Claimants DLT and the Joint Venture hereby allege as follows against the Counter-Defendants:

NATURE OF THE ACTION

1. This is an action to permanently enjoin the reproduction, publication, distribution, public performance, exhibition, and public display of the play entitled *3C*, written by Adjmi and previously produced by Counter-Defendants and performed at Rattlestick Playwrights Theater, on the ground that *3C* is an unauthorized derivative work of the celebrated television show *Three's Company*. In addition to equitable relief, Counter-Claimants seek damages for past infringement against all Counter-Defendants, jointly and severally.

PARTIES

2. Counter-Claimant DLT is a corporation formed under the laws of the State of New York with a principal place of business in New York, New York. Counter-Claimant DLT is the owner of the exclusive distribution and exploitation rights in and to *Three's Company* under license from the Joint Venture.

3. Counter-Claimant the Joint Venture is a joint venture consisting of TTC and NRW, formed under the laws of California with a principal place of business in Beverly Hills, California. The Joint Venture is the owner of the copyright in and to *Three's Company* and each character identified in paragraphs 69-110. Each episode of the show has been registered in the United States Copyright Office. *See* Exhibit A.

4. Counter-Defendant David Adjmi resides in New York, New York.

5. Counter-Defendant RPI is a corporation formed under the laws of the State of New York with a principal place of business in New York, New York.

6. Counter-Defendant PBP is a corporation formed under the laws of the State of New York with a principal place of business in New York, New York.

7. Counter-Defendant RPR is a corporation formed under the laws of the State of New York with a principal place of business in Brooklyn, New York.

JURISDICTION

8. Counter-Claimants' counterclaims of copyright infringement against Adjmi, RPI, and RPR arise under FED. R. CIV. P. 13 and the Copyright Act under 17 U.S.C. §§ 101 *et seq.*

9. This Court has subject matter jurisdiction over these counterclaims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

10. This Court has personal jurisdiction over Adjmi because Adjmi resides in New York, New York.

11. This Court has personal jurisdiction over RPI, PBP, and RPR because all of these companies reside in New York, New York.

12. Venue is proper under 28 U.S.C. §§ 1391(b)-(c), 1400(a)-(b).

FACTUAL BACKGROUND

Three's Company

13. The TV show *Three's Company* is a comedy that aired new episodes from 1977 to 1984. The show is about a single man, Jack Tripper (played by John Ritter), who moves in with two single women Janet Wood (played by Joyce DeWitt) and Chrissy Snow (played by Suzanne Somers), and avoids issues with his initial landlords, Mr. and Mrs. Roper (played by Norman Fell and Audra Lindley), by pretending to be homosexual. The show follows the three roommates through their innuendo-laden but platonic misadventures and misunderstandings.

14. While *Three's Company* often depicted comedic, farcical situations, it represented more than just light-hearted fare. *Three's Company* broke taboos, and commented on how 1970s and 1980s society treated sexual mores, homosexuality, and cohabitation among the genders. It was a game-changer in television, challenging an older society to become more in touch with modernity. As one commentator wrote, *Three's Company* was a rebellion against the “straight-laced, postwar 1950s romanticism of *Happy Days* and *Laverne & Shirley*.” See Chris Mann, COME AND KNOCK ON OUR DOOR: A HERS AND HERS AND HIS GUIDE TO THREE'S COMPANY at 1 (St. Martin Press, N.Y. 1998) (“Mann,” Exhibit B).

15. For example, as David Marc comments in his book *Comic Visions: Television Comedy and American Culture*, the landlord in *Three's Company*, Mr. Roper, is the subject of much derision because he is part of an earlier generation, out of touch with the modern understanding of sexuality. David Marc, COMIC VISIONS: TELEVISION COMEDY AND AMERICAN CULTURE, 180 (Blackwell Publishers 2002) (“Marc,” Exhibit C). Mr. Roper is “unable to conceive of the idea that a ‘normal’ man [such as Jack Tripper] might share friendships – never mind an apartment – with women who were not doing his sexual bidding.” *Id.* The landlord is labeled “unhip because he could not be casual about sexual matters,” whereas the cohabitating trio “were hip” because they did not “fetishize sex, and thus, they were healthy and admirable[.]” See Mann at 48. “The audience . . . is congratulated for living in the liberated future.” Marc at 180.

16. The show also challenged the social norms of the stereotypical machismo male, which traditionally tied sexual dominance to masculinity. As explained by Don Nicholl, one of the lead producers of *Three's Company*, Jack Tripper was unlike lead actors at the time: “[h]e’s a new type of leading man. He reflects the times and the increased acceptability of nonsexual

relationships between men and women. The old macho, leading-man image would never fit here. He started something new and I think it will be copied a lot.” Mann at 46.

17. Another element of *Three’s Company* that challenged cultural stereotypes was the concept that Jack Tripper could pretend to be gay and continue to be masculine. The only character who voiced disapproval over Jack’s pretended sexual orientation was the dimwitted landlord Mr. Roper. For one of the first times on television, *Three’s Company* showed that there was nothing wrong with being gay, even if it was just for-pretend. Said John Ritter, the actor playing Jack Tripper: “I always thought it was cool because I was a heterosexual who didn’t mind pretending to be gay – it wasn’t a question of my masculinity and I didn’t have to prove anything. The only homophobia that was going on was with the landlord; everybody else was just fine about it. And I think that was a nice attitude because a lot of gay people whom I’ve met since then and during the show like the idea that I wasn’t a heterosexual who thought that [being gay] was something wrong.” *Id.* at 51-52.

18. Further, *Three’s Company* writer Paul Wayne said of the Jack-is-gay-comic device: “I guess we were trying to make social commentary.” *Id.* at 52. And even though Mr. Roper did exchange jabs with Jack over his sexual orientation, Wayne says, “it didn’t get insulting. We didn’t play up gayness simply for the laugh you’d get for making somebody light in his loafers.” *Id.* The audience understood that any “gay jokes” in *Three’s Company* were meant to poke fun at an older generation that was uncomfortable with homosexuality.

19. In addition to challenging notions of the traditional masculine man, *Three’s Company* also challenged expectations of what women could demand in their marriages. The sexless relationship between, Mr. and Mrs. Roper was a frequent theme of the show. However, *Three’s Company* was doing much more than depicting Mrs. Roper as “an older women [who is]

a no-longer-attractive, sex-starved shrew [] played for laughs,” as Adjmi represents in Paragraph 31 of his Amended Complaint. Rather, Mr. and Mrs. Roper’s marriage parodied the traditional idea that men were the only ones who could be sexually undernourished in a relationship. As the actress playing Mrs. Roper, Audra Lindley, said: “It was a reverse of the cliché of the wife saying she had a headache. I think a lot of the older married women appreciated it – those who were married and didn’t get enough sex from their husbands – because this was never talked about.” *Id.* at 49.

20. Overall, Adjmi incorrectly states that *Three’s Company* was merely a silly television show, and that only his play *3C* takes a serious look at the issues depicted in the show.

21. Rather, *Three’s Company* itself attacked some of the most controversial topics of its time, often making light of them, but commenting on them nevertheless.

22. Adjmi’s *3C* merely builds on *Three’s Company*’s work, depicting the same type of sexual tensions and challenging the same orthodoxy that *Three’s Company* itself challenged. *3C* does not transform or parody *Three’s Company* as Adjmi claims.

DLT and the Development of Three’s Company

23. The production of *Three’s Company* was by no means a forgone conclusion. It took years of determination, hard work, and talent to produce and broadcast the first episode of the controversial show in 1977.

24. *Three’s Company* originated from an earlier television show, *Man About the House*, that aired in Britain in 1973. *Man About the House* was groundbreaking for its time, depicting a man pretending to be homosexual and cohabitating with two females. The show ran successfully for three years in Britain, but was considered too racy for American audiences. However, New York producer Donald L. Taffner, Sr. (the founder of DLT) disagreed. Taffner

believed that the United States was ready for a television show that confronted previously taboo topics such as sex, homosexuality, and cross-gender cohabitation.

25. In the fall of 1975, Taffner, in conjunction with another New York producer, Ted Bergmann, began pitching the idea of producing a U.S. version of *Man About the House* to three television networks in California. All three networks immediately turned the idea down, refusing to broadcast a show depicting a man living with two women outside of marriage, even if the relationship was platonic. However, after careful prodding, Bergeman and Taffner were able to convince a few executives within ABC-TV that the show could be successful, and development of the show was approved.

26. After first airing in the spring of 1977, *Three's Company* became one of the biggest television hits of the season, skyrocketing to the Top 10 in its second week.

27. In the years following the first airing, *Three's Company* won numerous esteemed awards, such as:

- the 1978 People's Choice award for Favorite New TV Comedy Program;
- the 1979 Golden Globe award to Norman Fell for Best TV Actor in a Supporting Role;
- the 1984 Primetime Emmy award to John Ritter for Outstanding Lead Actor in a Comedy Series;
- the 1984 Golden Globes award to John Ritter for Best Performance by an Actor in a TV-Series - Comedy/Musical; and
- the 1984 People's Choice Award for Favorite TV Program.

28. Over thirty years later, *Three's Company* remains one of the most memorable TV series of all time. Reruns of *Three's Company* continue to play on cable television networks such as TV Land, and the characters depicted in the show are some of the most recognizable in television history. In fact, *Three's Company* was nominated for a TV Land Award in 2003, 2004, and 2005 (twenty years after the original episodes were aired).

29. In using the characters and style of *Three's Company*, Adjmi merely capitalizes on the success and goodwill of the famous television show.

3C

30. The play *3C* is nothing more than an unauthorized derivative work of *Three's Company*, a derivative work that borrows many of *Three's Company* most recognizable features solely to capitalize on the show's success. Even the name is a direct reference to the show.

31. The play borrows not only many of the same concepts and jokes of *Three's Company*, but all six of the show's main characters, including their setting, background, and demeanor. For example:

- a. The title *3C* is clearly a direct reference to the title *Three's Company*.
- b. *3C*, like *Three's Company*, takes place in Santa Monica in 1978.
- c. *3C* is set in an apartment living room with several visible doors leading to the kitchen, bathroom, bedrooms and entrance. This was the precise primary set of *Three's Company*.
- d. *3C*'s lead female characters – blonde Connie and brunette Linda – are roommates, like *Three's Company*'s Chrissy and Janet characters, respectively.
- e. Connie in *3C*, just like Chrissy in *Three's Company*, is blonde and feminine, and is endearingly innocent, but often confused, and misunderstands language and behavior for comedic effect. In both *3C* and *Three's Company*, the character's father is a preacher. Connie is attractive and “jiggles,” just like Chrissy. Connie wears similar clothing as Chrissy's character.
- f. Linda in *3C*, just like Janet in *Three's Company*, is brunette and down-to-earth, and is depicted as the intelligent and reliable counterpart to her roommate Connie in *3C* (and similarly, to Chrissy in *Three's Company*). Linda works in a flower shop, as

does Janet. *3C*, like *Three's Company*, focuses on her self-consciousness over being less attractive than her female roommate, and being perceived as less spontaneous. Both Linda in *3C* and Janet in *Three's Company* are distrustful of men, and dress in a similar boyish style.

g. *3C* begins with Connie and Linda sitting on the sofa; it is the morning after a party for their former roommate, Beverly (Eleanor in *Three's Company*). Their former roommate is gone, and the characters complain about their hangovers. The brunette (Linda) is combining wine from various bottles into one bottle using a funnel, and the two are cleaning up from the party. In their discussion, they are concerned about paying the rent. This is identical to the first episode of *Three's Company*.

h. As the scene evolves, the male lead (Brad) appears in the girls' apartment as a "leftover" from the party who blacked out after drinking too much alcohol. This is identical to the first episode of *Three's Company* with respect to Jack. Even the dialogue bears an uncanny similarity:

3C (p.17)

Brad: (os; hungover) I was at the party last night. . . . I must've blacked out.
Three's Company (Season 1, Ep. 1)

Jack: I – I—last thing I remember I had a glass of that terrible punch and then everything went black.

i. Brad's character in *3C* is copied from Jack's character in *Three's Company*. Both characters are studying to be chefs, and are clumsy and accident prone, humorously knocking into things or falling over. Both Brad and Jack are played by tall, attractive men, and they treat the two women respectfully. *3C* plays Brad's clumsiness for slapstick comedy, as does *Three's Company* with respect to Jack.

j. The story in *3C* unfolds with Linda and Connie suggesting to Brad that he take the place of their previous roommate, who just moved out. Since their landlord would not allow a man to live with the two women, they need to pretend that Brad is gay. This is identical to the first episode of *Three's Company*.

k. In *3C*, the landlords are a married older couple (Mr. and Mrs. Wicker), as in *Three's Company* (Mr. and Mrs. Roper). Mr. Wicker, like Mr. Roper, is also a general (and reluctant) handy man. Mr. Wicker makes gay jokes, as does Mr. Roper. Mr. Wicker in *3C* and Mr. Roper in *Three's Company* are both intended to be viewed at least somewhat contemptuously by the audience for their old-fashioned views and curmudgeonly outlook.

l. In *3C*, there are a number of misunderstandings arising from the characters accidentally hearing parts of conversations with off-stage dialogue, as occurs throughout *Three's Company*.

m. Even relatively minor elements of *Three's Company* are copied or mirrored in *3C*. For example, *3C* copies a scene from a season 1, episode 2 of *Three's Company* where Janet tries to convince Jack to go to an art theater:

Three's Company (Season 1, Ep. 2)

Janet: Oh, well how about the all-night showing of "War and Peace" at the art theater? That's only \$3.00.

Jack: You've got to be kidding.

3C (p.58)

Linda: There's a Japanese movie at the art house on Beverly Boulevard, it's - It's supposed to be really good. We could . . . go together . . .

Brad: I can't, I - I have homework.

n. In *3C*, Brad's friend Terry (Larry in *Three's Company*) lives in the same building, presents himself as a playboy, and horses around with Brad (Jack in *Three's Company*).

o. In *3C*, there are references to a local bar called the "Rollie Polly"; this is equivalent to the "Regal Beagle" bar in *Three's Company*.

32. Adjmi even admits to copying the dialogue of *Three's Company*, as evidenced by the amendments he made in his Amended Complaint. In Adjmi's original Complaint and Demand for a Jury Trial ("Original Complaint"), Adjmi unequivocally stated that "*3C* copies no dialogue from *Three's Company*." Original Complaint at ¶ 3. However, in the Amended Complaint, this assertion was sharply hedged, and now simply states that "*3C* is not a copy of *Three's Company*["]." Amended Complaint at ¶ 3.

33. Further, *3C* copies elements of *Three's Company* that made the show so controversial and successful.

34. For example, *Three's Company* was groundbreaking in its depiction of a married woman who is unhappy in her relationship over a lack of intimacy with her husband. *3C* copies this plot element entirely, depicting Mrs. Wicker as a neurotic and unhappy in her marriage, a woman who needs pills to make her less anxious. Even though *3C* changes the Mrs. Roper character to make her slightly more neurotic (Mrs. Roper in *Three's Company* did not take pills), this is merely a matter of degree, not substance.

35. Adjmi also asserts he added elements of fear of sexual abuse to *3C*, which "adds new insights and understandings for instance . . . women, rather than merely being carefree and 'jiggly' sex objects, struggled with issues of rape [and] abuse." Amended Complaint ¶ 37. To highlight these "insights," Adjmi states that in *3C*, the "sexy blonde" character Connie is always

“worrie[d] about getting raped,” and in one scene in *3C*, Connie complains that “I had to quit, my boss was hitting on me!” See *3C* at 7. Adjmi contends that his play is therefore transformative. However, this theme is copied directly from *Three’s Company*. Season 2, episode 6 of *Three’s Company* begins with Jack and Chrissy discussing Chrissy’s self-defense against a “rough drunken sailor” who is trying to take advantage of her. Later in the episode, an attractive female guest character with a large bust, laments how she had to quit her job because her “boss invited me up to his apartment after work to go over some forms, and he started with mine. . . . Men just take it for granted you’ll say yes. . . . I am so tired of whistles and dumb remarks, ‘hey baby, how about coming over here and keeping the rain off of me.’” These themes which Adjmi alleges are “new” to *3C* were substantively addressed in several episodes of *Three’s Company*; *3C* simply copies them.

36. In addition to addressing rape and sexual abuse, *Three’s Company* previously addressed the other allegedly “new” themes in *3C*, including debilitating self-consciousness and low self-esteem. Adjmi suggests he was parodying Janet by writing the character Linda to “suffer[] from destructively low self-esteem” and make “self-punishing comments.” Amended Complaint ¶ 38. However, these elements were already present in *Three’s Company*; Adjmi has merely copied them, offering nothing new. Janet’s low self-esteem is a recurring theme in *Three’s Company*, and the show devotes nearly an entire episode to Janet’s decision on whether to get breast augmentation surgery. *3C*’s focus on Linda’s self-consciousness over her general appearance is the same as Janet’s insecurities over her breast size:

Three’s Company (Season 2, Ep. 3)

Janet: You men are all alike. . . . You know, when I first started high school I had absolutely no figure at all. I kept praying I would blossom. One day – one day, the teacher asked the class to locate the great American flat-lands. Every single boy in class pointed to me. . . . If we didn’t need training bras by the time we were ten, our lives were ruined.

3C (p.13)

Linda: I'm ugly and I look like a dyke!

Connie: You are not a dyke.

[PAUSE]

Linda: I know what people say about me //

Connie: What? People // don't-

Linda: (*hurt*) I know what people say.

37. Adjmi also claims that *3C* is somehow transformative because its characters use drugs. Adjmi states that “no one seeing or reading *3C* could mistake it for a theatrical version of *Three's Company* authorized by DLT, given . . . its depiction of illegal drug use.” Amended Complaint ¶ 57. However, *Three's Company* did depict illegal drugs, devoting an entire episode to the misadventures that occur when Chrissy and Jack discover marijuana plants growing in their landlord's backyard. *See Three's Company* Season 2, Ep. 22. *3C*'s depiction of drugs is not new; it is simply another element copied from *Three's Company*.

Fair Use

38. Adjmi now claims that *3C* is original and does not infringe the copyright of *Three's Company* because it is a protected parody, created under the umbrella of the fair use defense to copyright infringement.

39. However, Adjmi came to this legal conclusion long after developing and performing the play. When Adjmi started developing the script, he was unsure whether his work was an infringement. Adjmi sought advice from his “agents at CAA and my producers, some of whom doubted that the play would meet the legal standards of parody.” *See* Patrick Healy, *If Three Constitutes Company, Add Lawyers to Make it a Crowd*, NEW YORK TIMES (July 17, 2012) (available at <http://www.nytimes.com/2012/07/18/theater/threes-company-lawyers-object->

to-the-play-3c.html). Rather than contact DLT and seek an agreement, Adjmi went forward with the production of *3C*.

40. What little original matter is added to *3C* is not used to criticize or comment on *Three's Company* itself, but rather to satirize issues wholly unrelated to *Three's Company*. Adjmi wanted to appropriate the *Three's Company* characters and plotlines in order to comment on the “rage and anger and violence and hostility in the world of the play.” Satire is not protected by the fair use doctrine. *See, e.g., Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 597 (1993).

41. Adjmi stated to *The New York Post* that he “wanted to use this [*Three's Company's*] iconography as a springboard to talk about other things.” *See* Elisabeth Vincentelli, *Inside '3C,' NEW YORK POST* (July 9, 2012) (Exhibit D).

42. Adjmi merely used *Three's Company* to generate publicity, and as a vehicle to comment on other cultural issues, issues that had nothing to do with *Three's Company*.

43. Even if, as Adjmi claims, the play *3C* parodies some elements of *Three's Company*, Adjmi takes far too much than is necessary in order to conjure up the original.

44. For example, in *3C*, the character Linda is found funneling wine from various bottles after a party. This scene is identical to a scene in the first episode of *Three's Company*. However, *3C* does not copy this in a transformative way, *i.e.*, it is not presented with any comment, criticism, or even dialogue. Rather, Adjmi copies this element of *Three's Company* merely for comedic effect. Further, it is not even used to conjure up the original. In the original, the scene lasted a few seconds, and was not central to the plot. This non-transformative copying is not protected under the fair use doctrine.

45. As alleged above, the subjects that Adjmi claims are unique to *3C*, and which are allegedly parodying *Three's Company* (e.g., sexual assault, lack of self-esteem, and drug use), are not at all unique, but rather are squarely covered in *Three's Company*. Adjmi does not parody these subjects in *Three's Company*, nor does he depict them in a transformative way. He merely copies them.

46. In addition, in his Amended Complaint, Adjmi makes much of the fact that certain scenes in *3C* would never occur in *Three's Company*. However, all derivative works, by definition, contain some differences from the original. Merely finding differences, even significant differences, between an original and a derivative work does not make the derivative work a non-infringing parody.

47. For example, in *3C*, Linda (who represents Janet Wood in *Three's Company*) is molested by her landlord. Such a scene would, admittedly, never occur in *Three's Company*. However, the scene is not parodic. It is provided merely for shock value, to startle and disturb an audience watching the abuse of a well-known and revered character, Janet Wood. Consequently, this scene is not protected under the fair use doctrine.

48. The intention of *3C* was not, as Adjmi now claims, to parody or criticize the original show, but, as Adjmi admits, to use *Three's Company's* "iconography as a springboard," in order to bring attention to his own work.

49. Using *Three's Company's* incredible fame and goodwill to imbue the audience with a sense of nostalgia for the late 1970s was an important and intentional element of *3C*.

50. Contrary to Adjmi's assertion that "[n]o one would purchase tickets" for *3C* as a substitute for *Three's Company*, see Amended Complaint at ¶ 57, this exact nostalgia motivated at least one *New York Times* reviewer to watch the play:

Presented at the Rattlestick Playwrights Theater, this co-production with Piece by Piece Productions and Rising Phoenix Repertory - three's company, too-oo! - had me scurrying from the theater with the television show's saccharine theme song ringing in my head, recalling a happier era when even bad sitcoms were not allowed to descend below a certain level of harmless tastelessness.

See Charles Isherwood, *Names Have Been Changed to Protect the Innuendoes '3C,'* NEW YORK TIMES THEATER REVIEW (June 4, 2012) (available at <http://www.nytimes.com/2012/06/25/theater/reviews/3c-by-david-adjmi-at-rattlestick-playwrights-theater.html>).

51. Adjmi achieved his goal of using *Three's Company* as his “springboard,” gaining attention from nostalgic theatergoers and reviewers, hungry to revisit a television show from their childhood.

Harm to *Three's Company*

52. Counter-Defendant Adjmi has stated his intention to continue publishing and performing the play *3C*, and has in fact begun negotiations with two publishers to further that end.

53. As noted above, Counter-Claimants continue to have an interest in the television show *Three's Company*. Rerun episodes continue to be broadcast on cable and digital television; the show is widely distributed on home video; and efforts have been made to stage an official *Three's Company* play.

54. Accordingly, Adjmi's continued infringement of *Three's Company* harms Counter-Claimants.

RPI, PBP, and RPR

55. During 2012, the play *3C* was performed at the Rattlestick Playwrights Theater in New York.

56. On information and belief, RPI owns and/or controls Rattlestick Playwrights Theater, and has a direct financial interest in works performed at the Rattlestick Playwrights Theater.

57. On information and belief, RPI, PBP, and RPR produced the play *3C*.

58. On information and belief, RPI, PBP, and RPR have or had a direct financial interest in the public performance of the play *3C*.

59. On information and belief, RPI has acted in concert with Adjmi, PRP, and RPR with respect to the production and performance of the play *3C* at the Rattlestick Playwrights Theater.

60. On information and belief, PBP has acted in concert with Adjmi, RPI, and RPR with respect to the production and performance of the play *3C* at the Rattlestick Playwrights Theater.

61. On information and belief, RPR has acted in concert with Adjmi, RPI and PBP with respect to the production and performance of the play *3C* at the Rattlestick Playwrights Theater.

FIRST CLAIM FOR RELIEF

Copyright Infringement - For Preparing an Unauthorized Derivative Work Based on the Television Show *Three's Company*

62. Counter-Claimants repeat paragraphs 1 through 61 as if fully set forth herein.

63. The TV series *Three's Company* is an original work of authorship, protected under the copyright laws of the United States and other countries.

64. Counter-Claimants hold the exclusive right to create, or authorize others to create, derivative works based on *Three's Company*.

65. The play *3C* is an unauthorized derivative work of *Three's Company*.

66. Counter-Defendant Adjmi has infringed Counter-Claimants' copyright rights under at least 17 U.S.C. § 106(2).

67. Adjmi's infringement was willful.

68. Counter-Claimants have been injured as a result of Adjmi's acts.

SECOND CLAIM FOR RELIEF

Copyright Infringement – For Preparing an Unauthorized Derivative Work Based on the Character Jack Tripper Depicted in *Three's Company*

69. Counter-Claimants repeat paragraphs 1 through 61 as if fully set forth herein.

70. The character Jack Tripper is an original work of authorship, protected under the copyright laws of the United States and other countries.

71. Counter-claimants hold the exclusive right to create, or authorize others to create, derivative works based on the Jack Tripper character.

72. The character Brad in *3C* is an unauthorized derivative work of the character Jack Tripper in *Three's Company*.

73. Counter-Defendant Adjmi has infringed Counter-Claimants' copyright rights under at least 17 U.S.C. § 106(2).

74. Adjmi's infringement was willful.

75. Counter-Claimants have been injured as a result of Adjmi's acts.

THIRD CLAIM FOR RELIEF

Copyright Infringement – For Preparing an Unauthorized Derivative Work Based on the Character Chrissy Snow Depicted in *Three's Company*

76. Counter-Claimants repeat paragraphs 1 through 61 as if fully set forth herein.

77. The character Chrissy Snow is an original work of authorship, protected under the copyright laws of the United States and other countries.

78. Counter-claimants hold the exclusive right to create, or authorize others to create, derivative works based on the Chrissy Snow character.

79. The character Connie in *3C* is an unauthorized derivative work of the character Chrissy Snow in *Three's Company*.

80. Counter-Defendant Adjmi has infringed Counter-Claimants' copyright rights under at least 17 U.S.C. § 106(2).

81. Adjmi's infringement was willful.

82. Counter-Claimants have been injured as a result of Adjmi's acts.

FOURTH CLAIM FOR RELIEF

Copyright Infringement – For Preparing an Unauthorized Derivative Work Based on the Character Janet Wood Depicted in *Three's Company*

83. Counter-Claimants repeat paragraphs 1 through 61 as if fully set forth herein.

84. The character Janet Wood is an original work of authorship, protected under the copyright laws of the United States and other countries.

85. Counter-claimants hold the exclusive right to create, or authorize others to create, derivative works based on the Janet Wood character.

86. The character Linda in *3C* is an unauthorized derivative work of the character Janet Wood in *Three's Company*.

87. Counter-Defendant Adjmi has infringed Counter-Claimants' copyright rights under at least 17 U.S.C. § 106(2).

88. Adjmi's infringement was willful.

89. Counter-Claimants have been injured as a result of Adjmi's acts.

FIFTH CLAIM FOR RELIEF

**Copyright Infringement – For Preparing an Unauthorized Derivative Work
Based on the Character Mr. Roper Depicted in *Three's Company***

90. Counter-Claimants repeat paragraphs 1 through 61 as if fully set forth herein.

91. The character Mr. Roper is an original work of authorship, protected under the copyright laws of the United States and other countries.

92. Counter-claimants hold the exclusive right to create, or authorize others to create, derivative works based on the Mr. Roper character.

93. The character Mr. Wicker in 3C is an unauthorized derivative work of the character Mr. Roper in *Three's Company*.

94. Counter-Defendant Adjmi has infringed Counter-Claimants' copyright rights under at least 17 U.S.C. § 106(2).

95. Adjmi's infringement was willful.

96. Counter-Claimants have been injured as a result of Adjmi's acts.

SIXTH CLAIM FOR RELIEF

**Copyright Infringement – For Preparing an Unauthorized Derivative Work
Based on the Character Mrs. Roper Depicted in *Three's Company***

97. Counter-Claimants repeat paragraphs 1 through 61 as if fully set forth herein.

98. The character Mrs. Roper is an original work of authorship, protected under the copyright laws of the United States and other countries.

99. Counter-claimants hold the exclusive right to create, or authorize others to create, derivative works based on the Mrs. Roper character.

100. The character Mrs. Wicker in 3C is an unauthorized derivative work of the character Mrs. Roper in *Three's Company*.

101. Counter-Defendant Adjmi has infringed Counter-Claimants' copyright rights under at least 17 U.S.C. § 106(2).

102. Adjmi's infringement was willful.

103. Counter-Claimants have been injured as a result of Adjmi's acts.

SEVENTH CLAIM FOR RELIEF

Copyright Infringement – For Preparing an Unauthorized Derivative Work Based on the Character Larry Depicted in *Three's Company*

104. Counter-Claimants repeat paragraphs 1 through 61 as if fully set forth herein.

105. The character Larry is an original work of authorship, protected under the copyright laws of the United States and other countries.

106. Counter-claimants hold the exclusive right to create, or authorize others to create, derivative works based on the Larry character.

107. The character Terry in *3C* is an unauthorized derivative work of the character Larry in *Three's Company*.

108. Counter-Defendant Adjmi has infringed Counter-Claimants' copyright rights under at least 17 U.S.C. § 106(2).

109. Adjmi's infringement was willful.

110. Counter-Claimants have been injured as a result of Adjmi's acts.

EIGHTH CLAIM FOR RELIEF

Copyright Infringement - For Publicly Performing an Unauthorized Derivative Work Based on the Television Show *Three's Company*

111. Counter-Claimants repeat paragraphs 1 through 61 as if fully set forth herein.

112. The play *3C* is an unauthorized derivative work of *Three's Company*.

113. The play *3C* was performed in 2012 at the Rattlestick Playwrights Theater in New York.

114. Counter-Defendants have infringed Counter-Claimants' copyright rights under at least 17 U.S.C. § 106(4).

115. Counter-Defendants' infringement was willful.

116. Counter-Claimants have been injured as a result of Counter-Defendants' acts.

NINTH CLAIM FOR RELIEF

Vicarious Infringement – For Publicly Performing an Unauthorized Derivative Work Based on the Television Show *Three's Company*

117. Counter-Claimants repeat paragraphs 1 through 61 as if fully set forth herein.

118. The play 3C is an unauthorized derivative work of *Three's Company*.

119. The play 3C was performed in 2012 at the Rattlestick Playwrights Theater in New York.

120. Counter-Defendants RPI, PBP, and RPR had the right and ability to supervise the infringing activity of Adjmi as well as a direct financial interest in such activities.

121. Counter-Defendants' infringement was willful.

122. Counter-Claimants have been injured as a result of Counter-Defendants' RPI, PBP, and RPR acts.

TENTH CLAIM FOR RELIEF

Contributory Infringement – For Publicly Performing an Unauthorized Derivative Work Based on the Television Show *Three's Company*

123. Counter-Claimants repeat paragraphs 1 through 61 as if fully set forth herein.

124. The play 3C is an unauthorized derivative work of *Three's Company*.

125. The play 3C was performed in 2012 at the Rattlestick Playwrights Theater in New York.

126. Counter-Defendants RPI, PBP, and RPR have contributed to the infringing activity of Adjmi.

127. Counter-Defendants' infringement was willful.

128. Counter-Claimants have been injured as a result of Counter-Defendants' RPI, PBP, and RPR acts.

PRAYER FOR RELIEF

WHEREFORE, Counter-Claimants respectfully requests that the Court enter judgment:

129. Dismissing the Amended Complaint against DLT in its entirety, with prejudice;

130. Permanently enjoining all Counter-Defendants, and each and all those other persons who are in active concert or participation, from reproducing, publishing, distributing, publicly performing, and publicly displaying the play 3C;

131. Granting Counter-Claimants compensatory damages, Counter-Defendants' infringing profits, and/or statutory damages;

132. Finding Counter-Defendants RPI, PBP, and RPR jointly and severally liable with Counter-Defendant Adjmi in regard to the Eighth Claim for Relief (*i.e.*, infringement of the public performance right);

133. Finding Counter-Defendants RPI, PBP, and RPR vicariously liable with respect to the Ninth Claim for Relief (*i.e.*, vicarious liability);

134. Finding Counter-Defendants RPI, PBP, and RPR liable with respect to the Tenth Claim for Relief (*i.e.*, contributory infringement);

135. Granting Counter-Claimants attorneys' fees and related costs; and

136. Awarding Counter-Claimants such other and further relief as the Court deems just and proper.

Dated: March 24, 2014

By: 

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