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

JULIE TAYMOR and LOH, INC.,

Plaintiffs,

- against -

8 LEGGED PRODUCTIONS, LLC, HELLO
ENTERTAINMENT, LLC, GOODBYE
ENTERTAINMENT, LLC, SAVIOR
PRODUCTIONS, LLC, MICHAEL COHL,
JEREMIAH HARRIS, and GLEN BERGER,

Defendants.

11 Civ. 8002 (KBF)

**ANSWER OF PLAINTIFFS
JULIE TAYMOR AND LOH, INC.
TO COUNTERCLAIMS OF
DEFENDANTS 8 LEGGED
PRODUCTIONS, LLC, GOODBYE
ENTERTAINMENT, LLC,
SAVIOR PRODUCTIONS, LLC,
MICHAEL COHL and
JEREMIAH HARRIS**

Plaintiffs Julie Taymor and LOH, Inc., by and through their attorneys Lankler Siffert & Wohl LLP, hereby answer and assert defenses, pursuant to Fed. R. Civ. P. 8, to the counterclaims of defendants 8 Legged Productions, LLC (“8 Legged”), Goodbye Entertainment, LLC (“Goodbye”), Savior Productions, LLC (“Savior”), Michael Cohl, and Jeremiah Harris, contained in their Amended Answer and Counterclaims, dated February 16, 2012 (the “Counterclaims”), as follows:

NATURE OF THE ACTION AND RELIEF SOUGHT

1. Plaintiffs deny the allegations in paragraph 1 of the Counterclaims, except admit that plaintiffs and defendant Hello Entertainment, LLC (“Hello”) signed a deal memorandum dated August 4, 2005 (the “Author Deal Memo,” attached as Exhibit C to plaintiffs’ Complaint), which sets forth terms for Taymor’s services as co-bookwriter of the Broadway musical *Spider-Man: Turn Off the Dark* (the “Musical” or “*Spider-Man*”).

2. Plaintiffs deny the allegations in paragraph 2 of the Counterclaims.

3. Plaintiffs deny the allegations in paragraph 3 of the Counterclaims, except admit that a reference to the “Arachne” myth had appeared in a Marvel comic book and that Arachne was loosely based on a figure from Greek mythology.

4. Plaintiffs deny the allegations in paragraph 4 of the Counterclaims.

5. Plaintiffs deny the allegations in paragraph 5 of the Counterclaims, except admit that Cohl and Harris took over as lead producers of the Musical in 2009 and that the Musical opened in previews on November 28, 2010.

6. Plaintiffs deny the allegations in paragraph 6 of the Counterclaims.

7. Plaintiffs deny the allegations in paragraph 7 of the Counterclaims.

8. Plaintiffs deny the allegations in paragraph 8 of the Counterclaims.

9. Plaintiffs deny the allegations in paragraph 9 of the Counterclaims.

10. Plaintiffs deny the allegations in paragraph 10 of the Counterclaims.

11. Plaintiffs deny the allegations in paragraph 11 of the Counterclaims.

12. Plaintiffs deny the allegations in paragraph 12 of the Counterclaims.

13. In response to paragraph 13 of the Counterclaims, plaintiffs lack knowledge or information sufficient to form a belief as to whether 8 Legged is qualified to do business in the

State of New York or in this judicial district or whether 8 Legged currently holds exclusive rights to produce the Musical. Plaintiffs otherwise admit the allegations in paragraph 13 of the Counterclaims.

14. In response to paragraph 14 of the Counterclaims, plaintiffs lack knowledge or information sufficient to form a belief as to whether Goodbye is qualified to do business in the State of New York or in this judicial district. Plaintiffs otherwise admit the allegations in paragraph 14 of the Counterclaims.

15. In response to paragraph 15 of the Counterclaims, plaintiffs lack knowledge or information sufficient to form a belief as to whether Savior is qualified to do business in the State of New York or in this judicial district. Plaintiffs otherwise admit the allegations in paragraph 15 of the Counterclaims.

16. Plaintiffs admit the allegations in paragraph 16 of the Counterclaims.

17. Plaintiffs admit the allegations in paragraph 17 of the Counterclaims.

18. Plaintiffs admit the allegations in paragraph 18 of the Counterclaims.

19. Plaintiffs admit the allegations in paragraph 19 of the Counterclaims.

20. Paragraph 20 of the Counterclaims contains legal conclusions that require no response.

21. Paragraph 21 of the Counterclaims contains legal conclusions that require no response.

22. Plaintiffs deny the allegations in paragraph 22 of the Counterclaims, except admit that Stan Lee and Steve Ditko created the fictional Spider-Man superhero character in the 1960s.

23. Plaintiffs deny the allegations in paragraph 23 of the Counterclaims, except admit that the first page of *Ultimate Spider-Man #1*, published in 2000, depicts the character Norman Osborn and references the “myth of Arachne.”

24. In response to paragraph 24 of the Counterclaims, plaintiffs admit that a movie based on the Spider-Man character was released in 2002, but otherwise deny any characterization or description of the movie or its plot as superseded and controlled by the work itself.

25. Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 of the Counterclaims.

26. In response to paragraph 26 of the Counterclaims, plaintiffs admit that Marvel Enterprises, Inc. and Hello executed an agreement as of March 25, 2004, granting Hello the right to produce a dramatico-musical utilizing the Spider-Man character and the stories contained in *Ultimate Spider-Man ##1-7*, as well as the *Amazing Fantasy #15*, and to use, omit, adapt, translate, change, rearrange, interpolate, transpose, add to, and subtract from those stories in developing the book for the Musical. Plaintiffs otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 of the Counterclaims.

27. Plaintiffs admit the allegations in paragraph 27 of the Counterclaims.

28. Plaintiffs deny the allegations in paragraph 28 of the Counterclaims, except admit that Bono and Edge, among others, asked Taymor to direct and collaborate on the Musical.

29. Plaintiffs deny the allegations in paragraph 29 of the Counterclaims, except admit that Taymor directed *The Lion King*, which is among the longest-running and highest-grossing Broadway musicals of all time.

30. Plaintiffs deny the allegations in paragraph 30 of the Counterclaims, except admit that, in or around 2004, Taymor agreed to serve as Director and Collaborator on the Musical and thereafter wrote her three-page Treatment for the Musical.

31. Plaintiffs deny the allegations in paragraph 31 of the Counterclaims.

32. Plaintiffs deny the allegations in paragraph 32 of the Counterclaims, except admit that the words selectively quoted in paragraph 32 are contained in Taymor's Treatment.

33. Plaintiffs deny the allegations in paragraph 33 of the Counterclaims, except admit that the words selectively quoted in paragraph 33 are contained in Taymor's Treatment.

34. Plaintiffs deny the allegations in paragraph 34 of the Counterclaims, except admit that Taymor registered her Treatment with the United States Copyright Office in 2005.

35. Plaintiffs deny the allegations in paragraph 35 of the Counterclaims, except admit that Taymor's copyright registration for her Treatment identified the "[c]haracters and setting from 'Spiderman' comic books" as preexisting.

36. Plaintiffs deny the allegations in paragraph 36 of the Counterclaims, except admit that because of Taymor's expertise and talent, she was hired to perform various creative roles on the Musical, including the roles of director, collaborator, co-bookwriter, and mask designer.

37. Plaintiffs deny the allegations in paragraph 37 of the Counterclaims, except admit that Exhibit 1 to the Counterclaims appears to be a true and accurate copy of the Author Deal Memo entered into by plaintiffs and Hello.

38. Plaintiffs deny the allegations in paragraph 38 of the Counterclaims.

39. Plaintiffs deny the allegations in paragraph 39 of the Counterclaims, except admit that, in 2005, Berger and Hello signed a deal memorandum (the "Berger Deal Memo") reflecting the material terms of their agreement on issues related to Berger's services as co-bookwriter of

the Musical. Plaintiffs also admit that Exhibit 2 to the Counterclaims appears to be a true and accurate copy of the Berger Deal Memo entered into by Berger and Hello.

40. Plaintiffs deny the allegations in paragraph 40 of the Counterclaims, except admit that the Berger Deal Memo states, among other things, that it “outlines material terms upon which the parties have agreed Berger will co-write the treatment and/or book for a dramatic-musical work for the legitimate stage presently entitled ‘Spider-Man: A Musical Web’ (the ‘Musical’) and grant Hello the right to produce and present the Musical.”

41. Plaintiffs deny the allegations in paragraph 41 of the Counterclaims, except admit that Hello and Marvel signed an agreement in or around 2004 stating, among other things, that Marvel would have approval over “the story, basic treatment, overall concept and music-style contained in the Musical (e.g. rock vs. hip-hop), including but not limited to the basic storyline, character descriptions, portrayal of the powers, basic personal traits, physical appearance and the living habitat, environment and setting thereof (collectively, the ‘Basic Treatment’).”

42. Plaintiffs deny the allegations in paragraph 42 of the Counterclaims, except admit that a “Basic Treatment,” stating, among other things, “Story by Julie Taymor & Glen Berger,” was submitted to Marvel in June 2005, and that Taymor co-wrote the document with Berger.

43. Plaintiffs deny the allegations in paragraph 43 of the Counterclaims, except admit that Marvel sent a letter to Hello in or around June 2005 reciting, among other things, the words selectively quoted in paragraph 43 of the Counterclaims, and also admit that Marvel worked with Taymor to refine the story and that Marvel approved it.

44. Plaintiffs deny the allegations in paragraph 44 of the Counterclaims, except admit that Marvel sent a letter to Hello in or around June 2005 reciting, among other things, the words

selectively quoted in paragraph 44 of the Counterclaims, and also admit that Marvel worked with Taymor to refine the story and that Marvel approved it.

45. Plaintiffs deny the allegations in paragraph 45 of the Counterclaims, except admit that Marvel sent a letter to Hello in or around June 2005 reciting, among other things, the words selectively quoted in paragraph 45 of the Counterclaims, and also admit that Marvel worked with Taymor to refine the story and that Marvel approved it.

46. Plaintiffs deny the allegations in paragraph 46 of the Counterclaims, except admit that Marvel sent a letter to Hello in or around June 2005 reciting, among other things, the words selectively quoted in paragraph 46 of the Counterclaims, and also admit that Marvel worked with Taymor to refine the story and that Marvel approved it.

47. Plaintiffs deny the allegations in paragraph 47 of the Counterclaims.

48. Plaintiffs deny the allegations in paragraph 48 of the Counterclaims.

49. Plaintiffs deny the allegations in paragraph 49 of the Counterclaims.

50. Plaintiffs deny the allegations in paragraph 50 of the Counterclaims.

51. In response to paragraph 51 of the Counterclaims, plaintiffs admit that, in or around December 2007, Garfinkle and Martin McCallum wrote a letter to Marvel purporting to summarize a previous conversation with Marvel's David Maisel. Plaintiffs otherwise deny the allegations in paragraph 51 of the Counterclaims.

52. Plaintiffs deny the allegations in paragraph 52 of the Counterclaims, except admit that, in or around December 2007, Marvel sent a letter to Garfinkle and McCallum reciting, among other things, the words selectively quoted in paragraph 52 of the Counterclaims, and also admit that Marvel worked with Taymor to refine the story and that Marvel approved it.

53. Plaintiffs deny the allegations in paragraph 53 of the Counterclaims.

54. Plaintiffs admit the allegations in paragraph 54 of the Counterclaims.

55. In response to paragraph 55 of the Counterclaims, plaintiffs admit that Bono reached out to Michael Cohl about the Musical. Plaintiffs otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 55 of the Counterclaims, except plaintiffs deny that Cohl was an experienced Broadway producer before working on the Musical.

56. In response to paragraph 56 of the Counterclaims, plaintiffs admit that Cohl and Harris formed Goodbye for the purpose of carrying out their new responsibilities as lead producers of *Spider-Man*. Plaintiffs otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56 of the Counterclaims, except plaintiffs deny that Harris was an experienced Broadway producer before working on the Musical.

57. Plaintiffs deny the allegations in paragraph 57 of the Counterclaims.

58. Plaintiffs deny the allegations in paragraph 58 of the Counterclaims, except admit that *Spider-Man* played its first public preview performance on Broadway on November 28, 2010.

59. Plaintiffs deny the allegations in paragraph 59 of the Counterclaims.

60. Plaintiffs deny the allegations in paragraph 60 of the Counterclaims.

61. Plaintiffs deny the allegations in paragraph 61 of the Counterclaims.

62. Plaintiffs deny the allegations in paragraph 62 of the Counterclaims.

63. Plaintiffs deny the allegations in paragraph 63 of the Counterclaims, except admit that the producers continued to express support for the Musical to Taymor.

64. Plaintiffs deny the allegations in paragraph 64 of the Counterclaims.

65. Plaintiffs deny the allegations in paragraph 65 of the Counterclaims.

66. Plaintiffs deny the allegations in paragraph 66 of the Counterclaims.

67. Plaintiffs deny the allegations in paragraph 67 of the Counterclaims.

68. Plaintiffs deny the allegations in paragraph 68 of the Counterclaims, and refer to the document to establish the accuracy of the words selectively quoted in paragraph 68 of the Counterclaims.

69. Plaintiffs deny the allegations in paragraph 69 of the Counterclaims.

70. Plaintiffs deny the allegations in paragraph 70 of the Counterclaims.

71. Plaintiffs deny the allegations in paragraph 71 of the Counterclaims.

72. Plaintiffs deny the allegations in paragraph 72 of the Counterclaims, and refer to the document to establish the accuracy of the words selectively quoted in paragraph 72 of the Counterclaims.

73. Plaintiffs deny the allegations in paragraph 73 of the Counterclaims, except admit that Berger developed “Plan X” without Taymor’s knowledge or approval.

74. Plaintiffs deny the allegations in paragraph 74 of the Counterclaims.

75. Plaintiffs deny the allegations in paragraph 75 of the Counterclaims, except admit that Berger e-mailed Taymor an outline on February 18, 2011, stating “just fyi” and characterizing the outline as simply a “dramaturgical exercise,” with no indication that he had been discussing Plan X with the producers, Bono, Edge, and others behind Taymor’s back for at least the past two months.

76. Plaintiffs deny the allegations in paragraph 76 of the Counterclaims.

77. Plaintiffs deny the allegations in paragraph 77 of the Counterclaims.

78. Plaintiffs deny the allegations in paragraph 78 of the Counterclaims, except admit that the producers hired a company to conduct focus-group surveys and that those surveys

resulted in reports which included the selectively quoted passages reproduced in paragraph 78 while also finding that: (i) more than 80% of respondents ranked the show as ‘Excellent,’ ‘Very Good,’ or ‘Good’; (ii) a majority of respondents felt the show overall was “best describe[d]” as “visually stunning,” and “entertaining”; and (iii) while some respondents expressed concerns about various aspects of the show, including the “story,” the category of “songs/music” was named by a significant percentage of respondents as the “least liked” aspect of the show.

79. Plaintiffs deny the allegations in paragraph 79 of the Counterclaims, except admit that: (i) the focus-group survey respondents consistently ranked Arachne as a “favorite character” as frequently as “Mary Jane”; and (ii) only approximately 10% of respondents ranked Arachne as a “least favorite character.” Moreover, the focus-group reports ranked “Behold and Wonder,” one of Arachne’s key scenes in the first act, as a “favorite scene” in the show.

80. Plaintiffs deny the allegations in paragraph 80 of the Counterclaims, except admit that the producers sent Taymor certain information from the focus-group testing, including reports showing that 80% or more of respondents consistently indicated that they would recommend the show to others.

81. Plaintiffs deny the allegations in paragraph 81 of the Counterclaims, and refer to the document to establish the accuracy of the words selectively quoted in paragraph 81 of the Counterclaims.

82. Plaintiffs deny the allegations in paragraph 82 of the Counterclaims.

83. Plaintiffs deny the allegations in paragraph 83 of the Counterclaims, except admit that the Musical was originally scheduled to open in 2010 and was delayed and that, in February 2011, certain theater critics published reviews of the Musical.

84. Plaintiffs deny the allegations in paragraph 84 of the Counterclaims, and refer to the document to establish the accuracy of the words selectively quoted in paragraph 84 of the Counterclaims.

85. Plaintiffs deny the allegations in paragraph 85 of the Counterclaims, and refer to the document to establish the accuracy of the words selectively quoted in paragraph 85 of the Counterclaims.

86. Plaintiffs deny the allegations in paragraph 86 of the Counterclaims, and refer to the document to establish the accuracy of the words selectively quoted in paragraph 86 of the Counterclaims.

87. Plaintiffs deny the allegations in paragraph 87 of the Counterclaims, and refer to the document to establish the accuracy of the words selectively quoted in paragraph 87 of the Counterclaims.

88. Plaintiffs deny the allegations in paragraph 88 of the Counterclaims, and refer to the document to establish the accuracy of the words selectively quoted in paragraph 88 of the Counterclaims.

89. Plaintiffs deny the allegations in paragraph 89 of the Counterclaims, and refer to the document to establish the accuracy of the words selectively quoted in paragraph 89 of the Counterclaims.

90. Plaintiffs deny the allegations in paragraph 90 of the Counterclaims, and refer to the document to establish the accuracy of the words selectively quoted in paragraph 90 of the Counterclaims.

91. Plaintiffs deny the allegations in paragraph 91 of the Counterclaims.

92. Plaintiffs deny the allegations in paragraph 92 of the Counterclaims.

93. Plaintiffs deny the allegations in paragraph 93 of the Counterclaims, except admit that Taymor met with Cohl on February 16, 2011.

94. Plaintiffs deny the allegations in paragraph 94 of the Counterclaims, except admit that Taymor spoke with Cohl on February 20, 2011.

95. Plaintiffs deny the allegations in paragraph 95 of the Counterclaims, except admit that on February 26, 2011, Taymor met with Cohl, Edge, Berger, and Gelblum to discuss the Musical, and that Harris and Bono participated in the meeting by phone from Vail and Switzerland, respectively.

96. Plaintiffs deny the allegations in paragraph 96 of the Counterclaims.

97. Plaintiffs deny the allegations in paragraph 97 of the Counterclaims.

98. Plaintiffs deny the allegations in paragraph 98 of the Counterclaims, except admit that Taymor met with Cohl, Harris, Bono, and Edge on March 4, 2011, and that Taymor was dismissed from the production at that meeting.

99. Plaintiffs deny the allegations in paragraph 99 of the Counterclaims, except admit that Taymor was dismissed from the production at the meeting on March 4, 2011.

100. Plaintiffs deny the allegations in paragraph 100 of the Counterclaims.

101. Plaintiffs deny the allegations in paragraph 101 of the Counterclaims, except admit that Berger and Aguirre-Sacasa revised the Book of the Musical without Taymor's approval.

102. Plaintiffs lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 102 of the Counterclaims.

103. Plaintiffs deny the allegations in paragraph 103 of the Counterclaims, except admit that the Musical closed for three-and-a-half weeks.

104. Plaintiffs deny the allegations in paragraph 104 of the Counterclaims.

105. Plaintiffs deny the allegations in paragraph 105 of the Counterclaims.

106. Plaintiffs deny the allegations in paragraph 106 of the Counterclaims, except admit that the Musical went back into previews on May 12, 2011.

107. Plaintiffs deny the allegations in paragraph 107 of the Counterclaims, except admit that the Musical had its official opening on June 14, 2011, and that Taymor attending the opening.

108. Plaintiffs deny the allegations in paragraph 108 of the Counterclaims.

109. Plaintiffs deny the allegations in paragraph 109 of the Counterclaims, and refer to the document to establish the accuracy of the words selectively quoted in paragraph 109 of the Counterclaims.

110. Plaintiffs deny the allegations in paragraph 110 of the Counterclaims, and refer to the document to establish the accuracy of the words selectively quoted in paragraph 110 of the Counterclaims.

111. Plaintiffs deny the allegations in paragraph 111 of the Counterclaims, and refer to the document to establish the accuracy of the words selectively quoted in paragraph 111 of the Counterclaims.

112. Plaintiffs deny the allegations in paragraph 112 of the Counterclaims.

113. Plaintiffs deny the allegations in paragraph 113 of the Counterclaims, and refer to the document to establish the accuracy of the words selectively quoted in paragraph 113 of the Counterclaims.

114. Plaintiffs deny the allegations in paragraph 114 of the Counterclaims, and refer to the document to establish the accuracy of the words selectively quoted in paragraph 114 of the Counterclaims.

115. Plaintiffs deny the allegations in paragraph 115 of the Counterclaims, and refer to the document to establish the accuracy of the words selectively quoted in paragraph 115 of the Counterclaims.

116. Plaintiffs deny the allegations in paragraph 116 of the Counterclaims, and refer to the document to establish the accuracy of the words selectively quoted in paragraph 116 of the Counterclaims.

117. Plaintiffs deny the allegations in paragraph 117 of the Counterclaims, and refer to the document to establish the accuracy of the words selectively quoted in paragraph 117 of the Counterclaims.

118. Plaintiffs deny the allegations in paragraph 118 of the Counterclaims, and refer to the document to establish the accuracy of the words selectively quoted in paragraph 118 of the Counterclaims.

119. Plaintiffs deny the allegations in paragraph 119 of the Counterclaims.

120. Plaintiffs deny the allegations in paragraph 120 of the Counterclaims, except admit that, at the end of December 2011, it was reported that the Musical had the highest weekly gross of any show in Broadway history.

121. Plaintiffs deny the allegations in paragraph 121 of the Counterclaims.

122. Plaintiffs deny the allegations in paragraph 122 of the Counterclaims.

123. Plaintiffs deny the allegations in paragraph 123 of the Counterclaims, except admit that Taymor is a joint author of the Original Book of the Musical and that she registered a copyright in the Original Book, as alleged in the Complaint.

124. Plaintiffs deny the allegations in paragraph 124 of the Counterclaims.

125. Paragraph 125 of the Counterclaims contains legal conclusions that require no response. To the extent that paragraph 125 of the Counterclaims contains factual allegations, plaintiffs deny those allegations.

126. Plaintiffs deny the allegations in paragraph 126 of the Counterclaims, except admit that they filed this action against defendants seeking royalty payments for Taymor's work as a co-bookwriter, that the Original Book and the Treatment have been infringed by the Infringing Book, and that Taymor's right of privacy has been violated.

127. Plaintiffs deny the allegations in paragraph 127 of the Counterclaims.

128. Plaintiffs deny the allegations in paragraph 128 of the Counterclaims.

129. Plaintiffs deny the allegations in paragraph 129 of the Counterclaims.

FIRST COUNTERCLAIM

Breach of Contract – Collaborator Agreement (Brought by 8 Legged Against Taymor and LOH)

130. No answer to paragraph 130 is required, as plaintiffs intend to move to dismiss defendants' first counterclaim consistent with the Court's Scheduling Order.

131. No answer to paragraph 131 is required, as plaintiffs intend to move to dismiss defendants' first counterclaim.

132. No answer to paragraph 132 is required, as plaintiffs intend to move to dismiss defendants' first counterclaim.

133. No answer to paragraph 133 is required, as plaintiffs intend to move to dismiss defendants' first counterclaim.

134. No answer to paragraph 134 is required, as plaintiffs intend to move to dismiss defendants' first counterclaim.

135. No answer to paragraph 135 is required, as plaintiffs intend to move to dismiss defendants' first counterclaim.

SECOND COUNTERCLAIM

Breach of Fiduciary Duty – Co-Bookwriter (Brought by 8 Legged Against Taymor)

136. No answer to paragraph 136 is required, as plaintiffs intend to move to dismiss defendants' second counterclaim consistent with the Court's Scheduling Order.

137. No answer to paragraph 137 is required, as plaintiffs intend to move to dismiss defendants' second counterclaim.

138. No answer to paragraph 138 is required, as plaintiffs intend to move to dismiss defendants' second counterclaim.

139. No answer to paragraph 139 is required, as plaintiffs intend to move to dismiss defendants' second counterclaim.

140. No answer to paragraph 140 is required, as plaintiffs intend to move to dismiss defendants' second counterclaim.

141. No answer to paragraph 141 is required, as plaintiffs intend to move to dismiss defendants' second counterclaim.

THIRD COUNTERCLAIM

**Breach of Fiduciary Duty – Board Member
(Brought by Goodbye Against Taymor)**

142. No answer to paragraph 142 is required, as plaintiffs intend to move to dismiss defendants' third counterclaim consistent with the Court's Scheduling Order.

143. No answer to paragraph 143 is required, as plaintiffs intend to move to dismiss defendants' third counterclaim.

144. No answer to paragraph 144 is required, as plaintiffs intend to move to dismiss defendants' third counterclaim.

145. No answer to paragraph 145 is required, as plaintiffs intend to move to dismiss defendants' third counterclaim.

146. No answer to paragraph 146 is required, as plaintiffs intend to move to dismiss defendants' third counterclaim.

147. No answer to paragraph 147 is required, as plaintiffs intend to move to dismiss defendants' third counterclaim.

148. No answer to paragraph 148 is required, as plaintiffs intend to move to dismiss defendants' third counterclaim.

149. No answer to paragraph 149 is required, as plaintiffs intend to move to dismiss defendants' third counterclaim.

150. No answer to paragraph 150 is required, as plaintiffs intend to move to dismiss defendants' third counterclaim.

151. No answer to paragraph 151 is required, as plaintiffs intend to move to dismiss defendants' third counterclaim.

FOURTH COUNTERCLAIM

**Declaratory Judgment – Taymor Is Not a Joint Author of the Musical
(Brought by 8 Legged, Goodbye, Savior, Cohl and Harris Against Taymor)**

152. In response to paragraph 152 of the Counterclaims, Plaintiffs repeat, reallege, and incorporate by reference herein their answers to paragraphs 1 through 151 of the Counterclaims.

153. Plaintiffs deny the allegations in paragraph 153 of the Counterclaims.

154. Plaintiffs deny the allegations in paragraph 154 of the Counterclaims.

155. Paragraph 155 of the Counterclaims contains legal conclusions that require no response. To the extent that paragraph 155 of the Counterclaims contains factual allegations, plaintiffs deny those allegations.

156. Plaintiffs deny the allegations in paragraph 156 of the Counterclaims.

157. Paragraph 157 of the Counterclaims contains legal conclusions that require no response.

158. Paragraph 158 of the Counterclaims contains legal conclusions that require no response.

FIFTH COUNTERCLAIM

**Declaratory Judgment – Counterclaim Plaintiffs Have the Right to Produce the New
Version of the *Spider-Man* Musical in Non-Broadway Productions
(Brought by 8 Legged Against Taymor and LOH)**

159. In response to paragraph 159 of the Counterclaims, Plaintiffs repeat, reallege, and incorporate by reference herein their answers to paragraphs 1 through 158 of the Counterclaims.

160. Plaintiffs admit the allegations in paragraph 160 of the Counterclaims.

161. Plaintiffs deny the allegations in paragraph 161 of the Counterclaims.

162. Plaintiffs deny the allegations in paragraph 162 of the Counterclaims.

163. Plaintiffs deny the allegations in paragraph 163 of the Counterclaims.

164. Paragraph 164 of the Counterclaims contains legal conclusions that require no response.

165. Paragraph 165 of the Counterclaims contains legal conclusions that require no response. To the extent that paragraph 165 of the Counterclaims contains factual allegations, plaintiffs deny those allegations.

166. Plaintiffs deny each and every allegation of the Counterclaims to the extent not expressly admitted in this Answer to Counterclaims.

**AFFIRMATIVE DEFENSES
OF TAYMOR AND LOH, INC.
TO PRODUCERS COUNTERCLAIMS**

Introduction

167. In response to Taymor's claims for unauthorized and unlawful use of her work as a co-author of the Book of the Musical, the producers assert numerous Counterclaims against Taymor for damages they allege she caused to the show.

168. The producers' Counterclaims contain over thirty pages of highly-sensationalistic, false and misleading allegations aimed at blaming Taymor, as a co-author of the Musical, for problems encountered in development of the Musical and assassinating her character and professional reputation.

169. Unfortunately, although the producers' allegations and Counterclaims are baseless, Taymor now must defend herself against these outlandish claims by which the producers seek financial damages from Taymor. As noted above, Taymor will seek immediate

dismissal of the breach of contract and fiduciary duty counterclaims under the schedule approved by the Court.

170. In the unlikely event that the producers' Counterclaims are not dismissed in advance of trial, the evidence will reveal that Taymor did not cause the producers any financial damages, but rather that she substantially contributed to the ultimate success of the Musical.

171. In any event, to the extent that the producers suffered any financial damages, the failings of the producers and other members of the creative team (including Berger, Bono, Edge, and set designer George Tsypin) caused or substantially contributed to any financial damages of which the producers now complain.

172. Moreover, the producers' own intentional misconduct, engaged in with the knowledge and complicity of other members of the creative team, precludes or at a minimum substantially limits their recovery of any damages against Taymor. Upon information and belief, for months the producers conspired behind Taymor's back—in scores of secret e-mails, meetings and other communications—to misappropriate and change the Book of the Musical that Taymor co-authored, and over which the producers and Taymor's co-bookwriter had agreed Taymor had sole approval rights. While secretly conspiring to oust Taymor and use and change her work without pay, the producers also fraudulently induced Taymor to continue working and to diligently make improvements to the Book of the Musical and other aspects of the show for months during which public performances were being held and from which defendants derived substantial revenues.

173. In reality, Taymor was not fired for any alleged refusal to "cooperate" in making changes to the Book of the Musical, as the producers now claim. Rather, upon information and

belief, the true reason Taymor was fired was because the producers believed that firing her, and blaming all of the Musical's past problems on her, would be an opportunistic way to:

- appease existing investors who were anxious about the show;
- encourage additional investments to fund a suspension of preview performances while structural changes were made;
- sway critics' opinions of the Musical by fostering an image that the Musical would be "re-imagined" and that its technical and substantive problems were behind it;
- mask the producers' own failures to ensure the technical viability of the staging of the Book as originally conceived; and
- avoid the financial obligation of complying with Taymor's royalty rights, which had long ago been agreed upon.

174. Indeed, the producers' vitriolic and inflammatory allegations against Taymor—which were coupled with the simultaneous filing of a separate federal antitrust lawsuit against Taymor that subsequently was dismissed with prejudice—appear designed to intimidate Taymor into abandoning her authorship rights and amounts rightfully owed to her for use of her work, or otherwise face further gratuitous attempts at character assassination and the threat of substantial financial damages.

175. Upon information and belief, the producers' attempt to seek financial damages against a member of the Musical's creative team who labored for years in earnest and without pay to make the Musical a success is unparalleled in the history of Broadway.

**The Story that Taymor Co-Authored Was Approved
Long Before Public Performances Began**

176. The producers' insinuation in their Counterclaims that they did not know and approve of the story underlying the Book of the Musical co-authored by Taymor until the show

began public preview performances in November 2010, and that they were damaged as a result, is self-serving and false.

177. Everyone involved with the Musical—the producers, the entire creative team (including Berger, Bono, and Edge), and the relevant Marvel executives—approved the Book of the Musical co-authored by Taymor years before public performances began in November 2010.

178. Producers Cohl and Harris, in particular, were intimately familiar with the Book of the Musical when they took over production responsibilities in 2009. Cohl boasted publicly at that time that he knew “the details and intricacies of this wildly ambitious project.”

179. The notion that Cohl and Harris, who style themselves as sophisticated and astute producers, would have invested and solicited the investment of millions of dollars, and permitted sets to be constructed, rehearsals to begin, and public previews to commence, all without intimately knowing about and approving of the Book of the Musical, is nonsensical and, indeed, would have constituted gross negligence on their part.

180. Bono and Edge also supported and approved of the Book co-authored by Taymor all along. As Bono subsequently confirmed in a public interview: “We had [Taymor’s] script, we were part of developing that script, we thought it was great.” Edge added: “We loved every minute of it.” In a November 2010 interview publicly aired on the television program “60 Minutes,” Edge approvingly described the Musical as “more dark and twisted.”

181. Likewise, Taymor’s co-author Berger was effusive about the Book of the Musical they had created. In August 2010, shortly before public preview performances began, he sent an e-mail to Taymor stating:

i’ve been meaning to point this out for a while, but today, as people could sense something alchemical was going on in how the story was working—it’s—your directing and designing on this thing aside—your understanding of theatre has enabled you to

create a profoundly effective story. yeah, I wrote more of the words in the script, but the beat-to-beat narrative—that was totally your vision (I was your boy wonder) – and by figuring how to send the audience high, then plunging them low immediately after, then sending them high again, and on and on—well, it seems to work on the audience on a physiological level—putting them in a state where they're wholly open—prepared to engage in the story on a deep deep emotional level...

anyway, just a few hundred hurdles to go, so I won't get into it...

but just wanted to say what a gift, what a mind-cracking, heart-swelling gift it's been having these front-row tickets to you....

(Emphasis added)

Despite Urgings from Taymor, the Producers and Others Failed to Remedy Substantial Technical Problems Before the Musical's First Public Performance

182. Contrary to the producers' allegations, the Book of the Musical co-authored by Taymor had a finished, dramatic ending. That ending entailed a *coup de théâtre* in which a giant web was supposed to descend from the ceiling of the theatre in a thrilling fight/fly sequence involving the Spider-Man and Arachne characters.

183. In a technical workshop conducted well before rehearsals began, the technical team successfully demonstrated a model of the web ending, which thrilled the participants and gave the producers and creative team confidence that the show would have its planned-for spectacular ending.

184. The production's design team led by set designer George Tsypin, however, failed to design the end of the show properly. The giant web intended for the end of the show, which had been approved and constructed at a cost to the production of approximately \$1 million, was first installed in the theater during the "dry tech" portion of the production in the months before previews began. The web malfunctioned and was promptly removed from the theater the same

day it had been installed, however, as the web design interfered with the rigging that had been installed in the theater to enable the Musical's signature fly sequences.

185. As a result of the design failure of the web, as well as other design failures affecting the entire last scene of the show, the ability to stage the ending of the Book of the Musical, as originally conceived and labored on for years, was placed in jeopardy.

186. Taymor alerted Cohl to the design problems with the final scene of the Musical months before public performances began, urging him repeatedly to address the issue. In early September 2010, for example, Taymor sent an e-mail to Cohl stating:

I think we need to get into the reality of the problematic giant web/ring as soon as possible. . . . It will truly put us off schedule if we do not solve it immediately as it is an enormous flying scene to choreograph and the climax of the show. There may be a certain amount of denial going on and postponing a radical solution is not good.

187. Taymor followed up with several more e-mails and conversations with Cohl about the problems with the web and other aspects of the ending scene of the Musical. The producers, however, failed to ensure that the problems plaguing the show's final scene were remedied. The producers also failed to ensure the development of a back-up technical plan to account for the possibility that the originally-planned deployment of the web would not work in the theater.

188. The Musical's technical team and set designer George Tsypin continued to attempt fixes for these problems, but the attempts generally were not successful. The thrust of the story and the planned clarity and thrill of the ending of the Musical were substantially diminished as a result.

189. It was because of these failures that the Musical played its first preview performance on November 28, 2010, without the dramatic, climactic ending called for by the Book.

**Taymor and Others Continued to Make Changes in an Effort to
Improve the Story and Other Aspects of the Musical**

190. Despite the production's technical problems, Cohl and Harris continued to praise the Musical after preview performances began and led Taymor to believe that they remained supportive of the version of the show Taymor was tirelessly working to improve. Cohl was quoted publicly at the time stating that he was "ecstatic" about the first preview performance and "thought it was a 10 out of 10."

191. Over the month of December, Taymor, Berger, and others worked to clarify the Musical and to develop alternative solutions to stage the final scene of the show called for in the Book as originally conceived by the entire creative team. Meanwhile, Taymor and Berger also worked on, among other things, developing a new ending to the show in which the lead actor playing Peter Parker performed a dramatic fly sequence above the audience.

192. Cohl and Harris remained seemingly supportive of Taymor's efforts to improve the show, sending e-mails complimenting Taymor on the "big improvement[s]" she was making and stating "it's mind boggling what's being accomplished."

193. Taymor made clear to the producers from early on that she was willing to make changes to the production, including to the Book of the Musical. As she explained, however, the scope of possible changes was limited by the Musical's performance schedule once previews had begun, which called for eight performances most weeks, and the sheer technical complexity of the show.

194. As an experienced Broadway director and collaborator, and having been present for the development, rehearsals, and performances of the Musical, Taymor understood the practical implications involved in making significant changes to the Musical. For example,

because of the complex computer programming involved in the production, as well as the need to ensure the safety of all concerned, it could take up to four hours to make a forty-second change to the Musical. Adding to the scheduling pressures was the fact that much of the rehearsal time, which had to be spent in the theater because of the flying sequences and complicated scenery changes, was devoted to rehearsing understudies.

195. Taymor suggested to the producers that, in order to allow for significant improvements to be made to the production, they consider canceling a certain number of preview performances to allow for re-writes, rehearsals and re-staging to be implemented. On December 4, 2010, for example, Taymor sent an e-mail to Cohl and his associate producers stating:

As I ponder this schedule on the airplane I wonder when we will have time to put in the changes that Glen, Bono and Edge and I are making on the script. All of these changes are in act two. They are extensive in that they require rehearsal in the rehearsal room but then tech time on stage. . . . These script changes will have to [be] added carefully and slowly as to not confuse the actors, so we should discuss with Glen B when we will have the various pieces. . . . Needless to say, we do not have the time unless we cancel a preview or two.

196. While the show played a slightly reduced schedule during the early weeks of previews, allowing for rehearsal of changes, the producers made clear to Taymor that they would not permit additional performances to be canceled, which would have allowed larger-scale changes to be made. Canceling performances would have meant forgoing revenue.

197. During this time, Berger remained effusive about the Book of the Musical to Taymor, Bono, and Edge. In December 2010, after public preview performances had begun, Berger wrote e-mails to them stating that he was “so f*cking excit[ed] about where Act Two is going to go,” that “there’s a LOT of cool and novel stuff,” and that he “truly believe[d] Julie and [he] ha[d] cracked the play storywise.” Berger also defended the Book against critics who

argued that it strayed from the Spider-Man comic books, writing to Taymor on December 19, 2010:

I was just at the Forbidden Planet comic book store, paging through the Amazing Spider-Man compendiums (Issues #36-50 from about 7 years ago)—they have Spider-Man traveling through the Astral Plane, they have him fighting villains from the Astral Plane, they speak of the totemic power of the spider, of being “between” two worlds, of being pursued by a female villain who lives in the Astral Plane, of questioning whether the spider that bit Peter intentionally bit him for hidden reasons, and of conversing with a character (Dr. Strange) inside of Peter’s dream, because that’s the only way they can easily speak (Strange being a denizen of the Astral Plane). A certain amount of exposition in the comic book explains the “rules”/“physics” of it all, as comics have been doing for decades.

Which is all to say—any “comic book devotee” who says we’re diverging from “Spider-Man” is an idiot, and doesn’t know the first thing about what the comics have been up to for at least the last 10 years. Our job is simply to make sure that our Act Two story feels like it could have been a comic-book tale. This shouldn’t be too difficult—and smoothing out those last moments with Arachne, and the moments coming out of Turn Off the Dark, etc. will help. (Emphasis added)

**Bono and Edge Failed to Attend Preview Performances
and Were Distracted by Other Commitments**

198. As work on the Book of the Musical progressed, it became obvious that one of the most significant impediments to the show’s potential success was the music and lyrics—in particular, the disconnect between the music and the rest of the show. Early reviews from theater-goers and critics alike frequently emphasized the inability of the music to clarify or aid the story or to help the characters emotionally connect with the audience.

199. During this critical period for any new musical preceding the official opening of the show—one in which even veteran Broadway composers are almost always present and actively involved—Taymor continuously reached out to Bono and Edge in an effort to get them

to deliver improved music and lyrics. On December 14, 2010, for example, Taymor wrote an e-mail to Bono and Edge stating:

A lot is happening. It is getting clearer. The show is running more smoothly. But clarity in the last third is still the issue. We are working hard on it. A major rewrite of LOVE ME KILL ME is happening. But we all believe that the BOY FALLS needs a major rethinking or rejiggering of the lyrics. . . . [I]t is too baffling for the audience. It does not clearly state where Peter is or is going. (Emphasis added)

200. On December 19, Taymor again wrote to Bono and Edge:

It is nine pm in NYC. I am just about to sit down to a home cooked meal. I have been at it on [Spider-Man] nonstop. Glen has as well. We are writing lyrics, lines of dialogue, changes in music – all in service to the ending, to clarity. We know what the story is, we understand the stakes – but we do not have the lyrics to support it. I would like to talk to you before midnight my time – after I eat – to go over the situation and beg for lyrics.

We have sold out houses. Though there are issues of cueing etc, the first act works very well. The second act is better but the ending is still vague. We need you. It is not easy to change anything but now I think it is a matter of lyrical and musical changes – and perhaps cutting a scene or two from the second act.

Call me to discuss. (Emphasis added)

201. Taymor continued to send e-mails to Bono and Edge throughout December 2010 and January 2011 as she tirelessly worked on improving the Musical:

December 29: “our second act has many different issues. . . .”

January 19: “I need to talk to you about the new song.”

January 22: “What is the situation on the new material?”

January 23: “I need to talk to you.”

202. Taymor’s efforts to get Bono and Edge to focus on improving the music and lyrics for the Musical met with limited success. Instead, while Taymor and other members of the creative team had been present daily for months of intensive rehearsals and previews, Bono and

Edge had been on a concert tour with their band U2. Upon information and belief, the U2 tour became one of the highest-grossing concert tours of all time. As the producers knew, Bono's and Edge's absences caused them to miss all of the Musical's rehearsals, most of the technical rehearsals, and the entire first month of preview performances—all at great cost to the timely improvements to the Musical that all agreed needed to be made.

203. Upon information and belief, it was not until early January 2011 that Bono first came to New York and saw a live performance of the show. Even once in New York, Bono and Edge participated in the creative process of improving the show on a limited basis and were frequently distracted.

204. Moreover, while in January 2011 Taymor continued working feverishly to fix the show, Bono stayed in New York for less than two weeks before quickly turning his focus to other endeavors, including working on a new U2 album.

205. Bono and Edge have since publicly expressed regret about their absence from the production during this time.

206. The producers' effort to hold Taymor responsible for damages for failing to make improvements to the show as an author ignores the reality that the conduct of Bono and Edge—the Musical's other primary creative team members—severely hampered timely improvements to the Musical.

A Series of Accidents Beset the Production

207. Through no fault of Taymor's, the production suffered a series of setbacks, including accidents that injured performers.

208. Upon information and belief, the first two accidents occurred because the company responsible for the technical aspects of stage set movements did not install an “encoder” to interlock its systems with those of a competitor company responsible for the Musical’s flying technology, despite being advised of the issue. Upon information and belief, the producers knew or should have known that the technology systems being used in the show had not been properly interlocked with an encoder and the producers failed to take appropriate steps to ensure the safety of these systems. As a result, on two occasions, the flying and set-moving systems apparently did not synchronize with each other, and performers were injured as a result. After the second accident, an encoder apparently finally was installed to prevent further accidents.

209. In late December 2010, a third accident occurred after a stage-hand neglected to attach a safety tether to one of the dancers playing Spider-Man in a performance of the Musical. Although undoubtedly unintentional, the third accident caused further disruption of the production, and Taymor became a lightning rod for all of the accidents in the press.

210. Despite their knowledge that Taymor had no fault in these accidents, that Taymor had no knowledge of the “encoder” issue that apparently contributed to the first two accidents, and that Taymor had no control over the stage-hand’s neglect in failing to attach the safety tether which contributed to the third accident, the producers did not publicly defend Taymor against uninformed speculation in the press that she was somehow responsible. Following these events, the press surrounding the show began to turn negative.

**Defendants and Others Conspired to Make Changes to the
Book of the Musical Without Taymor's Knowledge or Approval**

211. As the series of unforeseen events unfolded, Berger and Tsypin apparently began privately to discuss a plan to re-write the Book of the Musical such that, among other things, the culmination of the current Act I—a dramatic fight scene between Spider-Man and the villain Green Goblin—would move to the end of Act II. Berger called this plan “Plan X.”

212. Among other things, and unbeknownst to Taymor, Plan X appears to have been conceived as a way to avoid the technical challenges Tsypin and his team were having with staging the finale called for by the Book of the Musical co-authored by Taymor.

213. Upon information and belief, Berger and Tsypin knew that Taymor had approval rights over any changes to the Book of the Musical, as Taymor's rights, among other things, had been negotiated and specifically agreed to by Berger over five years earlier in his own contract.

214. Upon information and belief, aware of Taymor's approval rights, Berger and Tsypin agreed to hide from Taymor their plan to change the Book of the Musical. On December 29, 2010, for example, Berger sent an e-mail to Tsypin stating that it was “best not to mention anything to J.” Tsypin responded: “I won't say a word.”

215. Upon information and belief, Berger and Tsypin, without Taymor's knowledge, then reached out secretly to Cohl, Harris, Bono, and Edge in an effort to further their clandestine plan. To this end, Berger and Tsypin apparently sent e-mails to Cohl and Harris describing their plan and imploring the producers to “please don't let JT know I'm sending this.”

216. On or around January 3, 2011, after having missed more than a month of preview performances as a result of their Australian tour, Bono and Edge traveled to New York to see the Musical live for the first time. Upon information and belief, shortly after Bono and Edge arrived in New York, they met privately with Berger to discuss his proposed modifications to the Book

of the Musical. As Edge recounted in an e-mail to Cohl after the meeting: “I met with Bono and Glen tonight. We are all in agreement that there are dramaturgical problems with the show that must be addressed. . . . We will meet [Taymor] tomorrow and have a general discussion about the situation. That meeting will tell us how open she is to compromise.”

217. On January 4, 2011, after the evening preview performance, Taymor met with Cohl, Harris, Bono, Edge, Berger and others for over two hours to discuss the existing issues with the Musical and how to address them. An audio recording of the entire meeting was made and preserved by a participant in the meeting other than Taymor.

218. During the January 4, 2011 meeting, all agreed that changes needed to be made to improve the second act of the Musical. As an experienced Broadway veteran, however, Taymor explained to the group that any large, structural changes to the show would require a temporary shutdown of public preview performances in light of the show’s complexity and the need to ensure the actors’ safety. No one present disagreed with Taymor’s assessment. Cohl, however, made clear that he was not willing to approve a temporary shutdown. Instead, it was agreed that Taymor and Berger would continue to make improvements to the Book of the Musical that could be achieved within the current weekly performance schedule, while Bono and Edge agreed to work on improving the show’s music and lyrics:

Bono:	The second act. . . . Are we gonna continue on an incremental level?
Taymor:	What do you expect? That we are gonna re-write the Second Act and start over?
Bono:	No.
Taymor:	<u>That’s like two months, that’s two months down the road. It’s re-costumes, re-lights, re-rehearse, and—</u>
Cohl:	<u>—and you can’t do that while the show is going.</u>

Taymor: You can't. You have to shut down.

Bono: I'm not talking about that. I'm talking about whether if we should cut some stuff out.

[. . .]

Taymor: Every single time you cut something, other things have to be completely re-rehearsed and re-written because it's very tightly, was very tightly scripted. . . . The second act is so interwoven that if you cut one thing you actually can't go into the next one.

[. . .]

Taymor: If we make a cut and we don't have weeks of rehearsal without performances, I'm not really . . . confident about the cuts. It's not so easy to just pull out and then have the next scene work.

Bono: I mean, look. The easier thing to fix is the music. . . . That's what I think we should do this week. . . . If the fixing of the story that is there, if you fix it, then that might work. Then you might be off.

Taymor: Well, there's a big question on the—

Cohl: —Well here are the two choices . . . fix the songs, make what changes we can make to fix the story, on the right side. On the left side, we have, not a complete scrapping of, but let's say a fairly deep scrapping of if it. If it got to the point where people would say "my God, we have to stop the show, do a rewrite."

Bono: No we don't want to do that.

Cohl: And we can't. So, we only have the one over here, which is: fix the songs as best we can, come up with a new ending, fix the story to whatever degree we can. And go forward and, like you say, I think we'll get there.

[. . .]

Cohl: Let's start with the songs. (Emphasis added)

**The Producers Directed Berger to Take a “Twin-Track”
Approach to Work Behind Taymor’s Back**

219. Upon information and belief, beginning in early January 2011, the producers, Berger, Bono, and Edge began to work in secret on what they called a “twin track” approach, despite their representations to Taymor during the January 4 meeting that all were in agreement about how to move forward with changes to the show. Berger was directed to continue working with Taymor on changes that concentrated on clarifying the storyline and confronting the technical limitations that had arisen with respect to the ending scene. At the same time, however, the producers apparently directed Berger to continue secretly developing his “Plan X” changes to the Book of the Musical, in complete derogation of Taymor’s approval rights over changes to the Book.

220. Upon information and belief, Berger communicated privately with Bono and Edge about proposed changes to the show and Plan X. On January 9, 2011, for example, Berger apparently sent Bono and Edge a detailed outline of the plan and met privately with them to discuss it. According to a later e-mail Berger apparently sent to the Musical’s associate set designer recounting the meeting, Berger “pitched [Bono] and [E]dge the new idea,” and Bono and Edge told Berger they were “100% in.” Upon information and belief, Berger warned the associate set designer, however, to keep Plan X “under the hat” and not to disclose it to Taymor.

221. Upon information and belief, over the next two days, Berger, Bono, and Edge exchanged secret e-mails about Plan X and Berger’s “double life” of working both with Taymor and against her:

Berger: “I understand Michael C. and Jere H. have some massive considerations to figure out, but I’m bewildered not knowing where their minds truly are and how anyone thinks we should be proceeding

. . . . I'll continue on with this double life til I'm told otherwise."

Bono: "I think we have to take a twin track approach."

Berger: "I'm twin tracking it, but a bit draining when it's 4 hours working with [Taymor] on scenes I know in my heart-of-hearts are wrong."

Edge: "Bono spoke to Michael [Cohl] yesterday and he was in the middle of putting together a time-line for executing plan X. . . . I want to kick the tires on plan x, but assuming it works I'm certain we will go for it."

Berger: "Well, that's—tentatively—encouraging."

222. Nobody told Taymor about these communications or the secret plan, despite Berger's prior agreement in his contract to "collaborate with Julie Taymor on bookwriter related and other creative decisions for the Musical" and that "Julie Taymor, in her sole and absolute discretion, shall have final approval on all such decisions." (emphasis added).

223. Upon information and belief, on or around January 12, 2011, without Taymor's knowledge, Cohl and Harris instructed Berger to send them "an assessment of Act Two – to see whether it was possible to retain the basic narrative and still get the show to where it needs to be." Berger apparently responded to Cohl and Harris that "[r]etaining the basic Act Two narrative would . . . require a probably-insurmountable amount of thought, rewriting, rearranging, and re-teching." Without consulting Taymor, Berger apparently urged Cohl and Harris to adopt his Plan X instead.

224. Upon information and belief, on January 13, 2011, Cohl, Berger, and Bono met with Taymor in the VIP room of the Foxwoods Theater. Unbeknownst to Taymor, Berger apparently understood that the purpose of the meeting was to finally disclose Plan X to Taymor. As Berger recounted in a later e-mail, however, "that meeting never happened":

[T]he meeting was postponed til 11 p.m., when Bono was going to show up – except he showed up in our room with Christy Turlington and a couple other supermodels, and he had already had a few beers, rendering him useless – so the producers postponed the meeting til the next afternoon – but that meeting never happened – but the producers assured me the new plan was to implement JT’s vision for the next three weeks and, if after polling and focus groups and checking their own guts, if they feel like they don’t have a hit, they’re going to shut down and implement “Plan X” – but JT doesn’t know about that plan – so meanwhile, we just pushed opening again to March 15th. (Emphasis added)

225. Throughout January and February 2011, with the show in public previews and scheduled to open in March 2011, Berger continued to work with Taymor on changes of the scope described at the January 4 meeting. After early January, there were no further meetings with the full creative team and the producers. Taymor was led to believe, based on the January 4, 2011 meeting and other statements by the producers, that (i) a shutdown to make substantial changes to the Musical was out of the question, and (ii) everyone was working together to improve the show.

226. In January and February 2011, Taymor repeatedly requested that Bono and Edge—who were rarely in town—deliver the improved music and lyrics that had been discussed at the January 4 meeting. On the rare occasions that Bono and Edge were in town during this time, Taymor worked with them as much as possible on changes to the show.

227. During this time, Taymor also requested that Berger deliver re-writes for the Book of the Musical to improve on the story’s pathos, clarity, and humor. In addition, when Berger proposed new ideas for changes or cuts to Taymor, Taymor sent e-mails to Berger asking him to “write them out” in script form so they could be evaluated and implemented if appropriate. Presumably because of his primary focus on Plan X, Berger failed to deliver the writing and improvements that Taymor requested.

228. Because of Berger's failure to deliver re-writes to Taymor, Taymor asked the producers to consider hiring an additional bookwriter to join the team and assist Berger to develop the material necessary to improve the Musical's story.

229. Meanwhile, the producers had and continued to induce and encourage Taymor's ongoing work. From December on, Harris sent e-mails to Taymor stating that "[a]udiences have been very positive into the show in all ways," "audiences have been much better," and "each night we get closer and closer." Cohl also stated: "My reports are all positive...well done." On January 26, Cohl sent Taymor an e-mail containing links to two favorable reviews of the Musical, stating: "enjoy." One of the reviews stated:

[*Spider-Man*] is an incredible technical feat of epic proportions and it absolutely blew my mind. It's a new type of musical, a new breed – where circus meets Broadway under the guise of a music concert. Julie Taymor has molded these elements together quite well. You can tell she's still ironing out the details, but for a show with no out-of-town tryout, she's doing a helluva job and she should be 100% commended for it.

230. The producers, Berger, Bono, and Edge, however, continued to develop and assess Plan X behind Taymor's back.

231. Upon information and belief, Berger secretly communicated with Cohl and Harris during this time, sending the producers detailed descriptions of his Plan X. Berger apparently reported to Cohl that he was "exasperate[ed]" at having to work on changes to the story with Taymor and that "any timetable and marching orders you've got for me...I'll take them." Berger also apparently sent an e-mail to Harris stating:

Hi Jere. . . . I've been desperately agitating for substantive changes to the book (and specifically the 2nd Act) since late December. . . . I implored Bono and Edge and Michael and anyone else to get [Taymor] to consider changes. Though Bono and Edge were fervent in their belief that change needed to happen, and told me they were on board with my proposals, their relatively gentle persuasions on Julie didn't have any teeth. So since the

beginning of January my marching orders have been to work with Julie to help her implement her vision. I was told that by last January (now mid-February), if more changes are required, then we'll all get down to it. I've gone along with this, despite it being what Edge called a "schizophrenic" situation. . . . [T]he problem hasn't been in finding a solution, the problem has been in the willingness to implement a solution. . . . [P]lease know that anything you need from me – I'm at your service. (Emphasis added)

232. Tsypin also apparently repeatedly lobbied privately for the producers to scrap Taymor's changes and implement Plan X, which would change the technical ending of the story that Tsypin continually was failing to properly design. For example, upon information and belief, on January 31, 2011, Tsypin sent Cohl and Harris an e-mail urging them that "[n]ow is the time to act" on Plan X.

233. On February 7, 2011, critics published pre-emptive reviews of the Musical five weeks before the then-scheduled opening night of March 15. While some of the reviews contained criticism of the show, those that praised it praised elements that had been conceived and implemented largely by Taymor: "As a stager . . . Taymor is bold, elegant, and eloquent"; "The flying is thrilling, a full-tilt leap into the extraordinary"; "'Spider-Man' deftly spins substance and spectacle"; "The state-of-the-art visuals can be stunning"; "Taymor delivers"; "A visual feast."

234. After the pre-emptive reviews, Taymor continued to work on many changes to the show, including to the Book of the Musical and the producers, Berger, Bono, and Edge continued to encourage her work. Among their e-mails to Taymor during this time-frame:

Bono: "i know today is not a surprise and the treatment by the media is as expected for a production of the scale of ours but just wanted to send my love and undying respect in case it got to you ... you would think imagination was the enemy not banality...."

Tsypin: “I was excited about the show last night. The first act is much tighter, has great energy. The ending is exciting, Reeve is fantastic, the show still sags a bit in the middle of the second act, I can’t wait to see new Dee[p]ly Furious.”

Cohl: “much better than before”

235. Despite communicating praise to Taymor, however, upon information and belief, the producers, Berger, Bono, and Edge continued to conceal Plan X from Taymor and to secretly work on it behind her back.

The Producers Held Secret Discussion with Phillip William McKinley and Roberto Aguirre-Sacasa About Using and Changing Taymor’s Work

236. Upon information and belief, at some point in late January or early February 2011, the producers secretly began to explore the possibility of engaging a new director and bookwriter for the production. They did not inform Taymor of such plans.

237. Upon information and belief, in mid-February 2011, Cohl and Harris began to have secret discussions with Phillip William McKinley and Roberto Aguirre-Sacasa. Cohl apparently met privately with McKinley on February 11, 2011, after he had instructed McKinley to view the previous two days’ performances and generate notes on his suggested changes. Cohl and Harris also apparently solicited detailed notes on the Book from Aguirre-Sacasa and Marvel’s new Chief Creative Officer, Joe Quesada, who had not been involved with the Musical during the many years in which the Book and design of the Musical were approved.

238. The producers’ discussions with McKinley were hidden from Taymor. McKinley’s notes, for example, confirmed that they “were never meant to be given out to Julie or anyone from her team.”

239. The producers' discussions with Aguirre-Sacasa and Quesada initially were also hidden from Taymor. On February 16, 2011, however, Taymor heard about the producers' rumored discussions with Aguirre-Sacasa from press reports. That evening, Taymor and Cohl met over dinner to discuss a focus group report that Cohl had just received. Taymor asked Cohl about Aguirre-Sacasa's rumored involvement. Cohl responded that he and Harris were simply "reviewing the research and reading the audience and our guts and trying to chart a course." He told Taymor that no decision had been made yet as to how to proceed. He mentioned that he had received notes from Aguirre-Sacasa and Marvel outlining potential changes to the show.

240. Taymor urged Cohl to share whatever notes he had with her and reiterated to Cohl that she was open to changes that could be implemented.

241. On February 18, 2011, Cohl forwarded pages of notes from Aguirre-Sacasa and Quesada to Taymor. The notes did not appear to Taymor to contain concrete changes to improve the Musical within the current technical and scheduling confines, but were instead in the form of brainstorming about ideas as if the show were re-starting from scratch, without regard to the fact that the Musical had gone through years of development and was currently performing in previews, with a planned opening date less than one month away.

242. Cohl did not request or direct that Taymor to implement any change to the Musical based on the notes that he had forwarded. In fact, when Cohl discussed the notes briefly with Taymor later, he told Taymor that he in fact did not like the notes. Bono expressed the same negative sentiment to Taymor about the notes.

243. On February 18, 2011, without explanation, Berger forwarded an outline to Taymor stating that it was merely a "dramaturgical exercise" that he had created in November 2010 and that he was sending it to Taymor as "just fyi." Only later, after Plan X was disclosed to

Taymor shortly before she was fired, did Taymor learn that Berger's outline apparently was the genesis of Plan X.

244. Neither Cohl nor Harris ever expressed to Taymor that they wanted to implement any suggestion contained in the notes forwarded to Taymor on February 18, 2011. No one reviewed the notes with Taymor to determine what realistically could be accomplished within the then-existing time limitations. Nor did the producers ever notify Taymor that their earlier directive not to allow large structural changes by temporarily shutting down preview performances—a decision that had been communicated to Taymor on several occasions—had changed.

Taymor and Others Continued to Substantially Improve the Musical

245. By late February 2011, Taymor had implemented numerous changes to the production. The changes included replacing the failed web ending with an alternate web and a dramatic ending scene in which the lead actor playing Peter Parker flew above the audience. Taymor, Berger, Bono, and Edge also further clarified the story in the second act by improving the show's lyrics and dialogue, as well as restructuring certain scenes.

246. By many accounts, the version of the Musical as it was being performed in late February 2011—which version was never reviewed by the press—had greatly improved since the version that had been reviewed by the press at the beginning of February 2011.

247. On February 18, 2011, for example, Glenn Orsher, Cohl's Executive Producer, sent an e-mail to Taymor stating: "Wow! What a great show!"

248. On February 25, 2011, Berger apparently expressed his own doubts to Cohl, Harris, Bono, and Edge about the advisability of implementing Plan X in light of the improvements Taymor and others had made:

Watched first half of the first Act (1st Geek scene big improvement), and the latter 3/4ths of the 2nd Act which, maddeningly, worked far better than I've ever seen it, and a palpably better ovation as a result... (new music tweak leading into tweaked curtain call helped too). Which is to say – tomorrow the top of 2nd Act Geek scene will be implemented. I think two things

1. probably a good/crucial idea to watch at least the whole 2nd Act tomorrow – assess one more time – is it truly absolutely beyond saving? ... JT is very much up for cuts, a certain degree of reworking, rewriting, etc. . . .

2. as I've said – the tires need to be kicked hard – really hard – on plan x before that trigger is pulled. What I sent back in January was preliminary, and didn't really put ore [sic] work/thought into it since then (been concentrating on implementing current version)....

Point is – not that I'm getting cold feet – but there's one last day to assess. There will definitely be a certain percentage of cast freak-out with a postponement, and I'm in the dark about how much certainty there is that something resembling plan x (much less the tweaks to Act One) can be implemented in the time we have. (Emphasis added)

249. On February 27, 2011, after viewing the previous evening's performance, Edge sent e-mails to the producers and Taymor stating that “many things are the best they have been,” that “[i]t was very good throughout,” and that “it might not take a big change to achieve” the desired level of improvement. Upon information and belief, Edge urged the producers to reconsider whether major changes were still needed.

250. Cohl and Harris, however, apparently had already made their decision to fire Taymor. Upon information and belief, in response to Edge's February 27, 2011 e-mail, Cohl wrote that the decision had already been made to “remove Julie and fix” the show. Significantly, Cohl apparently boasted that with Taymor dismissed from the production, he was “confident we can raise” new capital.

251. The decision to fire Taymor was not immediately communicated to her. Instead, on February 26, 2011, Cohl had a meeting with Taymor, Berger, and Edge, with Harris and Bono participating by telephone from Vail and Switzerland, respectively, to discuss whether to postpone the show's opening night beyond March 15. In this meeting, the producers revealed for the first time that Berger secretly had been working on Plan X, although Berger distanced himself from Plan X, saying it had not been "fully vetted yet." The producers never told Taymor at the meeting that they were willing to shut down preview performances to allow her to implement changes. Taymor thought the meeting was solely about deciding whether to postpone opening night once again. She expressed her belief that opening night should not be postponed again and that everyone would continue to work to improve the show.

252. After the February 26, 2011 meeting, Taymor traveled to a previously scheduled conference in California. Taymor still did not know that her collaborators were considering her removal from the production.

253. On March 4, 2011, when Taymor returned from California, the producers, Bono, and Edge summoned Taymor to a lunch meeting at The Lamb's Club in New York. When Taymor arrived at the meeting, she was summarily dismissed from the Musical.

**The Producers Dismissed Taymor to Publicly Scapegoat Her
While Continuing to Use and Change Her Work**

254. Upon information and belief, the producers did not fire Taymor because she refused to implement Plan X or any other proposed changes to the production.

255. Indeed, the producers never disclosed Plan X to Taymor until the decision had already been made to fire her. The producers never offered Taymor a chance to implement Plan X and never offered her a shutdown to make other changes to the Musical.

256. As Edge confirmed in interviews published after the Musical's official opening in June 2011: "[P]eople were careful in what they said or told [Taymor]. I certainly didn't feel I could be 100% frank with Julie. . . . She's been given the lion's share of the blame, but we were all in those workshop meetings and all saw the script. . . . [Taymor's work] is still the heart and soul of the show." (Emphasis added)

257. Upon information and belief, the true reason Taymor was fired was because the producers believed that doing so, while blaming all of the Musical's past problems on her, was the one action they could take to serve their own opportunistic goals, as set forth in Paragraph 173, above.

258. In the end, the producers have not created a "re-imagined" production. The revised Musical currently performing on Broadway is substantially the same production that Taymor directed before she was dismissed in March 2011. This technically-complicated Musical took years to write, design, and develop. The producers' current suggestion that they have created a "new" show after a mere three-week shutdown is false and incredible.

259. Rather Taymor's substantial creative contributions to the Musical, including her work as co-author of the Book, remain an integral part of the Musical and a substantial reason for its success. The myriad press reviews of the revised Musical that the producers have touted on the Musical's website promoting the show confirm this: "A fun, high-flying adventure"; "There's more flying than ever-And you can't help but feel a thrill as Spider-Man and the Goblin battle it out just a few dozen feet above your head!"; "it's a fantastic spectacle"; "Thrilling high-flying acrobatics"; "dazzling sequences unprecedented on Broadway!"; "It was one of the most dazzling theatrical experiences we have ever seen! And, most of that, we think, can be attributed to the bold and inspired work of Julie Taymor"; "[e]ssential elements of [the Original]

production remain”; “[v]isually speaking, the show bears Taymor’s outlandish stamp”; “fans of ‘The Lion King’ will be in familiar territory”; “[o]riginal director Julie Taymor’s fingerprints are still evident.”

260. The elements of the Musical praised in such reviews—which are elements Taymor was instrumental in creating—are the same elements that had been praised in February 2011, before Taymor was dismissed and the Musical was revised.

261. The producers also have not created a more financially viable production than Taymor’s original production. The first version of *Spider-Man* consistently ranked as the second- or third-highest grossing show on Broadway, despite the lack of promotion of the show to encourage ticket sales during the prolonged preview period. Its box office receipts were almost identical to the box office receipts that the revised version has earned since Taymor was dismissed from the production.

262. In total denigration of Taymor’s over seven years of work on the Musical and with obvious malice, defendants assert in paragraph 10 of their counterclaims that “[t]he show is a success despite Taymor, not because of her.” The evidence at trial will put the lie to this falsehood. In fact, Taymor undeniably has been instrumental in the enormous success of two of the three currently top-grossing shows each week on Broadway—*The Lion King* and *Spider-Man*.

FIRST DEFENSE

263. Defendants’ counterclaims fail to state a claim upon which relief can be granted.

SECOND DEFENSE

264. Defendants’ counterclaims are barred because plaintiffs fully performed under their contracts.

THIRD DEFENSE

265. Defendants' counterclaims are barred by the doctrine of waiver.

FOURTH DEFENSE

266. Defendants' counterclaims are barred by the doctrine of estoppel.

FIFTH DEFENSE

267. Defendants' counterclaims are barred by the doctrine of laches.

SIXTH DEFENSE

268. Defendants' counterclaims are barred by the doctrine of acquiescence.

SEVENTH DEFENSE

269. Defendants' counterclaims are barred by the doctrine of unclean hands.

EIGHTH DEFENSE

270. Defendants' damages claims are barred because any damages were caused, or substantially contributed to, by their own conduct and the conduct of others.

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