

1 EVAN S. COHEN (State Bar # 119601)
e-mail: ecohen@manifesto.com
2 S. MARTIN KELETI (State Bar # 144208)
e-mail: keleti@manifesto.com
3 SOMMER A. ISSAQ (State Bar # 259081)
e-mail: sissaq@cohenmusiclaw.com
4 COHEN AND COHEN
8340 Melrose Avenue
5 Los Angeles, California 90069-5420
(323) 655-4444 Telephone
6 (323) 655-3333 Facsimile

7 Attorneys for plaintiff
HERBERT COHEN
8

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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES
BY _____ NL

FILED

9 **United States District Court**
10 **Central District of California**

11
12 HERBERT COHEN, an individual,
13 Plaintiff,
14 v.
15 BARNEY HOSKYNS, an
individual;
16 RANDOM HOUSE, INC., a New
York corporation;
17 Defendants.
18

Case No. **CV09-4400** PLA

COMPLAINT FOR LIBEL

JURY TRIAL DEMANDED

I/S
20

19
20 Plaintiff alleges:

21
22 **I**

23 **SUBJECT MATTER JURISDICTION**

24 1. This court has jurisdiction over the subject matter of this action
25 pursuant to 28 U.S.C. § 1332(a)(3), because there is a complete diversity of
26 citizenship between plaintiff and defendants (each of whom is a citizen of another
27 state or a subject of a foreign country), and because the amount in controversy of
28 plaintiff's claim, exclusive of costs and attorney fees, exceeds \$75,000.

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II
PARTIES

2. Plaintiff Herbert Cohen is, and at all relevant times was, an individual residing in the County of Los Angeles, State of California.

3. Defendant Barney Hoskins (“Hoskyns”) is, and at all relevant times was, a subject of the United Kingdom and not a resident of the United States.

4. Defendant Random House, Inc. (“Random House”) is a corporation organized and existing under the laws of the State of New York, whose principal place of business is in the State of New York. Random House claims to be the world’s largest “trade book” publisher (a trade book being one intended for sale to the general public, as distinguished from a textbook, subscription book, etc.). Among Random House’s divisions is the Crown Publishing Group, whose imprints include Broadway Books. Random House is authorized to conduct business in the State of California and maintains an agent for service of process within the state.

5. Each of the named defendants was the agent, employee, partner, joint venturer, or co-conspirator of each of the other defendants, and was at all times acting within the purpose and scope of said agency, employment, partnership, joint venture, and conspiracy, and each defendant has ratified and approved the acts of the remaining defendants.

III
VENUE

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2), in that a substantial part of the events or omissions giving rise to the claims occurred in this district.

IV

FIRST CLAIM FOR RELIEF FOR LIBEL

(Against All Defendants)

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4 7. Plaintiff realleges paragraphs 1 through 6, inclusive, as if fully set
5 forth.

6 8. Plaintiff has resided and worked in the County of Los Angeles for the
7 past 54 years. Plaintiff has worked as a personal manager, as well as a record
8 company and music publishing company executive for more than half a century.
9 Plaintiff's management clients over the years included such recording artists as
10 Frank Zappa, Alice Cooper, Fred Neil, George Duke, Linda Ronstadt, and Tom
11 Waits ("Waits").

12 9. Hoskyns is an author who writes about popular music. He has written
13 for such publications as *Vogue*, *Rolling Stone*, *GQ*, *Mojo*, and *Uncut*, and he has
14 written or edited books including such titles as *Across the Great Divide: The Band*
15 *and America*, *Hotel California: Singer-Songwriters and Cocaine Cowboys in the*
16 *LA Canyons*, *Waiting for the Sun: A Rock and Roll History of Los Angeles*, *Led*
17 *Zeppelin IV*, *Say it One Time for the Broken Hearted: Country Side of Southern*
18 *Soul*, and *The Sound and The Fury: 40 Years of Classic Rock Journalism*.

19 10. On or about May 19, 2009, under its Broadway Books imprint,
20 Random House published a book written by Hoskyns, a biography of Waits entitled
21 *Lowside of the Road: A Life of Tom Waits* (the "Book"), in hardcover and
22 electronic book editions. The British publisher Faber & Faber published the Book
23 in the United Kingdom on or about March 5, 2009. The Book takes its title from
24 the song by Waits entitled "Lowside of the Road" which appears on his album
25 *Mule Variations*.

26 11. Random House has sold numerous copies of the Book, in both physical
27 copies and by digital transmission ("e-books"), as well as distributing copies of it
28 for review. The Book has been reviewed widely and received media attention.

1 Random House distributes physical books to book sellers throughout the State of
2 California and across the nation, as well as selling books online at its own website,
3 www.randomhouse.com, and such online booksellers as amazon.com; its e-books
4 are available in several different formats from nearly a score of online retailers.

5 12. The Book contains several passages referring to plaintiff, many of
6 which are false statements of fact regarding plaintiff.

7 13. On page 271, the Book republishes a statement by Jerry Yester,
8 namely

9 “Kathleen [Brennan, wife of Waits] told me Herbie
10 [plaintiff] had nicked a lot of money from Tom [Waits],”
11 says Jerry Yester. . . . “She was very smart and just had
12 a lot of really good input.” To the likes of Yester, the
13 news hardly came as a surprise. . . . “What was so
14 distressing was that Herbie had always been part of the
15 family,” Yester says. “It was like your father or your
16 brother doing it to you. . . . Waits absolutely trusted
17 Herbie to his core, and it devastated him when he found
18 out that he had grabbed a lot of the royalties.”

19 This statement is false, because plaintiff has never stolen or embezzled any amount
20 from Waits.

21 14. On page 60, the Book states “said cynicism was what enabled him
22 [plaintiff] to help himself to money that technically belonged to the artists he
23 [plaintiff] represented [including Waits].” Plaintiff never “helped himself” to, or
24 stolen, any money belonging to Waits or any other artists that he represented.

25 15. On page 271, the Book quotes Bones Howe stating “[s]he [Kathleen
26 Brennan] was able to bring about these things that put the money back in his
27 [Waits’s] pocket. Because of her they sued Herb and Tom [Waits] got a lot of
28 money and got control of his copyrights.” These statements are false, because at

1 no time did Waits ever sue plaintiff for control of the copyrights to compositions
2 written by Waits (so consequently no court ever did award Waits such control, nor
3 did he ever “get” control of the copyrights owned by plaintiff’s company, at any
4 time). Furthermore, the statements are false because the dispute in question was
5 settled in 1983, and did not involve Waits “getting a lot of money” from plaintiff
6 or the company in which he was a principal. Finally, the statements are false
7 because Waits did not “put money back in his pocket,” which falsely asserts that
8 plaintiff had wrongfully taken money from Waits in the first place.

9 16. On page 270, the Book states: “He [Waits] was just then in the process
10 of firing Herb Cohen, saying he’d ‘gotten rid of my ex-manager and a lot of the
11 flesh-peddlers and professional vermin I’d thrown in with.’” This false statement
12 accuses plaintiff of being among “flesh-peddlers and professional vermin.”

13 17. Later on page 270, the Book states: “The strong language reflected the
14 fact that Waits would soon be in court with Cohen, alleging fraudulent accounting
15 practices that had robbed Waits of royalties for years.” This false statement accuses
16 Cohen of stealing from Waits. Neither plaintiff, nor the company in which plaintiff
17 was a principal, ever “robbed” (or stole, or embezzled) any royalties from Waits.
18 Furthermore, Waits never sued plaintiff, or the company in which plaintiff was a
19 principal, for fraudulent accounting practices, whether in the early 1980s (which
20 would be “soon,” in the context of the time discussed in the Book), or at any other
21 time.

22 18. On page 270, and continuing on page 271, the Book states: “‘I thought
23 I was a millionaire and it turned out I had, like, twenty bucks,’ Waits told
24 [Hoskyns] in 1999. ‘And what followed was a lot of court battles, and it was a
25 difficult ride for both of us, particularly being newly-weds.’” These statements
26 assert that plaintiff took large amounts money from Waits, leaving him with
27 practically nothing, which is false, and also assert that there were court battles
28 between Waits and plaintiff when Waits and his wife were “newly-weds” (that is,

1 in the early 1980s) which did not take place.

2 19. The false statements of fact from the Book quoted above are libelous
3 on their face because they falsely charge plaintiff with the crime of theft,
4 embezzlement, or robbery, or some other form of illegal and dishonest conduct
5 (such as conversion, fraud, or breach of fiduciary duty), by accusing plaintiff of
6 having “nicked,” “grabbed,” “helped himself to,” or “robbed” money (i.e.
7 royalties) from one of his clients, Waits. These statements further have a tendency
8 to injure plaintiff in his occupation, because they assert that he cannot be trusted
9 with his clients’ funds, whether as a manager, record company executive or music
10 publishing executive.

11 20. Attached as Exhibit A and incorporated by reference are copies of the
12 relevant pages (60, 270 and 271) of the Book with the quoted defamatory passages
13 underscored.

14 21. Plaintiff is not a public figure.

15 22. The false statements of fact from the Book quoted above were
16 published without privilege.

17 23. The Book has been seen and read by persons who reside in and around
18 Los Angeles, indeed, by persons throughout the state, across the country, and
19 throughout the world.

20 24. As a proximate result of the above-described publication of the Book,
21 plaintiff has suffered loss to his reputation, shame, mortification, and hurt feelings,
22 all to his general damages, in an amount to be proven.

23 25. The Book was published by defendants with malice and oppression, in
24 that it was intended to harm plaintiff’s reputation, and with reckless disregard for
25 the truth, in light of the fact that Hoskyns interviewed plaintiff and many others in
26 preparing the Book, and the true facts could have been ascertained by consulting
27 plaintiff, other interviewees, and public records. Plaintiff thus seeks an award of
28 punitive damages.

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WHEREFORE, plaintiff prays as follows:

1. For general damages according to proof, but in no event less than \$1,000,000;
2. For punitive damages;
3. For an order that defendants remove the defamatory matter from any future editions of the Book in physical form (including, but not limited to, any paperback edition or revised edition) and from any electronic versions of the Book distributed in the future;
4. For costs of suit; and
5. For such other and further relief as the court should deem just and proper.

Dated: June 18, 2009

COHEN AND COHEN

By: 

 S. MARTIN KELETI

LOWSIDE OF THE ROAD

confectionery, only agreeing to meet me on condition I brought him a tube of chocolate Bath Olivers from London—a tube whose wrapping he proceeds to pry open with a vicious-looking knife he produces from his pocket. “They ain’t how I remember them,” he says after sampling one, recalling the days when he’d buy the thickly-coated plain chocolate biscuits on business trips to England.

Though he’s seldom flatly rude, Cohen’s conversation always borders on the ill-tempered. “I don’t have time to be concerned with the reality of incidental bullshit,” he says. “Artists think they’re so important, but who really gives a fuck. People think Dylan changed the world, that he was a prophet. But he was just a reporter. The times would have been a-changin’ with or without him.”

I find myself feeling a begrudging admiration for Cohen’s all-is-vanity cynicism—there really *isn’t* any bullshit here—while remembering that said cynicism was what enabled him to help himself to money that technically belonged to the artists he represented. “People are obsessed with what goes on behind the scenes—the lives of artists, whether they fucked their mother or what have you,” he says. “There are things I could tell you about Tom Waits or any of my artists that nobody knows, but why should I care if people want to know what an artist is really like? I always told my artists to lie about their lives anyway. I said, ‘Who cares what the truth is? Feed the writers stuff that’ll make the records sell.’”

Whether Tom Waits took that advice to heart we’ll probably never know; what we do know is that Cohen was present at the Troubadour club on a Monday hoot night in June 1971, and that an unusual voice and style caught his ear from the stage. “I was on my way to the toilet when I heard Tom sing,” he recalled matter-of-factly. “When I came out of the toilet I asked him what he was doing and he said, ‘Nothing.’ So I signed him up.”

LOWSIDE OF THE ROAD

behind it. It was kind of like taking a painting that's made out of mud and putting a real expensive frame around it."

One afternoon the phone rang in Howe's office. It was Waits, asking if they could meet for a drink at Martoni's, the famous Hollywood watering hole. A few evenings later they sat down, ordered two glasses of wine, and began talking. When Waits said he wanted to do his next album by himself, Howe took the news in his stride. "I said, 'Tom, that's always been your choice at any point that you wanted.'" He said that if Waits wanted to pursue the directions he'd hinted at on "Circus Girl" and "You Can't Unring a Bell," it probably wasn't going to work anyway. "If you're going to be banging on tire irons and out-of-tune guitars," he told Waits, "I'm not the right guy for the job. But understand one thing: if you ever want to make a record with me again, I'll be very happy to do it and I'll look forward to doing it." Waits mumbled something about never wanting to play the piano again and they drank another glass of wine. Then they shook hands and didn't see each other again for ten years. "I just needed to make a clean break," was how Waits put it to me. "I was at the end of a cycle."

Discussing plans for his next album in an interview in late February of 1982, Waits said he wanted to "be responsible for all facets of conceiving, producing and putting together the entire package." He was just then in the process of firing Herb Cohen, saying he'd "gotten rid of my ex-manager and a lot of the flesh-peddlers and professional vermin I'd thrown in with." He added that "my wife and I are taking care of all my affairs now." The strong language reflected the fact that Waits would soon be in court with Cohen, alleging fraudulent accounting practices that had robbed Waits of royalties for years. Kathleen Brennan, it so happened, came with a useful asset: according to Bones Howe, her father was an accountant. "I thought I was a millionaire and it turned out I had, like, twenty bucks," Waits told me in 1999.

"And what followed was a lot of court battles, and it was a difficult ride for both of us, particularly being newly-weds."

"Kathleen told me Herbie had nicked a lot of money from Tom," says Jerry Yester. "She was the one who woke him up to what Herbie was doing. She was very smart and just had a lot of really good input." To the likes of Yester, the news hardly came as a surprise. Cohen had already been taken to court by Frank Zappa several years before, and was fired as his manager in May 1976. "What was so distressing was that Herbie had always been part of the family," Yester says. "It was like your father or your brother doing it to you. And he and Waits were inseparable for a long time. Everywhere he went in Europe, they were together. Waits absolutely trusted Herbie to his core, and it devastated him when he found out that he had grabbed a lot of the royalties."

To Bones Howe, Kathleen Brennan saved her husband, not just emotionally but financially. "She provided emotional security *and* financial security," Howe says. "She was able to bring about these things that put the money back in his pocket. Because of her they sued Herb and Tom got a lot of money and got control of his copyrights. And when you get older those things become really important, because the big advances and big bucks aren't there—particularly for a guy that's as much a hermit as he is."

"Basically, Kathleen saved Tom," Paul Body agrees. "I can't say anything better than that. If he'd kept going the other way, it would have just been sort of a dead end. It would have fizzled out and nobody would have cared. But he somehow managed to reinvent himself, and Kathleen had a lot to do with that." Yet Brennan's new role as Waits' protector was felt not only by Bones Howe but by almost everybody who'd been involved with Tom over the preceding decade. "He cut himself off from his old life," Howe says. "It was like he was saying, 'That was a different person and now I'm a new person.' I began to see this happening and

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiff hereby demands a jury trial.

Dated: June 18, 2009

COHEN AND COHEN

By: 
S. MARTIN KELETI

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

I (a) PLAINTIFFS (Check box if you are representing yourself) HERBERT COHEN, an individual

DEFENDANTS BARNEY HOSKYN, an individual; RANDOM HOUSE, INC., a New York corporation

(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases): Los Angeles

County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only):

(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) EVAN S. COHEN (Bar # 119601) ecohen@manifesto.com S. MARTIN KELETI (Bar # 144208) keleti@manifesto.com COHEN AND COHEN/8340 Melrose Avenue, Los Angeles, CA 90069-5420, 323.655.4444 Tel./323.655.3333 Fax

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

- 1 U.S. Government Plaintiff 2 U.S. Government Defendant 3 Federal Question (U.S. Government Not a Party) 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business in this State, Incorporated and Principal Place of Business in Another State, Foreign Nation.

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

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify): 6 Multi-District Litigation 7 Appeal to District Judge from Magistrate Judge

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

CLASS ACTION under F.R.C.P. 23: Yes No

MONEY DEMANDED IN COMPLAINT: \$ according to proof (>\$1,000,000)

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Civil rights, 42 U.S.C. 1983

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

Large table with columns for categories: OTHER NATURE, CONTRACT, REAL PROPERTY, TORTS (PERSONAL INJURY, PERSONAL PROPERTY, CIVIL RIGHTS), PRISONER PETITIONS, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS. Includes checkboxes for various legal actions like 400 State Reapportionment, 110 Insurance, 310 Airplane, etc.

VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? No Yes

If yes, list case number(s):

FOR OFFICE USE ONLY: Case Number:

CV09-4400

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

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? No Yes

If yes, list case number(s): _____

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

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

IX. VENUE: List the California County, or State if other than California, in which EACH named plaintiff resides (Use an additional sheet if necessary)
 Check here if the U.S. government, its agencies or employees is a named plaintiff.
Los Angeles County

List the California County, or State if other than California, in which EACH named defendant resides. (Use an additional sheet if necessary).
 Check here if the U.S. government, its agencies or employees is a named defendant.
State of New York

List the California County, or State if other than California, in which EACH claim arose. (Use an additional sheet if necessary)
Note: In land condemnation cases, use the location of the tract of land involved.
Los Angeles County

X. SIGNATURE OF ATTORNEY (OR PRO PER): *Martin Keller* Date June 18, 2009

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

Key to Statistical codes relating to Social Security Cases:

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