

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

JOANNA LEVESQUE p/k/a "JOJO"

Plaintiff,

vs.

DA FAMILY RECORDS, LLC.; and
BLACKGROUND RECORDS, LLC

Defendants.

Index No.

SUMMONS

To the above named Defendants:

You are hereby summoned and required to serve upon plaintiff's attorney an Answer in this Action within twenty days after the service of this Summons, exclusive of the day of service, or within thirty days after service is complete if this Summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York
July 29, 2013



Noah Shube
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New York, NY 10013
Phone: (212) 274-8638

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COMPLAINT

Plaintiff Joanna Levesque, professionally know as “JoJo” (“JoJo”) by her undersigned attorneys, through this Complaint against defendants Da Family Records, LLC (“Da Family Records”), and Blackground Records, LLC (“Blackground Records” or “Blackground”) (collectively “Defendants”), alleges as follows:

A. NATURE OF ACTION

1. JoJo is a musical recording artist who first burst upon the pop music scene in 2004 at the age of 13 when she released her first album “JoJo” containing her hit single “Leave (Get Out).” She quickly followed up on that initial success when in 2006 she released her second album “The High Road” containing another hit single “Too Little, Too Late.” Both of these albums were released under the terms of a recording contract dated as of April 16, 2003 (“Recording Contract”) between JoJo and Da Family Entertainment, LLC (“Da Family Entertainment”). At all times relevant herein, defendant Blackground Records has also claimed rights to JoJo’s recording artist services under the Recording Contract by virtue of an Artist’s Assent and Guaranty also executed on or about April 16, 2003 (“Assent Agreement”). JoJo is informed and believes, and thereon alleges, that at certain times relevant herein, Da Family

Music, Inc. (“Da Family Music”) has also claimed rights to JoJo’s recording artist services under the Recording Contract. JoJo is further informed and believes, and thereon alleges, that defendant Da Family Records claims to have, and/or as a matter of law has, succeeded to any and all rights and liabilities formerly held by Da Family Entertainment, Da Family Music and/or any other Da Family entity (collectively “Da Family Entities”) relating to JoJo’s recording artist services under the Recording Contract. A true and correct copy of the Recording Contract is attached hereto as Exhibit 1. A true and correct copy of the Assent Agreement is attached hereto as Exhibit 2.

2. JoJo was 12 years old in 2003 and living in California with her mother when she entered into the Recording Contract. Because of her status as a minor, the Recording Contract (which provided for the application of New York Law), contemplated the filing of a petition for approval before the New York Surrogate’s Court pursuant to Arts and Cultural Affairs Law §35.03 (“Section 35.03”). Section 35.03(1) provides, in pertinent part, that if a contract is approved “the infant may not, either during [her] minority or upon reaching [her] majority, disaffirm the contract on the ground of infancy or assert that the parent or guardian lacked authority to make the contract.” Section 35.03(2)(d) further provides, in pertinent part, that “[n]o contract shall be approved if the term during which the infant is to perform or render services . . . including any extensions thereof by option or otherwise, extends for a period of more than three years from the date of approval of the contract, provided, however that if the court finds that such infant is represented by qualified counsel experienced with entertainment industry law and practices, **such contract may be for a period of not more than seven years.**” (emphasis added). Section 35.03 therefore reflects the considered public policy of the State of New York that under no circumstances shall a person who is a minor at the time of contract approval by the

Court be obligated by law to perform or render services under that contract for a period of more than seven (7) years from the date of approval.

3. In or about May 2003, Da Family Music filed a “Verified Petition For Approval of Contracts By An Infant Pursuant To Arts & Cultural Affairs Law Section 35.03” (“Petition For Approval”) with the Surrogate’s Court. The Petition For Approval was filed by attorney Diane F. Krausz on behalf of Da Family Music and was verified by Vincent Herbert, its Chief Executive Officer. JoJo is informed and believes, and thereon alleges, that Vincent Herbert also is or was an executive officer of all other Da Family Entities including Da Family Entertainment and Da Family Records. Paragraph 5(D) of the Petition For Approval states, in pertinent part, that “since the Recording Contract may extend for a period of more than seven (7) years during the Infant’s minority from the date of judicial approval and the Infant shall obtain majority of 18 years prior to expiration of a seven (7) year term[,] **Petitioner requests that the Term of the Recording Contract be approved for a seven (7) year period beginning with the date of judicial approval.**” (Emphasis added). A true and correct copy of the Petition For Approval (with selected exhibits) is attached hereto as Exhibit 3.

4. On March 17, 2004, the Surrogate’s Court granted the Petition For Approval as requested.¹ As a result, JoJo was precluded by law from disaffirming the Recording Contract at any time during her minority or upon turning into an adult on December 20, 2008. However, (i) despite the clear language of Section 35.03(2)(d) limiting any contract approved under its provisions to a term of seven (7) years, and (ii) the express request by Da Family Music in its Petition For Approval that the Recording Contract be approved for the maximum statutory term

¹ The Surrogate Court’s Order was signed on March 15, 2004, but the Surrogate’s Court date stamp for both the Order and the accompanying Decree Approving Infants’ Employment Contract is March 17, 2004, hence that date is used herein.

of seven (7) years, Da Family Records and Blackground Records contend that the Recording Contract is still in effect; that JoJo is still subject to its terms; and that JoJo cannot sign a new recording agreement with any other record label or otherwise exercise full control over the direction of her career. Specifically, Defendants contend that (a) JoJo is required to continue providing her recording services for a third album as provided under the Recording Contract, and (b) once the third album is completed, Defendants will still have contractual options for up to three additional albums.

5. At all relevant times herein, JoJo was unaware that, as a matter of New York law, the approval granted by the Surrogate's Court limited the term of the Recording Contract to a maximum duration of seven (7) years following the March 17, 2004 approval date. During the pendency of the Petition for Approval, JoJo was not represented by counsel before the Surrogate's Court. While a guardian ad litem was appointed by the Surrogate's Court, neither of the two reports filed by the guardian ad litem with the Court made any reference to the seven year contractual limitation. Additionally, neither of the Court's written orders approving the Petition For Approval issued on or about March 17, 2004 (one of which was prepared by attorney Krausz on behalf of Da Family Music) contained any reference to the seven year limited duration of the Recording Contract. Given these facts, and that at all times Defendants continued to act as if the Recording Contract was still in full force and effect, JoJo believed that the duration of the Recording Contract was open ended depending upon how many of the six "contract period" options were exercised. She therefore continued to render her recording services after the March 17, 2011 contract expiration date.²

² Because Da Family Records and Blackground Records continue to claim that the Recording Contract is still in full force and effect **after** being specifically informed of the Section 35.03 seven year maximum duration, any remote possibility that Defendants were also unaware that the

6. Had JoJo known that, as a matter of New York law, the Recording Contract expired on March 17, 2011, she would not have continued to render her recording services under the Recording Contract. Indeed, JoJo has been dissatisfied with her professional relationship with the Da Family Entities and Blackground for many years. This dissatisfaction resulted, in part, from their failure to, among other things:

(a) Release her third (or any other) album at any time following the commencement of the “third contract period” in or about late 2007, despite JoJo’s taking all actions on her part necessary for the release of the third album including, but not limited to, delivery of numerous master recordings well in excess of those required for one album, all of which had been accepted by Defendants for possible use in the third album;³

(b) Continuously and without interruption have a distribution agreement in place with Universal Records as required under the Recording Contract, without which Defendants were unable to successfully release the third (or any other) album; and

(c) Pay approved producers and other vendors with whom JoJo has collaborated, as required under the Recording Contract, thus limiting the number and quality of producers and other collaborators who would work with her.⁴

Recording Contract expired on March 17, 2011 (notwithstanding that the Petition For Approval expressly requesting the maximum seven year term was signed under oath by Da Family CEO Vincent Herbert), has been eliminated. Rather, Defendants’ intent to ignore the seven year limit of Section 35.03 is apparent.

³ Typically, only 10-12 songs are required for one album.

⁴ JoJo’s concern over these and other issues led her to file a lawsuit against the Da Family Entities and Blackground in August 2009. That litigation was discontinued after JoJo received assurances from defendants that her concerns would be addressed, in part, by Blackground’s entering into a distribution agreement with Universal/Interscope. Notwithstanding these assurances, the Universal/Interscope agreement expired or was terminated in or about 2012, and there is no current distributor; producers and other approved collaborators remain unpaid; and JoJo’s third album has still not been released, years after she provided to Defendants more than

7. By claiming that the Recording Contract remains in full force and effect, Defendants have caused and are causing JoJo to suffer irreparable damage to her professional career by depriving her of the benefits of Section 35.03 which reflects the considered public policy of the State of New York that under no circumstances shall a person who is a minor at the time of contract approval by the Court be obligated by law to perform or render services under that contract for a period of more than seven (7) years from the date of approval.

(a) Specifically, JoJo has been deprived of the one thing that is most important for any recording artist, control over the direction of her professional career. Section 35.03 was expressly enacted to protect a young artist's ability to control her career by limiting the length of time that any minor artist could be judicially bound by a contract for her personal recording services. An essential component of the right to control one's career is the freedom to choose with whom one will be in business. When JoJo entered into the Recording Contract in 2003, she was an unknown, aspiring 12 year old singer. She is now a 22 year old professional recording artist with two very successful albums to her credit and many potential new business opportunities, some of which she is aware and many of which she is not. This is because of the general reluctance by those in the music industry to approach an artist believed to be under contract. By way of example, because of Defendants' disregard of Section 35.03 and their

sufficient recordings to release that album. Indeed, JoJo is informed and believes, and thereon alleges, that a dispute between Blackground and Universal/Interscope regarding matters completely unrelated to JoJo, further adversely affected Defendants' ability to release JoJo's third album. JoJo therefore reserves her right to assert any and all available claims for money damages against Defendants based upon the above referenced breaches of the Recording Contract.

continued claim that JoJo is still under contract, JoJo has been and will continue to be deprived of the opportunity to enter into a new recording agreement with a different record label.⁵

(b) If allowed to do so JoJo would be able to sign a more favorable recording agreement now than the one she signed as an unknown artist in 2003. However, it is impossible to determine how much more favorable any new agreement would be without all potential interested parties involved in the negotiation process. This full participation cannot occur unless it is clearly communicated to the music community that, because of the seven year term limit mandated by Section 35.03, JoJo is a true “free agent” no longer burdened by her prior recording agreement.⁶

(c) Moreover, for as long as Defendants are allowed to represent to the music community that JoJo is still contractually bound to them, there are numerous other business opportunities that JoJo will lose, from touring to merchandise to endorsements to the ability to make connections with important people and the favorable publicity that she would be able to generate if the music community knew that she was no longer contractually bound to

⁵ Commencing in or about late 2012 and continuing thereafter (all before JoJo was made aware that the Recording Contract expired as a matter of law in March 2011), JoJo’s representatives had discussions with certain record labels that indicated their interest in signing JoJo to a recording contract in the event that an arrangement could be worked out with Defendants allowing her to do so. There are almost certainly other labels that would have also expressed interest but for Defendants’ claim that JoJo remains under contract. Not only did Defendants (wrongfully) insist that JoJo was legally prohibited from entering into a new record label deal without their permission, Defendants compounded their wrongful conduct by rendering it impossible to reach agreement with labels that had expressed interest in JoJo by making excessive contractual demands.

⁶ This is not to say that economic damages cannot be determined for the loss of certain types of business opportunities for which a reasonable method of calculation is available. Rather, it is to say that (i) irreparable harm results from a de facto loss of control over one’s career; (ii) it also results from the loss of business opportunities of which JoJo **will never become aware** because interested parties believe JoJo to be under contract to Defendants and do not make their interest known; and (iii) it is often the case that due to the nature and magnitude of the lost opportunities injury identified herein, money damages are extremely difficult or impossible to quantify.

Defendants. By way of example, because the Recording Contract provides for JoJo's exclusive recording services, any television or movie performance opportunities available to JoJo would first have to be approved by Defendants. Once again, while there is no way of knowing how many opportunities JoJo has lost in these areas because of Defendant's claim that JoJo remains under contract, it is beyond dispute that opportunities have been lost. The losses suffered exist on at least two levels. First, each project has an independent financial benefit (the amount of money JoJo would be paid for her performance). Second, in addition to that specific negotiated income, appearances in movies, television programs, and televised music awards shows provide crucial opportunities for JoJo to receive major media exposure and to connect with her fans on a grand scale, the loss of which cannot be compensated by money damages.

(d) By way of further example, there are many popular and prominent musical artists who want to collaborate with JoJo when she is free to do so. As above, the benefit from these collaborations is not only economic, but, equally important is the valuable positive media exposure that comes with industry professionals and fans knowing that JoJo is collaborating with certain other highly respected and popular performers. However, as long as Defendants are allowed to claim that they contractually control her, JoJo will never be able to take full advantage of these particular career enhancing opportunities.

(e) Of equal importance, JoJo's core audience has historically been the "tween," teen, and young adult demographic. Because JoJo started her recording career as a teenager, this demographic was a natural fit for her. At age 22, JoJo is still a young woman who has strong appeal for this demographic, but time is of the essence. The optimum age for an artist like JoJo to appeal to this highly regarded demographic is limited, and each day that JoJo is prevented from

controlling her career in the manner of her choosing so that she remains relevant to and connects with this particular fan base, is a day lost that cannot be recovered.

8. Therefore by this action, JoJo seeks, among other relief:

(a) A judicial declaration that, as a matter of law (i) the term of the Recording Contract expired on March 17, 2011; (ii) JoJo does not owe any further recording artist or other personal services to Defendants or anyone else under the Recording Contract; and (iii) JoJo is free to sign a new recording agreement with any record label of her choice, and to otherwise exercise full control over the direction of her career; and

(b) A preliminary and permanent injunction preventing Defendants, or either of them, and their employees and agents, and all others acting in concert with them, from enforcing, or seeking to enforce, or claiming the right to enforce, performance of any of JoJo's recording artist or other personal services under the Recording Contract.

B. THE PARTIES

9. Plaintiff Joanna Levesque p/k/a JoJo is an individual currently residing in Los Angeles, California.

10. Upon information and belief, JoJo alleges that at certain times relevant hereto, Defendants Da Family Entertainment and Da Family Music were entities organized under the laws of the State of New York. JoJo is further informed and believes, and thereon alleges, that on or about June 30, 2004, Da Family Entertainment was dissolved, as reflected in the online database of the New York Secretary of State. JoJo is further informed and believes, and thereon alleges, that on or about July 29, 2009, Da Family Music was dissolved, as reflected in the online database of the New York Secretary of State.

11. Upon information and belief, JoJo alleges that at all times relevant hereto, Defendant Da Family Records was and is an entity organized under the laws of the State of New York, with its designated agent for service of process, Vincent Herbert, located at 15 Remsen Avenue, Roslyn, New York 11576. JoJo is further informed and believes, and thereon alleges, that Da Family Records claims to have, and/or as a matter of law has, succeeded to any and all rights and liabilities formerly held by Da Family Entertainment, Da Family Music and or any other Da Family entity, relating to JoJo's recording artist services under the Recording Contract.

12. Upon information and belief, JoJo alleges that at all times relevant hereto, Defendant Blackground Records was and is an entity organized under the laws of the State of Delaware, with its designated agent for service of process, Paracorp Incorporated, located at 2140 S. DuPont HWY, Camden, DE 19934.

13. Venue is proper in this Court because the Recording Contract contains a New York choice of law clause, the Assent Agreement contains New York choice of law and forum selection clauses, and the Da Family Entities and Blackground Records have previously submitted to the jurisdiction of the Courts of this County in connection with the filing of the Petition For Approval.⁷

C. THE RECORDING CONTRACT AND RELATED DOCUMENTS

14. On or about April 16, 2003, JoJo entered into the Recording Contract with Da Family Entertainment. Because JoJo was 12 years old at the time, the agreement was also signed by her mother Diana, and her father Joel. A true and correct copy of the Recording Contract is

⁷ If, for any reason, it is determined that New York law is inapplicable to this action and/or that New York choice of law principles require the application of the law of a different jurisdiction, JoJo reserves her right to assert that California law applies because she was a minor residing in the State of California at the time she executed the Recording Contract.

attached hereto as Exhibit 1. [A copy is also attached as Exhibit A to the Petition For Approval (Exhibit 3)].

15. On its first page, the Recording Contract is also identified as the “Deal Memo” and there is reference to an attached “Long Form Agreement” (“Purported Long Form”), the terms of which the parties agreed to negotiate in good faith. The Recording Contract further provides that “any delay or failure to complete and execute the Long Form Agreement for any reason will not in any manner impede or compromise the enforceability and effectiveness of this agreement.” JoJo is informed and believes and on that basis alleges, that the Purported Long Form was never fully negotiated by anyone on her behalf, nor was it ever executed by her. [A copy of the Purported Long Form is attached to the Petition For Approval as Exhibit A].

16. The first page of the Recording Contract also contains a representation that Da Family Entertainment has entered into an agreement with Blackground Records “wherein Da Family and Blackground shall ‘joint venture’ the worldwide distribution (through Universal Records) of master recordings and phonograph records delivered by [JoJo] pursuant to this agreement.” JoJo is informed and believes, and thereon alleges, that at no time did she or any of her representatives receive a copy of this purported joint venture agreement.

17. Paragraph 2 of the Recording Contract contains the “Term” which provides for an initial “contract period” commencing upon execution of the agreement and continuing until the later of (a) 12 months after the delivery of the initial album master recordings or (b) 9 months after the commercial release of the initial album in the United States. The Recording Contract also provides for 5 additional options to extend the term for additional “contract periods,” such that JoJo could be required to deliver up to six albums over a total period well in excess of 7 years given the time it reasonably takes to create one album. Indeed, in the 10 years since the

execution of the Recording Contract, Defendants have only released two JoJo albums, one in 2004 and the other in 2006. The “third contract period” was commenced in or about late 2007 but JoJo’s third album has still not been released.⁸

18. Paragraph 11 of the Recording Contract contains an acknowledgment that JoJo is a minor according to the laws of the State of New York. It further states that “[m]inor and Da Family agree that New York law shall be the governing law of this Agreement and that such law governs the enforceability of contracting with minors for contracts which are to be wholly performed therein.”

19. On or about April 16, 2003, JoJo also signed the Assent Agreement. Once again, this agreement was also signed by JoJo’s parents. It was also signed by authorized representatives of Da Family Entertainment and Blackground Records. A true and correct copy of the Assent Agreement is attached hereto as Exhibit 2. [A copy is also attached as Exhibit B to the Petition For Approval].

20. Pursuant to paragraph 2 of the Assent Agreement, if during the term of the Recording Contract, Da Family Entertainment ceased to be entitled to JoJo’s recording services, “Artist, at Blackground’s request, will do all such acts and things so as to give Blackground the same rights, privileges, and benefits as Da Family would have had under the Artist Agreement if Da Family had continued to be entitled to Artist’s recording services.” Paragraph 2 further

⁸ Because the “commercial release” date of an album is outside of JoJo’s control (as is evidenced by Defendants having failed to release the third album for almost six years), paragraph 2 of the Recording Agreement creates a Term structure in this personal services contract that is not only indefinite, but potentially infinite in duration, thus creating a virtual “involuntary servitude” situation where there is no end in sight. Therefore, if for any reason, it is determined that the Recording Contract did not expire as a matter of law on March 17, 2011 as alleged herein, JoJo reserves her right to assert that the Recording Contract is unenforceable because, among other reasons, the Term is illusory, and/or that Defendants have breached the Recording Contract resulting in its termination by, among other things, failing and refusing to release the third album.

provides that “such rights, privileges, and benefits will be enforceable in Blackground’s behalf against Artist; and notwithstanding any breach by Da Family, all the terms and conditions contained in the Artist Agreement will be effective as if Da Family had assigned the Artist Agreement to Blackground with Artist’s consent.”

21. Paragraph 7 of the Assent Agreement further provides that “Blackground may, in its own name, institute any action or proceeding against Artist to enforce its rights” under the Recording Contract or the Assent Agreement.

22. Paragraph 9 of the Assent Agreement further provides that it is to be governed by the laws of New York State, and that “the New York Courts only will have jurisdiction over any controversies regarding this agreement.”

D. THE PETITION FOR APPROVAL

23. The Petition For Approval was filed in the New York Surrogate’s Court in or about May 2003. The Petition was filed in the name of Da Family Music by its attorney Diana F. Krausz and was verified by chief executive officer Vincent Herbert.

24. JoJo was not represented by counsel in connection with the Petition For Approval. However, on or about July 22, 2003 the Court did appoint attorney Shirley Stewart Farmer as Guardian Ad Litem. A true and correct copy of the Guardian Ad Litem appointment document is attached as Exhibit 4.

25. In connection with the performance of her services as guardian ad litem, Ms. Farmer filed two reports. The first, entitled “Report Of Guardian Ad Litem” (“GAL Report”), was filed on or about August 28, 2003. The second, entitled “Final Report Of Guardian Ad Litem” (“Final GAL Report”), was filed on or about January 29, 2004. On or about the same date, Ms. Farmer also filed her “Affirmation of Services Rendered By Guardian Ad Litem”

(“GAL Affirmation”), disclosing that she had spent 20.80 hours performing her duties as guardian ad litem. True and Correct copies of the GAL Report (without exhibits), the Final GAL Report (without exhibits), and the GAL Affirmation are attached hereto as Exhibits 5, 6, and 7, respectively.

26. While the Petition For Approval was pending in the Surrogate’s Court, two amendments to the Recording Contract were executed. The first amendment was dated “October ___, 2003” (“October Amendment”), and the second was dated “November ___, 2003” (“November Amendment”). True and correct copies of the October and November Amendments are attached as Exhibits 8 and 9, respectively. The November Amendment revised paragraphs 4(b)(ii)(B) through 4(b)(ii)(C) of the Recording Contract so that a \$55,000 payment to JoJo was no longer conditioned upon execution of the Purported Long Form.

27. The Petition For Approval was granted by the Honorable Eve. M. Preminger on or about March 15, 2004, and the Order Granting Petition (“Order”) and Decree Approving Infant’s Employment Contract (“Decree”) were both date stamped on March 17, 2004. True and correct copies of the Order and Decree are attached hereto as Exhibits 10 and 11, respectively.

28. The Order states in pertinent part:

In this uncontested application pursuant to Section 35.03 of the New York Arts and Cultural Affairs Law, petitioner recording company seeks approval of a contract between it and a twelve year-old infant for an initial term of nine or twelve months from the date of delivery of master recordings or nine months after the commercial release of a first album, to take effect concurrently with an assent and guaranty between

the infant and a distribution company. The infant is represented by counsel. (See, Arts and Cultural Affairs Law 35.03 [2][d].)

The guardian ad litem appointed by the Court has reviewed the agreement in detail and interviewed the infant and her natural guardian, who seeks to be appointed the guardian of the infant's property. A hearing before a court attorney-referee and the submitted papers demonstrate that the terms of the recording contract and assent and guaranty appear to be fair and in the infant's best interest, and the guardian ad litem recommends approval thereof.

The petition is granted

29. The Decree states in pertinent part:

ORDERED AND DECREED, that the Agreement between DA FAMILY MUSIC, INC. and the infant, as annexed to the Petition, as modified by the Amendments dated October and November, 2003, as annexed thereto, and the Assent and Guaranty annexed thereto as Exhibits hereby are approved, **and said infant may not, either during her minority or upon reaching her majority disaffirm the Agreement upon the grounds of infancy** (emphasis added)

E. ARTS & CULTURAL AFFAIRS LAW SECTION 35.03

30. Arts & Cultural Affairs Law Section 35.03[1] provides in pertinent part:

A contract made by an infant or made by a parent or guardian of an infant . . . under which the infant is to perform or render services as an . . . musician, vocalist or other performing artist . . . may be approved by the supreme court or the surrogate's court as provided in this section If the contract is so approved the infant may not, either during his minority or upon reaching his majority, disaffirm the contract on the ground of infancy or assert that the parent or guardian lacked authority to make the contract.

A true and correct copy of Section 35.03 is attached hereto as Exhibit 12.

31. Section 35.03[2][d] provides in pertinent part:

No contract shall be approved if the term during which the infant is to perform or render services . . . including any extensions thereof by option or otherwise, extends for a period of more than three years from the date of approval of the contract, provided, however that if the court finds that such infant is represented by qualified counsel experienced with entertainment industry law and practices such contract may be granted for not more than seven years. (emphasis added)

32. Section 35.03 [5][f][i] provides in pertinent part:

The petition shall have annexed a complete copy of the contract or proposed contract and shall set forth:

(f)(i) **A statement that the term of the contract during which**

the infant is to perform or render services . . . can in no event extend for a period of more than three years from the date of approval of the contract (emphasis added)

F. LEGISLATIVE HISTORY OF SECTION 35.03

33. In Prinze v. Jonas, 38 N.Y.2d 570, 575-76 (1976), the New York Court of Appeals was called upon to discuss the legislative history and purpose of General Obligations Law section 3-105 which was the predecessor statute to Section 35.03. A true and correct copy of Prinze v. Jonas is attached hereto as Exhibit 13.

34. The Prinze Court stated in pertinent part:

The Law Revision Commission report recommending the passage of [General Obligations Law] section 3-105 [the predecessor to Section 35.03] indicates that a major reason for its enactment was to provide a degree of certainty for parties contracting with infants in the entertainment industry so that the validity of such contracts would not be rendered doubtful or subject to subsequent litigation concerning reasonableness, after a considerable expenditure of effort in part or full performance of the contract.

35. The Prinze Court continued in pertinent part:

Section 3-105 was enacted to fill this need. But the statute also provides an additional measure of protection for infants in exchange for the right to disaffirm. The infant cannot be bound

for more than three years. In discussing the purpose and function of the three-year limitation on the duration of contracts . . . the report states that the restriction “limits the period for which the contract is made binding to a period in which the infant’s development and his future needs and capabilities are reasonably foreseeable” (1961 Report of N.Y. Law Rev. Comm., pp.256-257).

36. The Prinze Court continued in pertinent part:

The statutory scheme is clear. If the conditions set forth in section 3-105 are satisfied, and the contract is approved, the right to disaffirm is extinguished. **But the adult party must pay a price in order to obtain this guarantee against disaffirmance. The duration of the contract must be limited to three years. If it is to run for a longer period it cannot be approved and the right to disaffirm is left intact. That is the risk the adult party runs by insisting on a longer period.** (emphasis added).

G. 1997 AMENDMENT TO SECTION 35.03[2][d]

37. In 1997, the three year maximum contract term of Section 35.03[2][d] referenced by the Prinze Court [in connection with predecessor section 3-105(2)(d)] was amended to allow for approval of a contract with an infant that extended for a period not to exceed seven (7) years (“1997 Amendment”). This amendment was implemented by adding the following wording in pertinent part:

, provided, however that if the court finds that such infant is represented by qualified counsel experienced with entertainment

industry law and practices such contract may be granted for not more than seven years. (See, paragraph 31 above).

A true and correct copy of the 1997 Amendment is attached hereto as Exhibit 14.

38. Prior to the enactment of the 1997 Amendment, John A. DeFrancisco, Chairman of the Tourism, Recreation & Sports Development Committees and the State Senator sponsoring the bill, wrote an August 14, 1997 letter to the Governor urging his approval, in which he stated in pertinent part:

Under current law there are several safeguards to protect the interests of minors entering into personal services contracts – among them . . . a three year limitation on contract length.

It is that last provision which is harming the development of new talent in New York State. For example, with a three year contract limit, the recording industry is often reluctant to invest in the training and promotion of a child artist when the opportunity to obtain a fair return in that time frame may not be possible. **In addition to reducing opportunities for young residents of this state there is a strong incentive to simply move to another location like California, where a seven year contract period is permitted. . . .**

This bill strikes a careful balance, preserving our strong system of safeguards for the interests of minors, **by extending the present three year limitation to seven years**, but only when the court reviewing the contract finds that there has been representation by

qualified counsel experienced with entertainment laws and practices. (emphasis added).

39. Also prior to the enactment of the 1997 Amendment, Paul A. Tokasz, Chairman of the Tourism, Arts and Sports Development Committees and the State Assemblyman sponsoring the bill, wrote a September 9, 1997 letter to the Governor urging his approval, in which he stated in pertinent part:

This legislation would permit a minor, represented by qualified counsel experienced in entertainment industry law and practices, **to enter into a personal services contract for up to seven years,** if approved by the courts. While recording studios want to sign promising minors to recording contracts, the three year time limit creates a problem. In most cases, it is rare for any recording artist to deliver more than two albums in a three year period. In the case of a minor who is new to the industry the output could be even less. **Since recording studios can incur substantial costs early on in an artist's career, a three year contract may not permit the company to obtain a fair return on their investment. It may become more desirable to sign minors in states like California, where the limitation is extended to seven years.** As long as California has a longer period to sign child performers, New York is at a disadvantage. This legislation will rectify this matter. (emphasis added).

True and correct copies of these two letters are attached hereto as Exhibit 15.

40. Also prior to the enactment of the 1997 Amendment, Paul Rusinoff, Director of State Relations of the Recording Industry Association of America, wrote an August 14, 1997 letter to the Governor urging his approval, in which he stated in pertinent part:

[The 1997 Amendment] permits record companies to contract with a minor artist for a period of up to seven years. Today, only New York, Massachusetts and Florida impose a three year durational limit on a sound recording contract with a minor. **All other states, including California, permit contracts up to seven years in duration.** In order to obtain an enforceable contract with a minor, each company must get any contract with anyone under 18 approved by a court of law. **This legislation allows a court to approve a contract with a minor for up to seven years instead of three.** (emphasis added).

41. Also prior to the enactment of the 1997 Amendment, Gene De Santis, counsel for the Recording Industry Association of America, wrote an August 18, 1997 letter to the Governor urging his approval, in which he stated in pertinent part:

California, which competes vigorously with New York's entertainment industry, permits personal service contracts of up to seven years duration. Because young artists there can sign with a label for a much longer period of time, the recording company can invest much more heavily in promoting that youngster. Obviously, a greater investment in the promotion and marketing of a young talent translates into a higher possibility

of commercial success. Unfortunately, the New York law which was intended to protect minors works against them. The climate of uncertainty created by the three year limit encourages lower levels of compensation, reduces promotional and marketing investment, and in some instances discourages the company from signing the artist at all. **This bill would remedy the problem by allowing the minor to sign a personal service contract of up to seven years duration** provided “the court finds such infant is represented by qualified counsel experienced with entertainment law and practices.” (emphasis added).

True and correct copies of these two letters are attached hereto as Exhibit 16.

42. On June 13, 2013, letters were sent (i) informing Defendants in detail of the basis for this lawsuit and explaining why, as a matter of law, the Recording Contract expired on March 17, 2011; (ii) requesting both Defendants to acknowledge in writing that the Recording Agreement had expired and that Defendants would not enforce, or seek to enforce, or claim the right to enforce, performance of any of JoJo’s recording artist or other personal services under the Recording Contract; and (iii) advising them that failure to provide such acknowledgment in writing would result in the immediate filing of this lawsuit. After being provided with ample time and opportunity, both Defendants have failed to provide the requested acknowledgment.

43. Based upon the foregoing, JoJo has filed this action seeking a Declaratory Judgment and a Preliminary and Permanent Injunction so that the parties may ascertain their respective rights and obligations with regard to the Recording Contract and so that Defendants can be enjoined as requested herein.

FIRST CAUSE OF ACTION

(Declaratory Judgment)

[Against Da Family Records and Blackground Records]

44 . JoJo repeats and realleges the allegations set forth in paragraphs 1-43, inclusive, as if fully set forth herein.

45 . An actual controversy has arisen and now exists between JoJo on the one hand and Da Family Records and Blackground Records on the other, concerning the expiration of the Recording Agreement.

46 . JoJo contends that, as a matter of law, the Recording Contract expired on March 17, 2011, the date which is seven (7) years following the Surrogate Court's Order and Decree granting the Petition For Approval submitted by Da Family Music.

47 . Da Family Records and Blackground Records contend the Recording Contract remains in full force and effect and that JoJo is required to continue providing her recording services pursuant to the Recording Contract.

48 . Accordingly, JoJo seeks:

(a) A judicial declaration that, as a matter of law (i) the term of the Recording Contract expired on March 17, 2011; (ii) JoJo does not owe any further recording artist or other personal services to Defendants or anyone else under the Recording Contract; and (iii) JoJo is free to sign a new recording agreement with any record label of her choice, and to otherwise exercise full control over the direction of her career; and

(b) A preliminary and permanent injunction preventing Defendants, or either of them, and their employees and agents, and all others working in concert with them, from

enforcing, or seeking to enforce, or claiming the right to enforce, performance of any of JoJo's recording artist or other personal services under the Recording Contract.

49 . The foregoing judicial declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and obligations with regard to the Recording Contract.

SECOND CAUSE OF ACTION

(Preliminary and Permanent Injunction)

[Against Da Family Records and Blackground Records]

50. JoJo repeats and realleges the allegations set forth in paragraphs 1-49, inclusive as if fully set forth herein.

51. For all of the reasons set forth herein, JoJo has demonstrated a strong likelihood of success on the merits. Specifically, as a matter of New York law, the approval granted by the Surrogate's Court under Section 35.03 limited the term of the Recording Contract to a maximum duration of seven (7) years following the March 17, 2004 approval date.

52. For all the reasons set forth above in paragraph 7 of this Complaint, JoJo has no adequate remedy at law for the damage to be done by the continued assertion by Da Family Records and Blackground Records that the Recording Contract is in full force and effect. Unless Defendants are immediately enjoined, JoJo will continue to suffer irreparable harm by being deprived of (i) control over the direction of her professional career which the seven year time limit of Section 35.03 was expressly designed to protect; and (ii) the numerous other career enhancing opportunities which will be lost as set forth herein.

53. The harm to JoJo if the injunction is not granted will be greater than the harm to Defendants if the injunction is granted. Specifically, absent an injunction, JoJo will continue to

suffer the irreparable harm set forth in Paragraph 7 of this Complaint, whereas the issuance of an injunction will do no harm to Defendants who have illegally exercised contractual dominion and control over JoJo for a period of two years in excess of that allowed by Section 35.03 yet have inexplicably still failed to release her third album for a sixth straight year, and are currently without a distributor to enable them to do so.

54. JoJo therefore requests that:

(a) A preliminary injunction issue preventing Defendants, or either of them, and their employees and agents, and all others acting in concert with them, from enforcing, or seeking to enforce, or claiming the right to enforce, performance of any of JoJo's recording artist or other personal services under the Recording Contract; and

(b) A permanent injunction issue preventing Defendants, or either of them, and their employees and agents, and all others working in concert with them, from enforcing, or seeking to enforce, or claiming the right to enforce, performance of any of JoJo's recording artist or other personal services under the Recording Contract.

PRAYER FOR RELIEF

WHEREFORE, JoJo prays for judgment against Defendants as follows:

On The First Cause of Action:

1. For a Judicial Declaration that:

(a) the term of the Recording Contract expired on March 17, 2011;

(b) JoJo does not owe any further recording artist or other personal services to Defendants or anyone else under the Recording Contract; and

(c) JoJo is free to sign a new recording agreement with any record label of her choice, and to otherwise exercise full control over the direction of her career.

On the Second Cause of Action:

2. For a preliminary and permanent injunction preventing Defendants, or either of them, and their employees and agents, and all others acting in concert with them, from enforcing, or seeking to enforce, or claiming the right to enforce, performance of any of JoJo's recording artist or other personal services under the Recording Contract.

On All Causes of Action:

3. For costs of suit incurred in this action; and
4. For such other and further relief as the Court may deem just and proper.

Dated: July 29, 2013

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

JOANNA LEVESQUE p/k/a “JOJO”

Plaintiff,

vs.

DA FAMILY RECORDS, LLC.; and BLACKGROUND
RECORDS, LLC

Defendants.

Index No.

COMPLAINT

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