**9.15 Copyright – Ownership – Work Made for Hire**

[Name of plaintiff] claims ownership of [title of the asserted work] based on the creation of the work for [him/her/it] as a work made for hire. If the work is a work made for hire, [name of plaintiff] is considered the author and the copyright’s owner. To prove ownership of a work for hire, [name of plaintiff] must prove one of the following:

First, that [name of plaintiff]’s employee created [title of the asserted work] within the scope of the employee’s employment [, and [name of plaintiff] didn’t sign a written document giving the copyright to the employee].

Or second, that [name of plaintiff] specifically ordered or commissioned [title of the asserted work] for use [as a contribution to a collective work/as a part of a motion picture or other audiovisual work/as a translation/as a supplementary work/as a compilation/as an instructional text/as a test/as answer material for a test/as an atlas], and [name of plaintiff] and the person who created the work signed a written document confirming that the work was to be considered a work made for hire.

[Supplemental instruction for use when applicable: If the employment status of the individual who created the work is disputed, you should consider the following factors to determine whether the creator was [name of plaintiff]’s employee or an independent contractor when [title of the asserted work] was created:

• [Name of plaintiff]’s right to control the way the work was accomplished. The less control [name of plaintiff] exercised, the more likely it is that the creator was an independent contractor.

• The skill required to create the work. The more skills required of the creator, the more likely it is that the creator was an independent contractor.

• The source of the instruments and tools. The more the creator was required to use his or her own tools and instruments to create the work, the more likely it is that the creator was an independent contractor.

• The location of the work. The more the creator worked at [[name of plaintiff]’s [offices/work site]], the more likely it is that the creator was an employee.

• The duration of the relationship between the parties. The longer the creator worked for [name of plaintiff], the more likely it is that the creator was an employee.

• Whether [name of plaintiff] has the right to assign additional projects to the creator. The more ability the creator had to refuse additional work from [name of plaintiff], the more likely it is that the creator was an independent contractor.

• The extent of the creator’s discretion over when and how long to work. The more control the creator had over his or her working schedule, the more likely it is that the creator was an independent contractor.

• The method of payment. The more the creator worked for one-time project fees or on commission, the more likely it is that the creator was an independent contractor.

• The creator’s role in hiring and paying assistants. The more the creator hired and paid for his or her own assistants, the more likely it is that the creator was an independent contractor.

• Whether the work is part of [name of plaintiff]’s regular business. The more the creation of the work was a regular part of [name of plaintiff]’s business, the more likely it is that the creator was an employee.

• Whether [name of plaintiff] is a business. If [name of plaintiff] was not a business, the creator was more likely an independent contractor.

• The provision of employee benefits. The more the creator participated in benefit plans [name of plaintiff] provided (such as pensions or insurance), the more likely it is that the creator was an employee.

• The creator’s tax treatment. If [name of plaintiff] didn’t withhold taxes from payments to the creator or didn’t issue a Form 1099 to the creator, the creator was more likely an independent contractor.

No single factor should be considered conclusive on its own. And some factors may not apply to the circumstances in this case.]

**Special Interrogatories to the Jury**

 Do you find that [name of plaintiff]’s employee created [title of the asserted work] within the scope of his or her employment?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

 If you answered “Yes” to Question No. 1, did you find that [name of plaintiff] signed a written document giving the copyright to the employee?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

 If the creator of the work was not [name of plaintiff]’s employee, do you find that [title of the asserted work] was a work specially ordered or commissioned for use [as a contribution to a collective work/as a part of a motion picture or other audiovisual work/as a translation/as a supplementary work/as a compilation/as an instructional text/as a test/as answer material for a test/as an atlas]?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

 Did [name of plaintiff] and the author of [title of the asserted work] expressly agree in a signed, written document that the work was to be considered a work made for hire?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_