**9.21 Copyright – Infringement – Vicarious Infringement**

If you find that there is a direct infringement, you can then consider whether there has also been a vicarious infringement. A “vicarious infringer” is one who profits from a direct infringement while declining to exercise [his/her/its] right and ability to stop or limit the infringement.

Under this doctrine a party is responsible for the direct infringer’s acts if the party controlled or supervised, or had the right and ability to control or supervise, the direct infringer’s actions.

If you find that there has been a direct infringement of [name of plaintiff]’s copyrighted materials by one defendant (or third party), you can consider whether there has been “vicarious infringement” by another defendant.

To find that [name of defendant] is liable for another party’s infringement, you must first find that [name of defendant] had the right and ability to control or supervise the other party’s infringing action and either controlled the action, or failed to exercise [his/her/its] right and ability to prevent the infringement. Also, you must find that [name of defendant] directly profited from the other’s infringement.

**Special Interrogatories to the Jury**

 Was there a direct infringement by someone or some entity other than [name of defendant] (i.e., a third party)?

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

If the answer to the above question is “Yes,” answer the next question. If not, you should stop here.

 Did [name of defendant] directly profit from the third party’s direct infringement?

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

If the answer to the above question is “Yes,” answer the next question. If not, stop here.

 Did [name of defendant] have the right to stop or limit the direct infringement?

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

If the answer to the above question is “Yes,” proceed to the next question. If not, stop here.

 Do you find that [name of defendant] vicariously infringed [name of plaintiff]’s copyright either by controlling or supervising the direct infringement, or by failing to exercise [his/her/its] right to stop or limit the infringement?

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