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## **SUMMARY OF REASONS AND GROUNDS FOR CONTESTING THE CASE**

### **Case T 1213-17**

### **Martin Hjertstedt and others/ Tobias Forge**

At the preparatory oral hearing, the plaintiffs finally specified its legal action by specifying in 9 points actions which, according to the plaintiffs, constitutes actions that have contributed to an agreement having been reached between the parties and which formed a single partnership.

This has caused Tobias Forge in this Summary to also comment on the now specified legal action. The way the plaintiff's claim was formulated initially did not enable Tobias Forge to do this, something which was also stated in Tobias Forge's brief of November 10, 2018, Court's appendix 44.

To distinguish which circumstances have been added in addition to what has been earlier stated by Tobias Forge in previous briefs, that text has been shaded in grey. Slight corrections that do not constitute new circumstances have not been shaded.

In Section 10, which contains a description of each plaintiff, as well as Gustaf Lindström's participation in GHOST, it may in some parts contain repetitions of what has been stated previously.

However, it is important to repeat certain facts and events associated with the respective plaintiffs in order to describe in a context, what the respective plaintiff's assignment in GHOST meant - and not meant - and what agreements were met with each claimant, at what time and what the agreements meant with respective plaintiffs.

In addition hereto, Tobias Forge concludes that the plaintiff's evidence is still inadequate.

The summary has been divided into the following sections:

### **SECTION 1**

- Summary of Reasons and Grounds for Contesting the Case

### **SECTION 2**

- Tobias Forge, Tobias Forge's musical works, company structure, agreements

### **SECTION 3 2006 – 2009**

- The creation, business idea, attributes in GHOST

### **SECTION 4 January 2010 - September 2010**

- the breakthrough, publication on Myspace; Tobias, Gustaf, and Jonas, the first contract ('rise above records' 'iron pegasus'), release of single elizabeth, recording of Opus Eponymous, which musicians should be hired?

### **SECTION 5 September – december 2010**

- Which musician were hired? Simon Söderberg? Martin Persner? Aksel Holmgren ?, October tour 2010

### **SECTION 6 YEAR 2011**

- The meetings March 2 and April 2, 2011, agreement with Omerch, agreement with Rick Sales, e-mail of October 31 2011, agreement remunerations

### **SECTION 7 YEAR 2012**

- Agreement remuneration – again, Martin Persner sends e-mail March 15, 2012, remuneration to studio musicians

## **SECTION 8 YEAR 2013 - 2015**

- Retainer

## **SECTION 9 YEAR 2016**

- Agreement proposal of april 8, meeting September 7, draft agreement September 25, Henrik Palm's pay negotiations and acceptance of agreement, negotiations October - November, agreement concluded.

## **SECTION 10**

- About Gustaf Lindström's roll and part of GHOST, about Simon Söderberg, Mauro Rubino, Henrik Palm and Martin Hjertstedt

## **SECTION 11**

- Agreement? Company agreement?

## **SECTION 12**

- Does a simple company exist between the parties?

## **SECTION 13**

- Trademarks, copyrights

## **SECTION 14**

- Evidence

## SECTION 1

### SUMMARY OF REASONS AND GROUNDS FOR CONTESTING THE CASE

The operations of GHOST began in 2006. None of the plaintiffs were present or engaged at the time of the formation of GHOST but received tasks as musicians long after the definition of the purpose of the business GHOST was made, the business had been started by Tobias Forge and the musical works had been recorded and published.

The activities initiated by Tobias Forge in 2006 have not been transferred to a single-company business between Tobias Forge and the plaintiffs. Forge has never had any intention to enter into a legal partnership with the plaintiffs in the form of a single company or otherwise.

The documents referred to by the plaintiffs in points 1 to 9 do not constitute a presented and published legal act and are not sufficiently precise and clear in order to constitute an agreement.

The actions Tobias Forge is claimed to have undertaken pursuant to points 1, 2 and 3 are not addressed to any of the plaintiffs and none of the plaintiffs participated in decisions or actions.

The actions that are claimed to have been undertaken according to points 7 and 8, have been directed against another party (OMERCH and Rick Sales) where each plaintiff have undertaken a commitment towards OMERCH and Rick Sales respectively, but does not mean that an agreement has been reached between Tobias Forge and the plaintiffs.

The actions according to points 7 and 8 do not mean that Tobias Forge through the agreements with OMECH and Rick Sales has been bound by an agreement with the plaintiffs.

The contractual content of the agreements with OMERCH and Rick Sales cannot form a content in a company agreement between Tobias Forge and the plaintiffs.

Tobias Forge has not taken any action which may have given anyone of the plaintiffs legitimate grounds for believing that there was a legal relationship between him and the plaintiff in the form of a single company or that Tobias Forge intended to conclude an agreement with each plaintiff for operation of a partnership.

It has neither been formulated, specified or otherwise existed any joint purpose of operation between Tobias Forge and the respective plaintiff at any time concerning the operation of GHOST through Tobias Forge's operations.

The plaintiffs' purpose of their participation in GHOST was to receive remuneration for their work as a 'musician for hire'. As far as Simon Söderberg is concerned, his purpose was also to receive payment for studio rental and technical assistance as a recording engineer.

None of the plaintiffs have ever participated in the decisions relating to GHOST's business or its direction in any of Tobias Forge's businesses relating to the operations of GHOST or in any other way committed themselves to act for a common business purpose.

The respective plaintiff has only had the task of performing - executing - the musical works and the image in GHOST that Tobias Forge has created, produced and decided, all according to Tobias instructions.

The plaintiffs have invoiced fees for their assignments which are commonly referred to as "Live music fees", "Ghost tour", "monthly retainer".

Tobias Forge disputes the respective plaintiff's acceptance of assignments as a musician at the respective time in Ghost means any

contract or agreement to conduct business in a single company was met - neither by concluding acts or otherwise.

No agreement has been met with any of the plaintiffs that the paid fees should be deducted against future incomes. On the other hand, it has been agreed that each plaintiff received a retainer, i.e pre-payment, of the up-coming fee in order to secure that they fulfilled their assignments. That shall not be confused with a "part-payment".

None of the respective plaintiffs have met an agreement with Tobias Forge about sharing the incomes/profits in the businesses related to the operation of GHOST.

None of the plaintiffs has had any insight in the financial operations of Tobias Forge's businesses relating to the operations of GHOST or even asked for such financial information.

None of the musicians who has ever been engaged in GHOST have ever contributed to capital investment in Tobias Forge's business or agreed or promised to answer for any losses/profits in the business operations of GHOST.

The operations of GHOST have been financed by Tobias Forge's income. Tobias Forge has exclusively held decisions and control of the operations of GHOST.

None of the claimants have fulfilled their obligations under the Management Agreement with Rick Sales.

There are no joint rights to music recordings between the parties. Possible rights pertaining to the plaintiff's results from the recordings registered at Svenska Tonsättares International Music Agency (STIM) and SAMI.

The plaintiffs have not acquired any common rights to the trademarks relating to GHOST by their assignments. Tobias Forge used the GHOST brand already at the publication of the recordings on MySpace and when

agreements with Rise Above records and Iron Pegasus were made. In addition, Tobias Forge used the GHOST brand, Papa Emeritus and GRUCIFIX trademark in the release of the Opus Eponymous album recordings and in connection to the concerts in October 2010 on merchandising that Tobias Forge had manufactured in order to cover his costs. Tobias Forge has never assigned or granted any rights in the trademarks to the plaintiffs.

Simon Söderberg has no copyright in the musical works published on MySpace.

Simon Söderberg was not involved in the decision to publish the musical works on MySpace because he was not part of the GHOST at that time.

Simon Söderberg has no copyright in the musical work Elizabeth and was not involved in the decision to record or publish the work, as at that time he was not a part of GHOST.

Simon Söderberg was neither a party to the agreement with Rise Above Records nor participated in the decision to enter into an agreement with Rise Above Records. Simon Söderberg did not participate in GHOST at the time when the agreement with Rise Above records was met.

Simon Söderberg has never had any right to co-decide which musicians would be engaged or removed.

Simon Söderberg has not assumed any responsibility - or assumed any risks - for the operations of GHOST and has not made any capital investments in the business.

No agreement was reached with Simon Söderberg or Mauro Rubino, either at the meeting of 2 March or 2 April 2011. What was discussed at the meeting, is not sufficiently precise or concrete to constitute a contractual content as alleged. A regulation of the parties' business was dependent on a written contract being drafted and issued with a precise and concrete content regarding rights, obligations or economic division.

Any written agreement with that meaning has never met between Tobias Forge and the plaintiffs.

Simon Söderberg and Mauro Rubino's shares in the agreement with OMERCH Ltd, was a temporary way to remunerate Simon Söderberg and Mauro Rubino for their assignment as 'Musicians for Hire'. Participation in this time-limited agreement cannot be considered sufficiently precise and concrete in order to result in a company agreement being reached between the parties regarding the activities of GHOST, but is an isolated legal act.

Simon Söderberg and Mauro Rubino have exited from the agreement with Rick Sales and have never paid any commission to Rick Sales based on their income which is directly or indirectly linked to GHOST, such as for example compensation from Svenska Artisters and Musikers Interorganisation SAMI, royalty from recordings, etc. because they do not consider themselves having an agreement with Rick Sales.

That Tobias Forge, and among others, Simon Söderberg and Mauro Rubino entered into an agreement with Rick Sales, do not constitute a legal act that defines the content of a partnership agreement between these parties or results in a partnership agreement being reached between the parties about the activities of GHOST, but is an isolated legal partnership.

No agreement was met between Tobias Forge and Simon Söderberg and Mauro Rubino respectively in connection to the e-mail of October 31, 2011. The message does not contain anything concrete concerning the operations in GHOST and does not regulate the capital investments of the musicians, their contributions to GHOST or in any other way regulates the division of responsibilities or defines a content in a company agreement.

Tobias Forge's intention with the message in the e-mail of October 31, 2011, was not to be bound by an agreement but constituted only Tobias



Forge's personal thoughts about the activities of GHOST. That the revenues from GHOST's activities would be included in the Swedish Drama Pop was nothing new or something that was decided jointly.

Tobias Forge did not obtain any consent for the assignment of Mauro Rubino, Henrik Palm or Martin Hjertstedt as musicians for hire in GHOST.

Henrik Palm and Martin Hjertstedt negotiated their assignments as musicians as well as fees with Tobias Forge.

Henrik Palm or Martin Hjertstedt were not parties to the agreement with Rise Above Records or participated in the decision to reach an agreement with Rise Above Records.

No agreement was reached with Henrik Palm or Martin Hjertstedt either at the meeting on 2 March or 2 April 2011, as they were not GHOST members at that time. Henrik Palm and Martin Hjertstedt did not even know that these meetings existed in their acceptances of the GHOST assignments, and have not attended the meetings and do not know the content of the meetings.

Henrik Palm and Martin Hjertstedt were not parties to the agreement with OMERCH.

Henrik Palm and Martin Hjertstedt were not parties to the agreement with Rick Sales.

Henrik Palm and Martin Hjertstedt were not recipients of the email of October 31, 2011 and did not even know the content of the email at their GHOST access.

Henrik Palm accepted his assignment as 'Musician for Hire' under the terms of the contract proposals submitted in April and September 2016 respectively.

If a partnership is found to have existed between Tobias Forge and one of the plaintiffs, this partnership has ceased to exist and has been replaced

by their respective assignments as 'Musicians for Hire' and which were concluded with the respective plaintiffs during 2011 2012, 2013 and in 2016.

The plaintiff's assignment as musicians in GHOST was at least terminated on October 14, 2016, when they did not accept the contract proposal submitted to them by Tobias Forge on September 25, 2016, and by the plaintiffs' accept of the agreement dated November 9, 2016.

Hence, no simple partnership exists between Tobias Forge and the plaintiffs relating to the operations and business of GHOST and has never existed wherein respective plaintiff has been a part. Should a simple partnership be found to have existed at any time between Tobias Forge and the plaintiffs respectively, then that agreement has been terminated and replaced by other agreements.

As no legal partnership exists, Tobias Forge is not required to account for or disclose revenue, costs or assets in the GHOST business.

## SECTION 2

### TOBIAS FORGE TOBIAS FORGES MUSICAL WORKS, COMPANY STRUCTURE, AGREEMENTS

#### **2. Tobias Forge and GHOST**

##### **2.1 Tobias Forge**

Tobias Forge has, more or less his whole life, acted as composer and author of lyrics as a singer, guitarist, drummer and bassist. As such, he has appeared in several famous rock bands such as Repugnant and Crashdiet, but also in Sub-vision, Magna Carta Cartel where also one of the plaintiffs also played and is Superior. At the same time as Tobias Forge participated in various rock bands, he also created his music and wrote lyrics.

Tobias Forge is the creator of the rock band GHOST and he alone founded and created GHOST, its image with anonymity and the special scene show, as well as he is the one who created the first trademark associated with GHOST.

##### **2.2 Tobias Forge's musical work**

Tobias Forge is the main author of all GHOST musical works, with the exception of neither the "Year Zero" and "Zenith" that was created on the initiative of Martin Persner. However, these two works have been revised, arranged and instrumented by Tobias Forge. The lyrics for "Year Zero" are written by Tobias Forge. Furthermore, Klas Åhlund has participated to some extent in the latest Meliora album (2015). All assignments of rights

to works are registered at Svenska Tonsättares International Music Agency (STIM).

Tobias Forge has, in all cases, performed all vocal efforts on these recordings, with the exception of some choir singing performed by hired singers.

With the exception of the *Meliora* (2015) album, the recording process has always started with Tobias Forge's first recording of demo versions. On these, he has arranged all the works and also covered all the instruments, which includes the creation and arrangement of eg riff/licks, instrumental solo, drumming, choice of rhythm and tempo. With a few exceptions, Tobias Forge has thus solely taken responsibility for the entire arrangement of how the instruments are to be handled, regardless of whether it was ultimately someone else who has actually recorded the final version.

In the event that another musician has performed the works at the recordings, they have been given directives that the instruments should be treated in exactly the same way that Tobias Forge has recorded them on the demo recordings. There has thus been no room for self-interpretation, except in some cases when Martin Persner performed small so-called "licks" on a couple of recordings. "Licks" means short repetitive tones that are often played by the guitarist in hard rock.

### 2.3 Tobias Forge's Business idea

Tobias Forge runs the company Swedish Drama Pop AB, wholly owned by Tobias Forge, whose incomes are predominantly derived from GHOST's activities. The company was formed at the end of 2010 as a so-called Ready-Made Company and the new Articles of Association were filed at the Registration Office on March 25, 2011. Since then, Tobias Forge has let revenues flow into Swedish Drama Pop.

Such other income derived from the publishing rights of Tobias Forge, which he receives as a composer and author of the text of all the works he has created - included the music not created for GHOST - and his royalties for record sales. It is Swedish Drama Pop AB that has an agreement with a record company.

In addition, Tobias Forge runs the company Papastrello Ltd, registered in the United Kingdom, which is the company that has entered into an agreement with the merchandising company and is at risk of live performances in Europe. As far as live performances in the US are concerned, it is done by the American company Santasma Touring Inc.

The revenue generated over the years has been used solely to pay fees / wages to musicians and to pay for the production of performances as well as costs for scenery, scene building, staff, transportation travel, boarding and lodging as well as the purchase of equipment and instruments for use in the company.

Since the costs have always exceeded the income, the wages of musicians have always been guaranteed by Tobias Forge's other income in Swedish Drama Pop AB, such other income derived from the publishing rights of Tobias Forge, which he receives as a composer and author.

Until 2017, Tobias Forge has not personally received any salary from the revenues relating to concerts or sale of merchandising. Tobias Forge has solely lived on revenues from publishing rights and royalties that the first album Opus Eponymous generates.

Because Tobias Forge is the sole author of the works, and sole proprietor of the copyright to the works (with some exceptions), it is exclusively Tobias Forge who controls the activities of GHOST. This is a rather normal business set up within the music industry, where the set up follows the copyright. For the same reason, there is no equal division of the revenues, which is something that may exist in cases where all band

members are equally participating in the creation of the music works.

All agreements have been negotiated solely by Tobias Forge, without transparency, control or co-decision by any of the plaintiffs or other musicians of the above-mentioned companies whose business operates GHOST in various respects. Since he created GHOST, Tobias Forge has been very clear in relation to those involved in the GHOST business, that Ghost is not a joint project.

This was the view – and still is – of GHOST by the people initially engaged in 2010, ie Gustaf Lindstrom and Jonas Olsson. Neither Gustaf Lindström nor Jonas Olsson have ever claimed that they have had a part in the business – let alone that Gustaf Lindström has expressed that he participated in the creation of GHOST, appendix 1.

Therefore, a right to co-decision as concerns the conducting of the business and its purpose has never existed between Tobias Forge and the musicians who have been engaged in GHOST.

This is partly due to the fact that they have no copyright, and because Tobias Forge has not invited or agreed to this.

All musicians formally and at present engaged in GHOST are considered as "musicians for hire" who are tasked to perform - execute - the work Tobias Forge has created. As such, the musicians will have their own share, and from this invoice Tobias Forge for the agreed fee.

In spite of this, Tobias Forge was initially of the opinion that the musicians involved, in addition to the usual payment, could receive some form of share in other incomes from GHOST's activities. The share that was then mentioned should not be confused with share dividends in companies. Initially, it was talked about "dividend", which was later reiterated and the parties discussed 'bonus schemes' depending on their respective efforts. The share that was then discussed should not be confused with dividends in companies.

Such discussions are not uncommon in the music industry, it is customary for the management company to handle this type of question, and maybe a way to maintain the interest of hired musicians in a music group for a long time.

Any agreement of co-deciding the operations of GHOST's activities have never been present between Tobias Forge and the musicians involved in GHOST. However, Tobias Forge has of course always discussed and advised on practical questions with the musicians, and has been engaged and listened to their opinions in the same way as "regular" companies from their employees or contractors.

None of the musicians who have ever been engaged in GHOST have ever contributed to capital investment in the business or agreed to answer for any losses in the business. Tobias Forge has also not requested or demanded for dedicated musician's financial contribution to run GHOST.

In addition to the permanent salary, Tobias also paid regular allowances as well as transportation, food and accommodation expenses. Tobias Forge has not used any of the studios or other assets of dedicated musicians for free.

None of the musicians who have ever been engaged in GHOST have ever contributed to capital investment in the business or agreed to answer for any losses in the business. Tobias Forge has paid all investments in equipment and instruments unless a musician has used his private instrument that he uses. The fact that Tobias Forge paid all costs relating to GHOST, is evident in an email from Simon Söderberg on April 5, 2011, saying, *"Tobbe is losing money, of course, but I think it's right" invested "in any case. He is a golden boy as said and worth keeping tight! "Annex 2\_*

It is not until the recent 'Popestar 2017' tour, launched on March 24, 2017 and ended April 30, 2017, as the tour business has not made any profits.

## 2.4 Agreements

Even third person parties have perceived GHOST as Tobias Forge's own business. This is shown, for example, by the fact that the agreements related to GHOST has only been done between Tobias Forge's companies and the contracting party in question. All agreements have been negotiated solely by Tobias Forge, without transparency, control or co-decision by any of the plaintiffs or other musicians. Tobias Forge has alone paid all legal costs in connection with contract negotiations.

The agreements that Tobias Forge has met with the record companies relates to the release of his musical works, over which he has free disposal.

Tobias Forge is - nowadays- personally the contractor with Rise Above Records for the recordings of the album Opus Eponymous. Initially, two other persons were contractual parties i.e Gustaf Lindström and Jonas Olsson, but in 2011, Tobias Forge was appointed as sole contractor.

In addition, Tobias Forge's contractual part with an American publishing house that publishes all the works created by him, also works that do not constitute music for GHOST. He has also, through his company Swedish Drama Pop AB, made an agreement with all the producers who have produced the various recordings that have been released. As far as management is concerned, Tobias Forge has an agreement with the Rick Sales Entertainment Group in the United States.

Swedish Drama Pop AB has had also agreements with various other record companies regarding GHOST's recordings in addition to the album Opus Eponymous. Furthermore, Swedish Drama Pop AB had an agreement with Lucky You AB regarding concert production.

Papastrello Ltd, Tobias Forge Company in Great Britain, is a party to the agreement with an English merchandising company with merchandise products and an English agent for booking agreements in all territories



outside the United States. In addition, Papastrello Ltd is the contractor in the agreements since 2013 with the musicians.

Tobias Forge US company Santasma Touring Inc is a contractual partner with an American agent for booking agreements in the United States.

Tobias Forge is also, according to both Rick Sales and Tobias Forge, sole partner in the agreement with Rick Sales, ie GHOST's management company.

SECTION 3  
2006 - 2009  
CREATION  
BUSINESS IDEA  
ATTRIBUTES IN GHOST

### 3.1 GHOST - Business idea and Business purpose

Already in 2006 Tobias Forge created the first music for Ghost - which can be said to be the starting shot for the band GHOST - namely "Stand By Him".

"Stand By Him" had a very special sound and a first demo was recorded. Tobias Forge and the friend and music colleague Gustaf Lindström agreed that it should be possible to succeed with the sound image created by Tobias Forge, if Tobias Forge was able to two more songs with the corresponding sound image.

In 2007 and 2008, Tobias Forge wrote the songs "Prime Mover" and "Death Knell". In March / April 2008, the three tracks "Stand By Him", "Prime Mover" and "Death Knell" were recorded with help from Gustaf Lindström. Tobias Forge played all instruments and sang and Gustaf Lindström acted as a recording engineer.

Later in 2008, the procedure was repeated and another two songs "Ritual" and "Genesis" were recorded under the same circumstances. All five works are featured on the first album Opus Eponymous and are regularly played by GHOST on concert performances.

These recordings were spread and listened to by ten different people in Tobias Forge's and Gustaf Lindström's circle of acquaintance. This led, among other things, to GHOST being offered a concert as an opening act for the Dutch group THE DEVIL'S BLOOD at Tantogården in Stockholm on December 13, 2008, but Tobias Forge declined.

Already when Tobias Forge, created the first songs with the unique sound that was the starting point for GHOST, Tobias Forge knew that a theatrically commercially viable image was needed for GHOST to succeed through the noise of the many other rock bands in the music market, as well as establish and achieve the successes he hoped for.

During this early period and at the same time as the development of GHOST projects, Tobias Forge drafted the design of the logo for the rock group as well as how the pale-like figure would look like, see [Appendix 1](#).

For Tobias Forge, it was very important to have a commercially viable trademark. The purpose was that the trademarks would serve as a basis for the commercialization of GHOST and contribute to the activities and development of GHOST, ie through the sale of merchandise products at concerts and to the band's fans.

Tobias Forge has consistently maintained the control of the brand GHOST and is the one who solely decided how the brand will be used or combined with addition, email correspondence 23 - 24 December 2012 [Appendix 3](#).

Selling products related to music groups is a very important source of income for artists and of great importance for the tour to be done at all. For GHOST, the sale of goods in connection with the concerts is an important income. These incomes help to cover the costs associated with concerts such as the cost of scene decoration, scene building, staff, transportation, travel, boarding, and lodging, etc. In order to give the hard rock fans a full-fledged experience, usually, the income received at concerts do not cover this, income must, therefore, be obtained from other sources, such as merchandising the products.

Tobias Forge created an image and a scenery with a pope-like character in the lead role. All musicians would be disguised and the rock band

would be characterized by anonymity and mystery where no activity - either on or outside the stage - would be done without wearing disguise.

The main character is called 'Papa Emeritus' the name 'Papa Emeritus' was approved to be used by the musicians 'Ghouls'. The character Papa Emeritus was created by Tobias Forge. Since the musicians (The Ghouls) are anonymous, Tobias Forge is free to change the musician at will. Since the musicians always should perform the works according to Tobias Forge's explicit instructions, they are not irreplaceable and are not considered crucial for the band.

Moreover, anonymity was maintained until the plaintiffs filed this case in court, where even the identity of Tobias Forge, unfortunately, was revealed.

It was important for Tobias Forge to set the peculiar image he drafted for GHOST (where the group would be anonymous and make a spectacular live show) and he did not want to perform any concerts before the image was ready and the project had a repertoire of mostly its own works. In addition, Tobias Forge and Gustaf Lindström needed more musicians to perform live. The goal of Tobias became writing more songs in 2009 and when an entire album could be recorded and released, GHOST could perform live.

Tobias Forge knew that the music would appeal to the hard rock audience, but at that time he could not imagine that GHOST, a few years later, would become as popular as it is today. At that time, Tobias Forge did not know that he would be the singer in the band, as he had most thought about playing guitar.

### 3.2 The intermediate year of 2009

However, 2009 became a intermediate year for Tobias Forge because his newborn twins needed all the attention.

By the end of 2009, Tobias Forge announced via social media that he would again play in the death metal band Repugnant. Tobias Forge's intention with this was to spread the knowledge of GHOST to his existing network at the same time as he could develop the project further.

Discussions about the project continued in the meantime with the friend Gustaf Lindstrom, who wanted GHOST to become a Stockholm band (and thus not with based in Linköping). Gustaf Lindstrom also wanted that a friend of his, Jonas Olsson, who had also participated in the discussions about GHOST projects, should join.

## SECTION 4

### JANUARY 2010 - SEPTEMBER 2010

THE BREAKTHROUGH, PUBLICATION AT MYSPACE, TOBIAS, GUSTAF AND JONAS, FIRST DISTRIBUTION CONTRACT (RISE ABOVE, IRON PEGASUS), THE RELEASE OF SINGLE ELIZABETH, OPUS EPONYMOUS RECORDING, WHICH MUSICIANS SHOULD BE ASKED?

#### 4.1 The Breakthrough on March 12, 2010

In 2010, Tobias Forge had uploaded some of his recordings ('Ritual', 'Prime Mover' and 'Death Knell') to Myspace, a social community on the Internet, but had not published the songs. Myspace is a place where musicians can follow musicians and music groups without the need to be an accepted friend (ie unlike how Facebook works). Myspace features include the ability to present a presentation of the artist, his recordings of biography and images for those who want to present their musical performances.

Tobias Forge had, under the name GHOST, "liked" about thousand people as a preparation for the release of the recordings on Myspace. On March 10, 2010 Tobias Forge released the recordings and simultaneously sent a mail to GHOST's followers on Myspace.

The recordings made instant success and GHOST's page on Myspace completely exploded. The following day, GHOST had been noticed by a talented music blog in Norway who wrote about GHOST and predicted its successes and called GHOST "the band of the week".

The works published on MySpace had been recorded as demo versions in Gustaf Lindström's studio in 2008. For the final recording of the works

prior to publication on MySpace, new recordings were made WHERE Tobias Forge rented Simon Söderberg's recording studio.

The decision to publish the musical works on MySpace was taken by Tobias Forge. As the author of the works, Tobias Forge has exclusive rights to dispose over the works and make them available to the public. The decision to publish works on MySpace does not include any legal action that may result in a contractual relationship with anyone other than the one where the works are published. Simon Söderberg was not included in the decision to publish the works on MySpace and has no copyright to the musical works published on MySpace.

#### 4.2 Agreement with Rise Above Records and Iron Pegasus

The publicity caused GHOST to sign a contract with Rise Above Records on May 15, 2010.

Tobias Forge made a decision of signing contract with Rise above records after consulting Gustaf Lindström, as evidenced by email of April 22, 2010, Appendix 4.

Contracting parties were at that time Tobias Forge, Gustaf Lindstrom and Jonas Olsson (the latter, however, never appeared to be a musician in GHOST). The contract shows that the name of the artist was GHOST. The first page of the agreement is shown in Appendix 5.

Rise Above Records was informed about the image Tobias Forge outlined, ie that all public performances were to be made in disguise and with masks, and that the band was characterized by anonymity to create mysticism around GHOST.

GHOST, however, had a previous agreement with another record company, Iron Pegasus, on the release of the recordings Death Knell and Elizabeth.

The single Elizabeth was recorded in spring 2010 and contributed as musicians to the recording were Tobias Forge and Gustaf Lindström. The single was released on June 20, 2010.

As payment for the recording and release of the single, these two musicians were allowed to divide up a number of discs they received from the record company as an exchange for the recording, which they could sell, as evidenced by email correspondence from June 26, 2010, in Appendix 6.

The new collaboration with Rise Above Records resulted in GHOST's first album *Opus Eponymous* released on October 18, 2010. All recordings on the album have been created, arranged and produced by Tobias Forge (under the name Gene Walker).

During the recording, only bassist Gustaf Lindstrom and the drummer Ludvig Kennberg participated as musicians. Tobias Forge acted as the single vocalist and instrumentalist, and thus handled all other instruments.

In summer 2010, another trademark "GRUCIFIX" was added. This later trademark was created by Erik Danielsson when he and Tobias Forge designed the album cover for the album *Opus Eponymous*.

The release of the *Opus Eponymous* record made it easier for Tobias Forge to market GHOST to the concert organizers and Tobias Forge also received more requests for concerts.

In order to be able to develop GHOST and its performances at the concerts that were booked in 2010 following the released album, two more guitarists were needed. Since Tobias Forge, on the recommendation of the record company Rise Above Records, chose only to sing in GHOST, two additional guitarists were now needed for Tobias Forge to consider the constellation optimized for the artistic elements.



By the email of April 22, 2010, Tobias Forge and Gustaf Lindström did not know which guitarists would be employed in addition to themselves, at that time. Appendix 4.

In April/May 2010, the proposal between Tobias Forge and Gustaf Lindström the instrumentation crew in GHOST was the following:

- Per Aranda Lead Guitarist,
- Andreas Axelsson Comp Guitarist,
- Gottfrid Åhman, Comp Guitarist as well
- Hampus Lead Guitarist.

In June, Tobias Forge contacted Per Aranda, Appendix 7, and informed that he, along with Gustaf Lindström, signed an agreement with Rise Above Records, and told about the music activities in the GHOST band and explained the layout of GHOST image. Tobias Forge wanted to hire Per Aranda as lead guitarist in Ghost. Tobias Forge announced the address to MySpace so that Per could go in and listen to the music [www.myspace.com/thebandghost](http://www.myspace.com/thebandghost)

However, none of the above-mentioned persons could participate. It was also a matter of urgency to make it clear how the ensemble would look like in upcoming concerts during 2010.

Until mid-September 2010 it was not clear which musicians would play, apart from Tobias Forge and Gustaf Lindström, and they both even wondered if it could be possible to use "backtracks" instead of additional musicians, ie already recorded background music and ask some people to put on the costumes and pretend to play instruments on stage, email of September 15, 2010, Appendix 8. The concert tour in October 2010 was considered by Tobias Forge and Gustaf Lindström "as one thing and the coming tour in April 2011 as another"

The original plan was, as stated above, that GHOST would be Stockholm based and with musicians from Stockholm. However, this was not possible to realize.

Tobias Forge had to reconsider and started to speak to musicians in Linköping instead.

## SECTION 5

### September – December 2010

WHICH MUSICIANS WOULD TOBIAS HIRE?  
SIMON SÖDERBERG?  
MARTIN PERSNER?  
AKSEL HOLMGREN?  
OCTOBER TOUR 2010

#### 5.1 Simon Söderberg

During a visit to a studio at the end of August, beginning of September 2010, Tobias Forge mentioned to Simon Söderberg that they were having a "line-up" problem for the coming concerts in Germany.

Tobias Forge asked in this connection whether Simon Söderberg could play the guitar that Tobias Forge had first intended to play (ie, the one that was first offered to Per Aranda and Hampus respectively), with the reservation that Simon Söderberg would play exactly as Tobias Forge's played. Simon Söderberg accepted.

Tobias Forge did not think Simon Söderberg was really actual as musician in GHOST because Simon Söderberg was not a hard rock player but focused on another genre in rock music (called hardcore).

To ask the plaintiff, Simon Soderberg became an emergency choice since he was both geographically close and knew the songs.

#### 5.2 Martin Persner

Some time later, Tobias Forge was contacted by one of his best friends, Martin Persner. He also wanted to play in GHOST. Gustaf Lindstrom did not want that Martin Persner would get the assignment, but Tobias Forge went against Gustaf Lindstrom and Martin Persner got the place as a musician in GHOST.

Martin Persner then gradually took on the role of spokesman for the other musicians.

Participating musicians for the gigs in Germany finally became Simon Söderberg as lead guitarist, Martin Persner comp guitarist and Aksel Holmgren drums. Ludwig Kennerberg, who was involved in the recording of Opus Eponymous, had left. This is evidenced by e-mail correspondence of 15 September 2010, [Appendix 8](#)

None of the plaintiffs Mauro Rubino, Martin Hjertstedt or Henrik Palm participated in the 2010 concerts. Tobias Forge had no contact with those persons at the time.

Since Tobias Forge and Gustaf Lindström saw the concerts in October separately from what might come after the turn of the year, that changes in the set of musicians could happen.

At that time, the size of the payment to the musicians was not discussed, as there was no actual income. Tobias Forge, however, made clear that he would make his best to pay the musicians when the touring generated revenues.

None of the participating musicians were asked to pay any costs associated with the concerts.

### 5.3 Costumes and concert costs

In the time leading up to the concerts in October 2010, Tobias Forge had a tailor sew the pope-like outfit. Other outfits and masks for the musicians were bought by Tobias Forge at Buttericks, [Appendix 9](#).

None of the plaintiffs Mauro Rubino, Martin Hjertstedt or Henrik Palm participated in the 2010 concerts. Tobias Forge had no contact with these people at the time, [Appendix 10](#).

None of the participating musicians had any influence on how the outfits would look or on the general performance. That the musicians have later come up with developing proposals, is another matter.

Any scenery was not used at that time.

The record company Rise Above Records handled the cost of travel and lodging. Costs taken from the income generated in record deal between Rise Above Records and Tobias.

## SECTION 6 YEAR 2011

AT MEETING ON 2 MARCH 2011 AND 2 APRIL 2011,  
AGREEMENT WITH OMERCH LTD, AGREEMENT WITH RICK  
SALES ENTERTAINMENT. E-MAIL OCTOBER 31, 2011,  
COMPENSATION AGREEMENT

- 6.1 The release of the Opus Eponymous record made it easier for Tobias Forge to market GHOST to the concert organizers and Tobias Forge also received more requests for concerts.

The composition of the GHOST ensemble changed in the spring of 2011 as Mauro Rubino was added and Gustaf Lindström left. Sometime into the year 2011, Rikard Ottosson also joined. It was Niels Nielsen who proposed Rikard Ottosson for Tobias Forge. Niels Nielsen arranged Rikard Ottosson's compensation per gig.

Tobias Forge had engaged a tour leader – Niels Nielsen – who handled the practicalities that around the concert. In Niels Nielsen's eyes Tobias Forge was the one who made the decisions and was eventually responsible for the concert costs, see email dated April 5 2011, appendix 2.

Furthermore, Swedish Drama Pop AB had an agreement with Lucky You AB regarding concert production. Lucky You AB was a company that provided so-called production, a kind of intermediary between the artist and the concert organizers who conduct concert activities.

Costs for the concerts were paid by the production company, who then collected their expenses from the fees that were invoiced to the production company on behalf of Tobias Forge.

## 6.2 Agreement and fee discussions

### 2.6.1 *The meeting on March 2, 2011*

On March 2, 2011, the musicians in GHOST met for a review of practical questions. It is contested that Simon Söderberg has been responsible for the finding new musicians. Memory notes from the meeting were taken by Martin Persner, who had appointed himself as secretary. This was accepted by the other musicians. The plaintiffs have referred to the memory notes and the order of the day as a minutes, annex 9. The minutes are, however, not countersigned and hence, they can only be considered as Martin Persner's own memory notes and interpretations of what was discussed. Martin Persner was though very cautious in doing notes and shared those will all present.

At the meeting, among other things, GHOST's structure and governance was discussed. The memory notes say that Tobias Forge was a band leader, songwriter and one who had the full mandate of aesthetics and music. Any rights, obligations or economic distribution were not mentioned during the meeting. It was clear that Tobias Forge should take all the risks, but also take all the artistic as well as the business-related decisions.

The memory notes show that others (except Tobias Forge) were to be musicians but were welcome to come with suggestions. That the musicians had some possibility to influence gigs and comment in more general terms were due to their friendship with Tobias Forge. This did not imply that they had a right to co-decision or control of the business or became partakers of the business in any way. It is contested that Simon Söderberg has been responsible for finding new musicians.

The meeting on March 2 2011 was attended also by Gustaf Lindström. According to him no agreements were made at the meeting. However,

Tobias Forge did state that he did not want an arrangement similar to that of dance-bands, i.e. where musicians buy into and out of the business and have business partnership.

What however emerges clearly from the memo notes of the March 2 2011 meeting is that nothing was said about rights, obligations and economic distribution. Furthermore, it clearly emerges that a contract would be established later” on which basis and under which terms and contract are passed at a later time where we decide on the time aspects, obligations, rights etc.”

What occurred at the March 2, 2011 meeting can therefore not be said to form the basis of reaching agreements, whether implied or orally, between the musicians who were playing in GHOST at the time and which would have meant that these people agreed on a partnership agreement. What was discussed at the meeting is not sufficiently precise or concrete to form the content of an agreement of the kind which is asserted by the plaintiffs. Furthermore, it explicitly emerges that a written agreement shall be established at a later time and then with a precise and concrete content with regards to rights, obligations or economic distribution and the concrete contents of the agreement. No such written agreement was ever made between Tobias Forge and any of the plaintiffs.

The plaintiff's assert in the summons applications that Gustaf Lindström attended the meeting on April 2, 2011. But he did not. However, Richard Ottosson attended. The plaintiffs did not mention that. This was later corrected in the plaintiff' statement. In the case, the plaintiff's refer to document appendix10 in support for a decision made on the April 2, 2011 meeting to divide the business surplus evenly between Tobias Forge and those who were playing in GHOST at the time.

Firstly, the contents of document appendix 10 does not report what occurred at the meeting on April 2, 2011 meeting but is a Newsletter reporting events in March 2012 with no reference to financial issues.



Secondly, the meeting on April 2, 2011 was only a reflection of the previous meeting on March 2, and resulted in no precise or concrete agreements as the meeting on March 2, 2011.

Thirdly, Tobias Forge did not otherwise agree on any economic distribution of income or cost distribution between himself and the musicians who were playing in GHOST at the April 2 2011 meeting. This is also confirmed by the contents of appendix 2, and from Simon Söderberg's email of April 5, it is pointed out that Tobias Forge is the one who handled the loss due to increased costs at the "Germany Concert". If higher costs had burdened Simon Söderberg's income, he could not have made that statement.

Of course, ongoing practical issues were discussed during the tours. Furthermore, it was agreed on how and when Tobias Forge was to pay compensation to the musicians and what compensation would be paid. In correspondence, a partnership agreement is mentioned, but that is not the case. What it was about was an agreement with the musicians to formalize already made oral agreements regarding compensations and how they would be calculated, how the compensations would be paid, anonymity and confidentiality regarding GHOST, as well as clarifying that musicians that left the band had no right to future income in any form or right to keep instruments and equipment bought by Tobias Forge for the business.

#### *6.2.2 The Agreement with OMERCH LIMITED*

Sometime in the second half of 2011 Tobias Forge and Martin Persner, Simon Söderberg, Aksel Holmgren, Mauro Rubino and Richard Ottosson reached a shorter, temporary merchandise agreement with the company OMERCH LIMITED which concludes in December 2011.

The year 2011 was a sensitive period, as GHOST's touring began to pick up the pace and Tobias Forge saw that his business was developing in

the direction he had intended. However, no major income had poured in from the GHOST tours, it could contribute only to the touring costs and musician remunerations. That is the reason why Tobias Forge let other musicians be contracting parties, and simply paid their remuneration.

There was a smaller income from the tours during the summer, which Tobias Forge used to invest in equipment for an upcoming tour to with the band In Flames. Without that equipment, GHOST would not be able to accept the request to be opening act to In Flames and thus not to tour.

### 6.3 The agreement with Rick Sales Entertainment

In the latter half of 2011, Tobias Forge was contacted, among others, by two well-known US management companies, 5 B Artist Management Inc and Rick Sales Entertainment Group (Rick Sales). Both contract proposals were negotiated by Tobias Forge adviser and lawyer Sissi Hagald.

The deal was finally concluded with Rick Sales on October 1, 2011, which included all the musicians who then played in GHOST.

The agreement states that "Artist will pay Manager or cause Manager to be paid, as and when received by Artist or on Artist's behalf, a Commission equal to twenty percent (20%) of all Gross Income earned by Artist during the Term of this Agreement"

In the agreement farther reaching commitments were imposed upon Tobias Forge than on the other contracting partners, which was natural as he was considered as the leader of the band GHOST. Tobias Forge was imposed with an obligation to pay a 20% commission to Rick Sales on all his business activities.

Point 1 in the Rick Sales agreement makes clear that the commission which Simon Söderberg, Martin Persner, Richard Ottoson, Aksel Holmgren and Mauro Rubino had to pay, would on the contrary only be calculated on activities which had a direct or indirect relation to the band

*GHOST: Notwithstanding the foregoing, with respect to all members of Artist other than Tobias Forge ("TF"), activities shall also not include any individual endeavors of such members that are not directly or indirectly related to the band "GHOST"...."*

The musicians had made sure that not everything they did would entitle Rick Sales commission.

The reason was that Martin Persner and Simon Soderberg simultaneously played in the "TID" and "Magna Carta Cartel" and Rikard Ottoson in the band "Maim". They did not want to risk paying the management commission to Rick Sales for their income from these groups and would also not risk the need to be bound exclusively if they would leave GHOST.

Only some weeks later Rick Sales understood that Tobias Forge was the only artist of GHOST and that the others, i.e. Simon Söderberg, Martin Persner, Richard Ottoson, Aksel Holmgren and Mauro Rubino were only session musicians hired as 'musicians on hire' with no share in the copyright of the musical works and were not the Artists to the same extent as Tobias Forge.

Therefore, Rick Sales changed the management agreement so that it only included Tobias Forge as contracting party.

As far as is known, this has not been communicated to the contractors Simon Söderberg, Martin Persner, Richard Ottosson, Aksel Holmgren and Mauro Rubino in writing by Rick Sales. However, Simon Söderberg, Martin Persner, Richard Ottosson, Aksel Holmgren and Mauro Rubino were fully aware of this decision by Rick Sales.

Martin Persner was contacted by Sissi Hagald by phone at the end of 2011 and confirmed that he had no objection to the change of contractors. In Martin Persner's email dated to March 15 2012, document appendix 22, shows that it is therefore incorrect that the plaintiffs claim that Rick Sales has acted on behalf of all members of GHOST i.e. Simon Söderberg,

Martin Persner, Richard Ottosson, Aksel Holmgren and Mauro Rubino, on behalf of a single company.

The commission of 20% which the musicians had to pay Rick Sales according to the agreement has not been paid by anyone other than Tobias Forge. The remuneration which the other musicians have collected and which is included in commission percentage to Rick Sales was, for e.g. the remuneration which respective applicant has personally obtained/obtains from SAMI, mechanical royalty and royalties for public performance so-called public performance rights, record royalties from record labels, the remuneration from Colbert which was paid directly to Simon Söderberg, remuneration which Simon Söderberg, Martin Hjertstedt and Henrik Palm obtained at a performance in Örebro 2016 etc, in connection to their GHOST assignment. These incomes have not been accounted for to Rick Sales, even less commission paid on those incomes to Rick Sales.

The reason can be assumed to be that neither Simon Söderberg nor Mauro Rubino consider that they are bound by the agreement with Rick Sales. Martin Hjertstedt and Henrik Palm have not even entered into an agreement with Rick Sales.

It is therefore incorrect that Rick Sales has acted on behalf of all members of GHOST and on behalf of a single company. Rick Sales has acted exclusively on behalf of Tobias Forge.

However, Rick Sales has helped Henrik Palm and Martin Hjertstedt with certification when these two needed passports, in order to be able to apply for a visa. Rick Sales says that these two are "integral members of Ghost", means nothing more than that they played in GHOST.

When Tobias Forge entered into the management agreement with Rick Sales, Tobias Forge asked Sissi Hagald to come up with a proposal for an agreement where the musicians, in addition to a music salary, would be rewarded in the form of a bonus. How the bonus would be calculated was

not clear, but it was clearly stated by Martin Persner that it would not be the same for all members.

#### 6.4 Fall 2011 and the mail October 31, 2011

In 2011, Tobias Forge had no real income from the activities of concerts in addition to the surplus that came from summer festivals and advance payments from Global Merchandising Ltd for revenues on sold merchandise products. The money from Global Merchandising was direly needed because it meant that Tobias Forge could pay out fees/salary to the musicians. For Tobias Forge, it was important that the musicians were keen to engage and he was willing at that time largely share the inputs that came into GHOST's activities so that the musicians felt confident. Tobias Forge also made a temporary agreement with OMERCH. At that time, GHOST did not earn more than 20,000 kronor per gig. Even if Tobias Forge used his income fully to compensate the musicians, that did not mean the musicians thereby were entitled also to all future income.

On October 31, 2011, Tobias Forge sent an email to the musicians with an update on news and changes in GHOST, Appendix 2 in the lawsuit, and containing information on how compensations should be paid.

The email mentions a person named Magnus Strömblad, who was an accounting consultant. It was Magnus Strömblad who proposed that the musicians in GHOST should form an economic association and had also met Tobias Forge and the musicians at the time. However, that was never the case either for Tobias Forge or for other musicians, and the mail shows that he invited all musicians to register their own companies so that they could invoice Tobias Forge's company for the compensation agreed. Tobias Forge did not want to act as "goalkeeper" for a company where the other musicians would own a share but take on no responsibility.

How much the musicians should receive as compensation is not presented in the email. The email also does not contain anything else

concrete regarding the GHOST business activities and also does not make the impression that the musicians would make capital investments, contribute to GHOST or otherwise take risks. The email does not contain anything else that defines the content of a partnership agreement. Tobias Forge's intent in the email was not contractuality but simply constituted Tobias Forge's personal thoughts on the GHOST business. That the income from the GHOST business would be taken into Swedish Drama Pop was nothing new or anything that was commonly agreed – Tobias Forge had since long let income from GHOST flow into this company and that was how it would remain.

In the mail of October 31, 2011, it is talked about the division and distribution of revenues, which meant paying out the compensations Tobias Forge agreed with the respective musician. Something that was made possible by Tobias Forge receiving an advance from the merchandise company. However, the mail does not express the distribution of profit or support for GHOST profits to be distributed equally between Tobias Forge and the musicians.

The mail further states that no joint company would not be formed, because not all musicians could be included in the beginning. In addition, not all musicians would bind themselves because they also had engagement in other rock bands at the same time. Martin Persner also announced that he "went on soc" (public welfare) and therefore had difficulty in being a company man unless he had to lose his public welfare.

Tobias Forge contests that the meaning of the mail dated October 31, i.e. that the plaintiffs (they who were in at the time) would invoice Swedish Drama Pop their salary, meant anything other than that Swedish Drama Pop AB got control over its income and expenses and enabled the musicians to invoice the salary that had been agreed for their live performances. Initially, the musicians billed Swedish Drama Pop, which later changed to Papastrello Ltd.

The contents of the email dated October 31, 2011, shall be seen in the light of it being written during a period where much was happening for Tobias Forge in the realization of his GHOST business and that Tobias Forge's intent has never been to let the musicians get a share of the business. The intent with the email was instead to have the musicians feel secure in that they would be given some kind of remuneration for their part – how much was however unknown at that time as it wholly depended on the income of GHOST – and found a solution for how the remuneration could be paid out.

However, discussions on partnership and compensation continued.

Martin Persner explained to Sissi Hagald in a telephone conversation at the end of 2011 that the band members felt that the management Rick Sales was only working as a manager for Tobias, which was an accurate observation.

On the question if this was a problem, Martin Persner replied that he did not think so since GHOST was Tobias Forge's creation and that they had no problems with that at all. According to Martin Persner, he and the musicians were only "in for the ride". However, only as long as it could be guaranteed that the fees/wages would be paid on a regular basis and that a bonus would be paid. According to Martin Persner, the bonus would primarily be for the musicians who provided extra services beyond the usual, ie other than playing concerts and participating in promotional activities. These members were, according to Martin Persner's opinion himself and Simon Söderberg. Other musicians would only have fixed fees/salary.

Musicians receiving bonuses in addition to fees is not unheard of in the music industry as it is one way – a carrot – of retaining musicians within an ensemble.

In the conversation, Sissi Hagald suggested that Martin Persner take all

the discussions regarding the fees and bonuses with the management company Rick Sales. The reason was the that it became too personal between Tobias Forge and Martin Persner to discuss compensations, but also because in the music industry it is customary for the management company to handle this type of question.

Eventually, Tobias Forge arranged with the musicians that they obtain a fixed monthly fees for the period April – September 2012, which is shown by an email July 1 – 2 2012 Appendix 11

This occurred after the musicians, with Martin Persner as the representative, wrote a few emails to Tobias Forge and Rick sales in the middle of February and middle of March of 2012.



## SECTION 7 2012

### AGREEMENT REMUNERATION – AGAIN MARTIN PERSNER WRITES EMAIL MARCH 15 REMUNERATION TO STUDIO MUSICIANS

#### 7.1 Email February 17 2012

On February 17 2012, Martin Persner sent an email to Simon Söderberg and Tobias Forge, appendix 12, wishing to meet and that Tobias Forge informed about record companies, what Tobias had in mind, what concerned the production for the coming year, some practical issues that were to be done and a wish that Tobias made a schedule regarding the coming recording of an album.

In the same email Martin Persner mentioned the following:

*"...I look forward to a meeting, where we can find positive methods to do all this in an efficient way. Now as this is coming into the phase of becoming a "real" company (yes, even if it is **your** company, we stand and fall with it, so we all have an interest in it working out well... thus this email) at least I am keen to be clear on how and when we will work on stuff..."*

Simon Söderberg confirmed in an email dated February 2012 in the same email thread, appendix 12" *Great email Martin. I agree to everything.*" Simon also wrote in the same email that "Are we a band?" *Solo project with musicians? If we are a band we need to discuss what that means. Soon it's going to be" big business". We need to know our place, otherwise there's no point in discussing costumes and live shows etc."*

Thus, with this email thread it was absolutely clear that Martin Persner and Simon Söderberg had no share in Tobias Forge's business GHOST at that time, that they had no right of co-determination or insight into the business and that nothing concrete had been agreed with regards to a

partnership or their alleged share in the business GHOST, but that they were simply contracting parties under 'Musicians for Hire'

## 7.2 Martin Persners mail March 15, 2012

On March 15 2012, Martin Persner sent an email on behalf of all the current musicians', as an appeal to the manager Kristen Mulderig of Rick Sales, Tobias Forge and other musicians in GHOST, [appendix 22](#).

The email sent by Martin Persner on behalf of all musicians, concretely expresses that the musicians had reached an agreement with Tobias Forge which meant that the musicians were 'Musicians for Hire', and they have no share in Tobias Forge's business and that any musician has not taken any risk and not invested any capital. The email gives no impression that discussions were about a jointly owned limited company or economic association had been put on ice – on the contrary, the agreement reached at this time put a complete stop to that. In the email, Martin Persner presented ideas for other ways that the musicians could be remunerated – which was never accepted by Tobias Forge.

Below are the relevant extracts from this email and the mail can be seen ended all previous discussions, relating partnerships, compensations, etc<sup>1</sup>.

*"Dear Kristen,*

*i've just talked to Tobias Forge about our (me and the boys in the orchestra) economical situation and means how to solve this affair. I'd like to start with severing the "group/band" from the "company" in order to get the semantics straight for the following mail.*

---

<sup>1</sup> Markings with **bold font** were made by undersigned

*As you are aware, none of us have any funds at all, and stand completely broke; many of us in debt to relatives and friends from having touring etc.*

*Tobias Forge and foremost Sissi made me aware that having a **discussion with Tobias Forge on our wages and on our membership/employee-deal with the company (Tobias' company Ghost, in all it's shapes) would only lead to further confusion.***

*.....*

*..... We have had several meetings and round up's on how to function as a band, our roles, our goals and more.*

*Now, since Tobias Forge and we decided on him owning the company as whole and us being employees and serve as hired musicians rather than being part owners of the actual company, with all it's perks and risks, we came to the conclusion that this is doable if, and only if, we get paid for our label. We never quite came to a final solution on how to do this, but we very well came up with solutions fit for the group and the company on how to manage this.*

*The solution we all could agree on (yes, this was a group decisions, for good and bad) was that we get paid per gig. This because Tobias Forge was unwilling to have us on payroll for periods of no work or gigs. Only fair. The model would be that each of us have their own small company and invoice him per gig/tour. Also, and important for the verve and soul of the group, we decided that we, the employees, should in some form have the right to get per cent of the gross of something that measures the band's growth – suggesting per cent per member of the group (not to mix up with the actual company) of the gross of one year's total sum of the income of played gig's. This, all in good will, in order for everyone to get the feel that they belong and work for results, rather than just the payroll - something all of us including Tobias Forge sense is of great worth for having a functional band. The feeling of membership of the group.*

***Given this I address you, sadly, at this point not so much as "our" management, but as Tobias' management or CEO – since we have not yet come to a conclusion on what are exact roles are and should be in the company/companies of Ghost.***

.....

*To address another problem, surfacing when making attempt to look at this logically and per se:*

***Even if we would have ownership in any of the companies that is Ghost, we could not do another gig without getting paid. It's down to that by now. So, regardless on our economical role in this whole machinery, we are dead broke. Now, at this point.***

.....

***Since we no longer (if ever, but to that we all can agree – yes, that was the initial plan: us being part of the company and it's growth) are members or have any ownership in the companies being Ghost – we should be bought out from what we helped building during the first year and some up until now. Some 70 gigs or so. Tobias Forge had an idea of giving us payment for the accomplished gigs retroactive, and thus buying us out of our share of the bands value we helped constructing by traveling, playing, rehearsing, having meetings. This is only fair given that we elsehow have been working for a long time without having nothing in return from it. Not ok for any of us. Because if we should turn to meaningless terms as "no band ever gets paid during first year" i'll answer that by saying "no, that's because they invest time and effort in it as band and company members – getting paid later on...or not – if the band fails on being a commercial success. Risking money and other ways of living." In any event – if we are not to have any ownership in the company, which are decided upon that we shall not, why take any risks furthermore or even, as in this particular case, in the past? Risking for maybe getting a payroll in the future?***

*Lots of strings are being pulled and lots of things happen at this*

moment as you if anyone, are aware of. All this because people and companies believe in the Ghost phenomenon. There are costs to having Ghost doing what they are, and these above mentioned are some of them. **We are, unfortunately, or fortunately, to be seen as expenses. Not risktakers with nothing in return.**

.....

Since the band needs to function as group and individually doing this we needs funds. That will be given from the record company as an advance of the expected value of this band. They nowadays serve as risktakers and financial muscles in order to get things working that would otherwise not work. That is handling and risking economy for a project they BELIEVE in. **We are part of that project. We are expenses just like anything else, giving we are hired musicians.**

.....

Bottom line is – none of us neither can nor will risk anything more than already risked for this project. ....

Summing it all up for overlook should be this:

1. **We (the hired musicians of Ghost) need money to do the US tour.**
2. **We would like to now, or at a later occasion, have retroactive payments for effort and work done so far in order for Ghost to have us off from our share of the stock value at this given day**
3. **We need to make contracts on a.) how much our salary should be and for what kinds of efforts given by us b.) what our per cent of any gross value stating the bands growth should be.**

As you can see from my text i am no lawyer and neither i wish to be, so all this is to be considered a open letter to you and Rick explaining our, the members of the musical group Ghost, situation and thoughts as is per **2012-03-15**

*Kind regards,*

*Martin Persner, and on behalf of*

*Rikard, Mauro, Aksel and Simon”*

The email is undersigned by” *Martin Persner, on behalf of Rikard, Mauro, Aksel and Simon”* and accounts for the plaintiffs' impression that their assignment was merely as ”hired musicians” in Ghost and that they had no share in Tobias Forge's business with regards to GHOST.

In a Newsletter from Martin Persner to the musicians week 12, 2012, it is communicated that ”On Thursday in week 11 we sent a letter to Rick sales and Kristen with a detailed description of our situation”, document appendix 10. The musicians are furthermore informed about talks to Rick sales before the weekend in a conference call, also suggested that they should get a "Good Faith" payment before the tour.

This email to Rick Sales was then followed by a reply from Kristen Mulderig March 20, 2012, appendix 13, wherein all musicians have been attached as recipients. Kristen Mulderig confirms that she has raised the issue of remuneration which Martin Persner presented in the email March 15. There was afterward a telephone conference with Rick Sales March 23, 2012, which all musicians Simon Söderberg, Martin Persner, Mauro Rubino, Aksel Holmgren and Rikard Ottosson attended and discussed the issue of remuneration.

The plaintiffs' assertion that Martin Persner was not the spokesperson of the musicians in the matter presented above is an after construction. The musicians were fully informed and attended the telephone conversation which followed Martin Persner's email March 15 2012.

Information or support for Simon Söderberg or Mauro Rubino objecting to the content of Martin Persner's email has not appeared either at that time or later date. On the contrary, the plaintiffs have acted entirely in accordance with the

content of Martin Persner's email. They have invoiced their fees and not paid commission to Rick Sales because they did not feel bound by the agreement as they were "musicians for hire" and nothing else.

### 7.3 The compensation

The solution was that the musicians received a monthly payment where the compensation was paid even if they were not out on tour. The idea was that they would get the requested security but also get paid in case they were needed for rehearsals or something else.

The handling of the compensation was primarily carried out by Rick Sales. The email correspondence July 1-2, 2012, [appendix 11](#) discussed practical matters about rehearsals etc. Through this email correspondence plaintiffs asked Tobias Forge several questions, regarding payment of fees. In that context Tobias Forge referred this to Rick, being arranged via Rick Sales. Tobias Forge had in this context mortgaged future income and stood for this risk.

The email content confirms the agreements reached earlier in the year that the musicians were merely 'Musicians for Hire' which is confirmed in Martin Persner's email of March 15 2012.

Simon Söderberg and Mauro Rubino were also paid for the period March 2011 – December 2012 with 111 631 SEK each

Despite an extensive tour program in 2012, the income from the concerts were largely matched with the cost of the concerts. This is nothing rare so sales of merchandise products and recordings from albums, etc., is an important source of income to make the touring reality.

Throughout Tobias Forge has arranged, so that the musicians are the ones who have always been paid, even if it has meant that he has not been able to get salary from the activities of GHOST. In addition to the permanent salary, they have received regular allowances of 200 - 300 kronor per day (about 840 USD per month) as well as transportation, food and accommodation that have also been paid by Tobias. Tobias Forge has also reimbursed the musicians for other costs.



In email correspondence November 6 2012, appendix 14, Martin Persner returns to the musicians' calculation with regard to the fees issue for the upcoming record cycle. In the same email, Martin Persner said that *"...we'd better get going with some sort of partnership deal before all hell breaks loose come the album-release and all of it's perks and rights – and duties."* and it otherwise clearly emerges from the content of the email that no agreement with regards to the GHOST business or profit distribution or other economic shares existed between Tobias Forge and the other musicians. No such agreement was reached.

#### 7.4 Renumeration of studio musicians

As regards the respective plaintiff's assignment as studio musician at music recordings, respective plaintiffs have reached an agreement with the record companies and/or producer. The agreements that Tobias Forge has met with the record companies concerns the release of his musical works, which he freely possesses.

As for the recording of the Infestissumam album, which was made in 2012, the musicians were instructed by e-mail on September 18, 2012, appendix 15 to invoice Universal for their tasks as studio musicians at the recording. This because Universal was the musician's contractor. Universal usually does not pay the amount to the artist so that the artist then pays to the contractors.

Part of the email correspondence is reproduced below<sup>2</sup>.

**From:** Kristen Mulderig < >  
**Date:** Monday, September 17, 2012 at 9:57 PM  
**To:** Martin Persner < >, Simon Söderberg < >, Mauro Rubino < >, Rikard Ottosson < >, Aksel Holmgren < >  
**Cc:** Tobias Forge  
**Subject:** Re: Payment

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<sup>2</sup> When reproducing the email the email addresses of respective applicants have been removed for privacy reasons. Underscores have been made by undersigned.

Hello All,

I am sorry if there was any confusion, this is not in any way shape or form a royalty payment it is a **work for hire**. Paid musician. You are all independent contractors considered session musicians for this in the eyes of the label admin dept.( the people who deal with the money) Universals rule is to not pay out an artist to disperse money to independent contractors, it has to come directly from them.

Yes ,I will need each of you to Invoice **UNIVERSAL** for their amount – As soon as you all emailed me back on whether you wanted to receive a check or Wire transfer I was then going to attach a sample invoice for you to work off of.

If you already have a template for your invoices – feel free and please instead of invoicing Svensk Drama Pop AB, you will need to invoice **Universal**. I am waiting on confirmation from them on exactly how the WHO is to be made out to. We believe it is what is below in Yellow, but you can leave that line blank and I can fill it in for you guys if you want to send me the invoice right away. Please make sure you put bank wire info or who to make the check out to and address depending on what form of payment you choose.

In this particular case – as the recording was done in USA – it later emerged that tax need to be paid for the musician's studio fees as they were not registered in the US. The only way to avoid that and to make sure that the musicians expeditiously obtained their fees for the studio recording, was that Tobias expended the sums to the studio musicians on behalf of Universal provided that Universal immediately reimbursed Tobias for the expense, which was approved by Universal as well as Tobias for that occasion, appendix 16. Simon Söderberg and Mauro Rubino then invoiced Swedish Drama Pop the corresponding sum, appendices 17 and 18. The relationship in which Tobias reimbursed fees to Simon Söderberg and Mauro Rubino on Universal's behalf, did not equate to any agreement being reached or connected to the music recording between Tobias and the musicians.

Even though the plaintiffs have played in GHOST as musicians at concert performances, they have not participated in the same degree when the music was recorded.

In the recordings of Meliora album, Henrik Palm is the main contributor, Simon Söderberg joined only three concerts and Mauro Rubino and Martin Hjertstedt not at participated. On the Popestar tour, Martin Hjertsted and Henrik Palm are the only plaintiffs who contributed. None of the applicants have been involved as studio musicians at the recording of the Opus Eponymous record. This is according to information recorded at SAMI.

Instead of the plaintiffs, freelance studio musicians were involved in the recordings. None of the plaintiffs have ever been asked about their consent for the appointment of freelance musicians. Although it may have been discussions about personal chemistry and the person's skill as a musician, it is exclusively Tobias Forge who made the decision, no matter if it was regarding musician or another crew for GHOST.

The musicians' rights to music recordings as performing artists are limited to the cases in which they have contributed as session musicians. In addition to salary for the studio assignment, the respective musician obtains compensation for public performances in accordance with the notifications made to SAMI, for which the recording engineer is responsible. Any further requests for compensation which the plaintiffs have regarding the music recordings, must be expressed to the phonogram producer.

No plaintiff has so far questioned for which music recordings their contribution as musicians have been SAMI registered. If the plaintiffs deem that SAMI has the wrong information, the plaintiffs will have to request correction through the producer.

## SECTION 8 2013 - 2015

### RETAINER

- 8.1 During the years 2013 to 2015, GHOST toured extensively, especially in the United States.

In order not to live too uncomfortably during the tour, a larger bus was rented, which naturally led to higher costs and ultimately meant lesser profits for Tobias Forge's business and thus lower compensation to the musicians – which is the case in the email of August 20, 2012, appendix to the document 5. A number of albums, EP and singles were also released during the period.

In early 2015, Martin Hjertstedt and Henrik Palm took over the helm and Aksel Holmgren left as musician.

- 8.2 Compensation agreements 2013

In January 2013, the musicians received an email from Sissi Hagald about the fee / salary compensation that would be issued in 2013 and the bonus system discussed in this context, appendix 34. The level of compensation had, as in previous cases, been decided by Tobias Forge in consultation with Rick Sales.

The proposed compensation exceeded what is customary for unsettled musicians, to whom plaintiffs are to be regarded. The musicians were also given instructions on how to invoice the fees. The bonus system was also discussed in this context, but it was made clear that any deliberation about any bonuses were not considered.

Invoicing would be made with the indication of the text "Ghost Monthly Retainer". The term "retainer" refers to the Oxford Dictionary "A fee paid in Advance to someone, especially a barrister, in order to secure their services for use when required." In cases where the musicians received their payments for live performances in advance, it was to make sure of their participation in concerts and nothing else– which is customary in the music industry.

Tobias Forge contests the plaintiffs invoiced anything as advance. The musicians have invoiced fees for their assignments which are commonly referred to as "Live music fees", "Ghost tour", "monthly retainer" etc in the invoices.

The plaintiffs are now trying to redefine the fees they receive by calling it something else, ie "a conto". According to Swedish Dictionary, "a conto" means "in advance of installment, etc.". Any completion or final payment of the invoiced fees has never been made because with retainer it was only a prepayment of its contracted fee for the assignment that would be performed during a future period. It is also unknown against what deduction should be made.

In order to secure the salary to the musicians in 2013, Tobias Forge got an advance on merchandise sales of Global Merchandising as well as advances in fees for the upcoming concerts. The costs of running the project were still in loss or barely making even, and any surplus was needed in Tobias Forge's business to continue the project. The musicians received their monthly remunerations, even if the business went with a loss.

Discussions about any bonus could not happen at that time but this could possibly be relevant in the spring of 2014 if the incomes allow a profit. For that reason, there is mentioned a hope of earning, in e-mail

correspondence, so that Tobias Forge could fulfil his desire to give the musicians a bonus in addition to the salary, appendix 6.

On August 31, 2013, Martin Persner addressed Sissi Hagald (Tobias Forge's Legal Representative) with questions and comments regarding compensation from SAMI, publishing fees, royalties from records, yields to band members, etc., appendix 19.

From the email, it is clear that Martin Persner was made fully aware that the business activities of GHOST, as well as recordings were Tobias Forge's property and copyrighted assets. Furthermore, it is shown that no agreement was reached regarding any yield to the musicians the day GHOST generated profits. On September 2, 2013, the email was answered by Sissi Hagald, where it was clearly informed that it was up to Tobias Forge to allocate any eventual profits, appendix 19. Martin Persner accepted the content of Sissi Hagald's response, which is shown in appendix 19.

## SECTION 9 2016

DRAFT AGREEMENT APRIL 8  
MEETING, 7 OF SEPTEMBER  
DRAFT AGREEMENT, 25 OF SEPTEMBER  
HENRIK PALM'S PAY NEGOTIATIONS AND ACCEPTANCE OF  
AGREEMENT  
NEGOTIATION OCTOBER - NOVEMBER  
AGREEMENT ENTERED

9.1 Sissi Hagald had, during a travel in USA in November 2015 where she attended GHOST's concerts on several occasions, noted that Martin Persner was clearly dissatisfied and grudgeful. Something that emerged further on a couple of occasions when Martin Persner and Sissi Hagald encountered each other in Stockholm by the end of 2015 and the beginning of 2016. In early 2016, Sissi Hagald therefore discussed with Tobias Forge, but especially with Rick Sales, that the assignments of the musicians as 'musicians for hire' in GHOST must be formalized in writing. At the same time, it was intended to give the musicians a pay rise and specify the bonus.

### 9.2 Contract proposal April 8, 2016

A contract proposal was sent from Rick Sales on April 8, 2016 via email from Sissi Hagald to the plaintiffs. In her e-mail to the musicians, Sissi Hagald declared the main contractual content, that is, the musicians would receive a retrospective increase from 1 April 2016 to between 2,000 - 3,000 USD per month. To help the musicians judge the content of the agreement, Tobias Forge also offered to pay for six hours of advice from a Swedish lawyer.

Simon Söderberg, Martin Persner, Mauro Rubino, Henrik Palm and Martin Hjertstedt immediately invoiced the increased fee for April and beyond,

appendix 20 a - d. Mauro Rubino also invoiced the difference between the new fee and the fee charged for January and February retroactively.

In Stroudsburg, USA, April 14, 2016, Tobias Forge was confronted by the plaintiffs with Martin Persner in the lead regarding the proposed agreement and, in a meeting later that day, the plaintiffs and Martin Persner expressed, in very strong language, their views on the agreement to Kristen Mulderig from Rick Sales. Tobias Forge, therefore, urged the musicians, because of the nature of the discussion, not to sign the agreement and that he would instead be returning with a new, more balanced contract proposal which would be easier to understand and be written in Swedish. The proposed agreement regulated what is standard in an international arena but was unfortunately perceived as complicated by Martin Persner and the plaintiffs. What was clear, however, was that the agreement would only formalize the agreements that had already been reached, i.e. a contract for 'musicians for hire' and nothing else.

Martin Persner finished his assignment in GHOST in mid July 2016. At that time, Martin Persner received a final settlement of his fee, but no other compensation. Martin Persner's assignment ended due to the decision made by Tobias Forge.

### 9.3 Meeting September 7

In the beginning of September 2016, Tobias Forge and Sissi Hagald called the plaintiffs to a meeting September 7 in Solna. At the meeting, GHOST's future plans were discussed, and Tobias Forge presented the tour plan, announcing that, according to his plans, he could guarantee gigs and fixed monthly wages for another 2.5 years until December 2018, based on a new album cycle. Tobias Forge announced to the musicians that he could only guarantee a certain amount of compensation to the musicians for a full-time job according to the system used. The



compensation would be paid even when the musicians did not play. Tobias Forge insisted that he deserved to be free from January 1, 2019 and not be responsible for paying salary to the musicians. In that way he could freely plan for the future.

The plaintiffs were urged to consider and come with any wage claims, as Tobias Forge wanted them to be satisfied and motivated for the 2.5 years the contract was valid. No one chose to do this on September 7th. They were invited to return by phone or email in the coming days.

Sissi Hagald presented the proposal on paper in Solna. The agreement was identical to all. However, the individual compensations were not filled out, but had been blanked. In addition to the assignment, it also regulated to right for bonus on sales of albums and secured the intellectual properties of GHOST, to Tobias Forge's company, Swedish Drama Pop AB.

The deal was thoroughly perused point by point with the request that the musicians ask questions. Any such queries were not made.

#### 9.4 Draft agreement, September 25

On September 25, the musicians were presented the agreement, as discussed at the meeting on September 7, appendix 21, by email. The draft agreement included the regulation of fees and bonus calculations, regulations of rights, and regulation of respective musicians' obligations and commitments.

On September 29, 2016, appendix 22, the musicians were notified in an email from Sissi Hagald which also contained an update of discussions with the management Rick Sales: *"With September coming to an end, questions about the raised fees were brought up. Management wanted to be explicitly clear that they would like to, but could not pay out the increased fees until the agreement had been signed by respective party. They said that this had been communicated previously, but would like to*

*remind now.... Unfortunately, the Martin Persner situation is still causing problems and, in order to calm the Ghost apparatus, I would like to ask you to come back as soon as you can concerning the agreements. Is it so that you can't come to a decision on this, I will ask you to come back to me, so we will know, because I will, among other things, have to ask Loma Vista/Concord to issue an agreement that has to be signed for taking part in the filming at Wiltern. "*

Simon Söderberg confirmed having received the draft agreement, but informed that he would need a few weeks to review the proposal.

Henrik Palm received the draft agreement on September 25, and announced on the same day his company's organization number, appendix 23. On October 4, 2016, Sissi Hagald reminded Henrik Palm about the agreement and notified, among other things, that *"if you can send me a feedback now, so that we can add the fee increase to the current invoice you will send for the coming month or if you need more time to reflect on it? Should you need it, then I would like to be clear that we have to deduct the increase you have already received on the next payment. Otherwise, the agreed increase will be in force from the day we are in agreement and forward. "* Martin Palm confirmed this to Sissi Hagald in an email on October 5, appendix 24, and also stated in his reply that he had no ambition in bringing the matter to a similar Persner situation.

## 9.5 Henrik Palm's negotiation and acceptance

Tobias Forge contacted Henrik Palm to urge him to negotiate his compensation. Henrik Palm had switched to bass guitar replacing Martin Persner and Henrik Palm would learn the new bassist Megan Thomas songs. Tobias Forge considered Henrik Palm to be an asset to GHOST and would reward him with higher salary, which pleased Henrik.

However, Henrik Palm returned a couple of weeks later and wanted to get more than the sum agreed in September. Henrik Palm thought that the wage negotiation had gone a little bit too quickly and that, along with his girlfriend, he thought that a higher specific sum would feel more appropriate. The increase was accepted by Tobias Forge and they shook hands and hugged after it, as both wanted to express their joy of agreeing with each other and satisfied with the Agreement.

On October 10, Henrik Palm invoiced the higher fee negotiated between him and Tobias Forge, i.e. \$ 2,500, which was \$ 500 more than previously agreed, appendix 20d. Prior to that, Henrik Palm had invoiced the higher retroactive fee offered in the draft agreement in April, appendix 20 d. Henrik Palm did not make any objections to the tangible content of the agreement.

Martin Hjertstedt was reminded of the agreement by e-mail on October 4 and informed on October 7, that "My personal opinion about the contract is that it looks good.", appendix 25. Martin Hjertstedt invoiced the higher fee as stated in the draft agreement as of April and did not make any comments on the content of the agreement.

Mauro Rubino accepted the compensation offered by Tobias Forge, which was invoiced in April, appendix 20 b. Mauro Rubino had no comments on the tangible content of the agreement.

#### 9.6 Negotiations from October to November

However, on October 14, the plaintiffs returned via their lawyer, The Law firm Inter, and announced that the agreement was not accepted. The plaintiffs had, among other things, views on the agreement regarding the size of the monthly wage, shorter contract times and right to share in revenue from merchandise sales generated at concerts they participated in as well as royalties from recordings of exploitation of the recordings that the musicians have contributed to the recordings.

In addition, the plaintiffs' lawyer stated in the letter that no agreements would be signed regarding the involvement of the musicians in Ghost, for example the recently released DVD deal. The agreement concerned an audio-visual recording of the GHOST concert performed at the renowned The Wilton Theatre in Los Angeles in 2016. The cost and investment in the recording of the concert was too extensive to risk, if the musicians did not accept the agreement proposed by Tobias. Decisions were made to cancel it with immediate effect.

The atmosphere during the tour became more and more strained and Tobias Forge was at times completely frozen out of the group. The plaintiffs threatened Tobias Forge to leave the tour unless the terms they proposed were accepted. In order to ensure that the tour could be completed at the end, Tobias Forge felt obliged to negotiate some form of agreement for a limited time.

On October 21, 2016, the plaintiffs returned via their lawyer with a request for Tobias Forge's standpoint to previous correspondence and announced, among other things, that no agreement had been reached between the parties for the forthcoming tour. The correspondence mentions that the plaintiffs would receive compensation based on the Swedish Musicians' rates for live performances, and which rates apply to musicians.

On the 31 October 2016, appendix 26, the plaintiffs came back through their lawyer and once again pointed out that there was no agreement between the parties. Among other things, the plaintiffs' lawyer presented on behalf of his clients that *"It would be unfeasible to expect them to continue this tour without a proper deal in place with regards to the financial terms. The current indeterminate financial state has caused a lot of anxiety for our clients."*

On November 1, Tobias Forge came back through his lawyer, Sissi Hagald, by e-mail, appendix 27, and informed that Tobias Forge had no intention in to reply to their counter-offer (to the September draft agreement) submitted by the plaintiffs on October 14th, nor submit any new proposal regarding future engagement of the plaintiff's services, except for a regulation of the fees for the plaintiffs' live performances during the ongoing Autumn tour. This was to ensure that the Autumn tour was completed until November 12, 2016. The offer was valid until November 12, 2016.

In a letter dated November 2, 2016, appendix 28, the plaintiff's lawyer confirms that she is not aware of any other agreements between Tobias Forge and her clients: *"I am however not familiar with any other particular agreements between our clients."* However, the lawyer confirms in the same letter that there is an agreement between her clients and Tobias Forge pursuant to *"our clients are entitled to invoice Tobias Forge for certain monthly retainers as regards their touring services"*.

Subsequently, the plaintiffs sent through their lawyer a draft agreement to Tobias Forge on November 3, appendix 29. Point 1.2 in the draft agreement proposes that: *"The artist has engaged the Musicians for participation Ghost in, including musicians and singers in live performances with Ghost, by with the musicians, among other has participated and will participate in a tour during the period September 19, 2016 until November 12, 2016 (hereinafter referred to as "The Autumn tour". Participation during the Autumn tour takes the form on a basis of free-lance."* At the end of point 2.5, it is stated that previously paid compensation to the plaintiffs will be deemed as compensation for their live performances.

These formulations show that the plaintiffs' standpoint was that they were "Musicians for Hire" and nothing else. Furthermore, the correspondence shows that there existed no agreement on anything other than a monthly

fee for their services – retainer – between the parties. The negotiations by the plaintiffs were also characterized by the situation often found in the music industry, that is, musicians threaten to not fulfil an accepted assignment if they are not given special supplementary terms not previously agreed. In the present case, the additional terms the plaintiffs dictated were not accepted.

The plaintiffs' draft agreement was rejected by Tobias Forge because it was too far-reaching and did not reflect the reality the parties had cooperated in. The claim that the payment, i.e., retainer, would be considered a payment on account was wrong because retainers were paid to ensure that the plaintiffs fulfilled their commitments on the tour and any settlement against any future, major compensation was not applicable. Furthermore, it was incorrect that there was a final agreement.

Tobias Forge made a counter proposal for an agreement, which was finally made on November 9. That agreement regulated the plaintiffs' assignment under the remaining period of the autumn tour until November 12, 2016. In that deal, all the plaintiffs received a fee which amounted to a significantly higher amount than the individual compensation which had been accepted by the musicians after the meeting in Solna, [appendix 30](#).

During the negotiation concerning the agreement reached on November 9, the plaintiffs stated in their letter through their lawyer that their musicians were to be defined as "sole traders", [appendix 31](#), which they were also defined as in the agreement. This underlines that the plaintiffs were "Musicians for Hire" and considered themselves as such. This agreement regulated all of the parties' agreements regarding the autumn tour, cf. paragraphs 9 and 10.

Questions about bonuses and royalties were not discussed at all during the negotiations of the agreement which was reached on November 9.

During November, GHOST Tour Manager George Davidson was contacted by them as musicians, to announce their names to the guest list for the sold-out Stockholm concert on April 28, 2017.

Sissi Hagald was instructed by Tobias Forge to announce to the plaintiffs representatives that no further involvement was relevant and that the guest list was not available to the candidates.

Sissi Hagald appealed in writing to the plaintiffs' lawyer "*As there seems to be confusion about their commitment, I would like to clarify that by your email on October 14, 2016, informed me that your principals did not accept the offer that had been submitted. My principal has also not accepted any counterbid why it should be made clear to your principles that any agreement regarding their commitment as musicians in Ghost does not exist. It should also be clarified for them, that they will not be considered for further engagement as my principal does not intend once more to be extorted during future tours.*", appendix 32.

As late as December 16, 2016, the plaintiffs' lawyer replied and then stated that there existed a legal partnership between the parties.

Throughout all correspondence at the end of 2016, the plaintiffs have acted as and confirmed in being the contractors, i.e. Musicians for Hire. This is in line with the agreements reached with Tobias Forge and which the plaintiffs have behaved and acted throughout the time as only musicians in GHOST.

The assertion that there would now be a single company and the plaintiffs are not considered as employees but partners, is nothing but an after construction of a non-existent legal relationship, which neither the plaintiffs nor the plaintiffs had perceived.

Tobias Forge immediately engaged new musicians so that the forthcoming tour that was due to start in March 2017 could be done.

On March 30, 2017 late in the afternoon, the plaintiff's lawyer sent an application for a summons, stating that it would be filed on April 3, 2017. The plaintiffs' lawyer accordingly stated:

*Attached is a draft of application for a summons, which will be submitted to Linköping's district court no later than Monday, April 3, 2017.*

*In case Tobias wants to come back with a reasonable extrajudicial solution, proposals will be welcomed no later than Monday, April 3, 2017.*

Tobias Forge was thus not given a reasonable amount of time for consideration to assess the plaintiff's actions and assess the correctness of the claim. From The Swedish Bar Association's ethical rules, the procedure is reprehensible.



## SECTION 10

ABOUT GUSTAF LINDSTRÖM'S ROLL AND PART OF GHOST

ABOUT RESPECTIVE PLAINTIFF  
SIMON SÖDERBERG  
MAURO RUBINO  
HENRIK PALM  
MARTIN

### 10.1 Gustaf Lindström

Gustaf Lindström (not plaintiff) was the person who Tobias Forge exchanged ideas and opinions with already during the time Tobias Forge wrote the first musical works intended for GHOST as well as until March 2011 when he left GHOST.

Gustaf Lindström was the one for whom Tobias Forge first played the tracks, as well as a recording engineer for the recording of the musical works published on MySpace, participated as studio engineer during the recording of the album Opus Eponymous, as well as involved in discussing and supporting Tobias Forge in the selection of record companies. Gustaf Lindström was also a contractor in the agreement with Rise Above Records because he was playing the Opus Eponymous album. Gustaf Lindström also discussed about commercialization of the album, how singles and copies of albums would be distributed in relation to the Elizabeth album and the planning for future concerts in Germany in October 2010 with Tobias Forge.

Gustaf Lindström also regarded himself as the one involved and started GHOST and, something Tobias Forge did not object to, considered that his voice weighed heavier than other musicians. At that time, it was not even certain that the other musicians who participated in the concert in October 2010, would remain as members of the band.

## 10.2 Simon Söderberg

### 10.2.1 Studio engineer Simon Söderberg

Since Simon Söderberg was a friend of Tobias Forge and also had a music studio, Tobias Forge recorded the musical works that were then published on MySpace in spring 2010 in his studio. The work had already been recorded with Gustaf Lindström once. For that, Simon Söderberg was paid.

In addition, the album Elizabeth was recorded in Simon Söderberg's studio. For this, Simon Söderberg was also paid as well as was given a complimentary a copy of the recordalbum as thanks for the help. Since Simon Söderberg was neither involved as a musician in the recording or in any way considered to be a member of the music group, and for that reason, he was not part in sharing the albums from the record company Iron Pegasus as "payment".

In August 2010, Simon Söderberg rented his studio for the recording of the album Opus Eponymous, where he acted as a studio record engineer. Simon Söderberg was paid for the hire of the studio for the recording and studio technology of Rise Above Records. In the plan for recording the album Opus Eponymous, the intention was to originally use another studio for recording because Simon Söderberg could not record drums.

Simon Söderberg also rented his studio to Tobias Forge in connection with the demo recording of GHOST's other album in August 2011, Infestissumam, and assisted as recording engineer with technical

assistance even during the latter recording of the record. For the rental of the studio, Simon Söderberg charged 30,000 kr + VAT for demo recording and 120,000 kr + VAT for the latter recording.

A recording works of a GHOST album basically as follows when recording with real instruments:

1. Each Instrument is recorded;
2. The vocal, ie the song, is recorded thereafter;
3. The producer arranges the sound image in a recording and has overall responsibility for production;
4. The recording files are then sent to a mixer that ensures that the different files are sound together and where electro-acoustic audio is blended into one whole;
5. The mastering engineer ensures that the sound level in the recording becomes optimal for the listener

A recording engineer (also called recording engineer)'s task is to technically master hardware and software when recording a track of music, ie performing points 1 - 2. The task of studio recording engineer may include placing microphones, signal amplifiers and setting input levels.

Simon Söderberg has only been tasked with performing points 1 to 2 when he acted as a recording engineer for recordings of Tobias Forge's musical works.

Simon Söderberg considered himself only as a recording engineer/recording technician, is shown by an email that Simon Söderberg sent on 23 August 2010, Appendix 19, to Tobias Forge's mixer Jamie Gomez (who performed the information in points 4 and 5 described above), in which he presents himself as "This is Simon, the engineer of the Ghost recording." The comments submitted in the complaint regarding

the changes that had to be made in the mix had been dictated by Tobias Forge to Simon Söderberg. Mixing was done by another person and not Simon Söderberg.

From an interview with Jamie Gomez, the mixer and producer of the work Opus Eponymous, it is also evident that Simon Söderberg acted fully following instructions from Jamie Gomez (who performed the information in points 4 and 5 described above).

The interview is on

<https://www.youtube.com/watch?v=fArJ1BP9a5A&feature=youtu.be> and

the statement about the information Simon Söderberg performed will be 1.25.50 in the recording.

Simon Söderberg has thus only been assigned the task of performing points 1 to 2 above when he acted as a recording engineer for recordings of Tobias Forge's musical works. Since the works were already created and arranged by Tobias Forge and in some cases already recorded, there was no room for another person's individual creation or processing of the works.

Simon Söderberg acting as a recording technician can't equal to performers as defined in copyright.

Simon Söderberg has never done a single independent action for the recordings of demos by Tobias Forge's at the beginning of 2010, arranged the works in the manner claimed or otherwise contributed with interpretations or shaped the musical works. Simon Söderberg's effort can't be compared with the effort of a conductor. Neither Tobias Forge or Gustav Lindström recognizes that Simon Söderberg would have "leading recording work, produced, programmed all drums and arranged demo recordings "with Tobias Forge.

Participation as a recording technician means no right to or part of the music recorded - unless otherwise specifically agreed. This has not

happened in the present case. The person who assists with technical assistance during a recording does, like a producer, does not receive copyright protection for his work.

#### 10.2.2 Musician for Hire Simon Söderberg

Simon Söderberg received his first assignment as a musician in GHOST prior to the concerts in Germany in October 2010. However, that he received this assignment does not mean that Simon Söderberg was self-evident for the forthcoming tour in spring 2011.

At a meeting in a studio at the end of August, beginning of September 2010, including Simon Söderberg, Tobias Forge mentioned that they had difficulty in "line-up" for upcoming concerts in Germany in October 2010.

Simon Söderberg was asked by Tobias Forge to play the guitar that Tobias Forge had first intended to play, with the reservation that Simon Söderberg would play exactly as Tobias Forge's played. Simon Söderberg accepted this.

Tobias Forge did not really think that Simon Söderberg was a natural choice as a musician in GHOST because Simon Söderberg was not a hard rock player but focused on another genre in rock music (called hardcore).

To ask the plaintiff, Simon Soderberg became an emergency choice since he was both geographically close and knew the songs.

Simon Söderberg still got confidence in the spring tour. Simon Söderberg made it clear that Tobias Forge was the one who paid the tour and lost money if the costs were higher than the revenues.

At the beginning of April 2011, ie after the above-mentioned meetings of March 2 and April 2, 2011, Simon was completely aware that he had no part in the business - or any responsibility - in addition to the assignment

as a musician. Furthermore, Simon Söderberg was not involved and took no risks in the business or contributed any capital investments. Simon Söderberg has never, even if he had the opportunity, contributed to the GHOST business. For example, Simon Söderberg could have contributed to the business by lending his the studio for free and provide his assistance as a recording engineer for free.

Simon Söderberg has not participated in any economic development, instead Simon Söderberg has always invoiced Tobias Forge's company or rental company as well as assistant with studio technology fees.

This is evidenced by an email correspondence from Simon Söderberg of April 5, 2011, Appendix 2, discussing that if an additional person need to be included in the tour then need to bear additional costs. Simon Söderberg stated in the mail that *"It is Tobias who loses the money, of course, but I think it's right" invested "in any case."*

In an email of February 18, 2012, Simon Söderberg confirmed that Ghost is Tobias Forge's company and at the same time asks whether *"we are a band? Solo project with musician? If we are a band then we have to discuss what it means in short. "*

Simon Söderberg was represented by Martin Persner in the email of March 15, 2012, which clearly states that he regarded himself as Musician for Hire in GHOST and no longer considered the partnership of the agreement with Rick Sales. Simon Söderberg also participated in the telephone conference following the email on March 15, 2012, where monthly payment of wage/salary was agreed.

In the email correspondence on July 1, 2012, Appendix 11, such as payrolls, Simon Söderberg was included and agreement was reached earlier this year that the musicians were only Musicians for Hire and were thus confirmed by them.

Simon Söderberg has not paid any commission to Rick Sales under the agreement.

### 10.2.3 Studio musician Simon Söderberg

As regards the Simon Söderberg's assignment as studio musician at music recordings, Simon Söderberg has reached an agreement with the record companies and/or producer.

Simon Söderberg has participated in the Infestissumam album as a studio musician. In addition, Simon Söderberg has participated as a studio musician on three songs on the latest Meliora album. The payment of Simon Söderberg was in the record company's budget, which have been paid to Simon Söderberg.

Simon Söderberg participated in EP *If You Have Ghost, I'm a Marionette, Crucified and Waiting for the Nigh*, as well as in *Secular Haze*.

Simon Söderberg's rights to music recordings as performers are limited to the cases they participated as musicians at recordings. How his rights in recordings may be publicized and exploited in sound carriers is a legal relationship that is regulated between Simon Söderberg and the record company. Beyond payment for the studio assignment, each musician received compensation for public performance according to the notifications made to SAMI, which the producer of a recording is responsible for.

### 10.2.4 Simon Söderberg's invoicing

The amounts Simon Söderberg invoiced and received from Tobias Forge's respective company (first Swedish Drama Pop, then Papastrello Ltd) for his assignments defined as "musician tour ghost", "musician ghost" and retainer. When the musicians were instructed to submit Invoice to the Papastrello company in early 2013, they were also instructed to use the text "retainer". By retainer is meant to pay a amount for the coming period in advance to ensure the participation of the musicians.



Simon Söderberg has consistently invoiced for his assignments as a live musician in accordance with the fee level agreements between him and Tobias Forge or Rick Sales as stated above.

Simon Söderberg has also invoiced the Swedish Drama Pop fee for assignments as "studio musician" in October 2012, which was in conjunction with the recording of the Infestissumam album, Appendix 17. For the reasons explained in more detail in section 7.4 of this opinion, Swedish Drama Pop released The Studio / Seven Four Entertainment (Universal) studios, with the studio musicians then billing Swedish Drama Pop. Tobias Forge released \$3180 for the Republic/Seven Four Entertainments account for the studio music voucher for Simon Söderberg, Appendix 16. Simon Söderberg then invoiced the Swedish Drama Pop 19 770 SEK + VAT, Annex 17, which at that time was USD 3180. This Fees have therefore not been included in the compensation received by Simon Söderberg for his tournament with GHOST.

Simon Söderberg, in connection with a live performance at Liveshow Colbert, has received compensation for his appearance directly from the organizer, appendix 33.

#### 10.2.5 Summary

Simon Söderberg has consistently performed as Musician for Hire in connection with his assignments in GHOST as well as invoiced for his assignments.

Simon Söderberg's primary purpose with his participation in GHOST has been to receive fees for his assignments as Musicians for Hire and to receive payment for studio rentals and assistant as a recording engineer.

Simon Söderberg was not part of the GHOST music group until September 2010. Simon Söderberg's assignment as a musician in

September for the concerts in October 2010 was initially a time-limited assignment as Musician for Hire.

Simon Söderberg thus entered the music band as a musician only after the purpose of the business was defined, the activity was started by Tobias Forge and the first musical works were already recorded and published.

Since Simon Söderberg had no assignments in GHOST in addition to being a recording engineer, Simon Söderberg has no copyright in the musical works published on MySpace. Simon Söderberg was also not involved in the decision to publish the musical works on MySpace because he was not part of the GHOST at that time.

Simon Söderberg has no copyright in the musical work Elizabeth and was not involved in the decision to record or publish the work, as at that time he was not a part of GHOST.

Simon Söderberg was not a party to the agreement with Rise Above Records or in the decision to enter into an agreement with Rise Above Records. Simon Söderberg did not participate in GHOST at the time of the agreement. At that time, Tobias Forge, Gustaf Lindström and Jonas Olsson participated in GHOST, which is also reflected in the fact that these are stated as parties to the agreement with Rise Above Records.

No right of co-deciding has existed as to which musicians would be employed or assigned to Simon Söderberg. It has been completely decided by Tobias Forge, as shown below in the section concerning Mauro Rubino, Henrik Palm and Martin Hjertstedt.

Simon Söderberg has not assumed any responsibility - or posed any risks - for the operations of GHOST and has not done any capital investments in the business.

No agreement was reached with Simon Söderberg either at the meeting of 2 March or 2 April 2011. What was discussed at the meeting is not

sufficiently precise or liable to constitute contractual content of the kind claimed by Simon Söderberg. Furthermore, it is expressly stated that a written agreement must be drawn up at a later date and then with a precise and liable content regarding rights, obligations or economic distribution, as well as the concrete content of the agreement. However, such a written agreement never met between Tobias Forge and Simon Söderberg.

Simon Söderberg's share in the agreement with OMERCH was a temporary way to pay Simon Söderberg's fee for his assignment as Musician for Hire. Participation in this time-limited agreement cannot be considered sufficiently liable or precise to result in a company agreement being reached between the parties regarding the activities of GHOST but should be seen as an isolated legal partnership.

Simon Söderberg has terminated from the agreement with Rick Sales and never received a commission to Rick Sales for his income directly or indirectly linked to GHOST, such as compensation from SAMI, etc. The fact that Tobias Forge and the musicians who at that time had assignments as musicians in GHOST met with Rick Sales cannot in themselves constitute a legal act that defines the content of a company agreement between these parties or results in a company agreement being reached between the parties about the activities in GHOST, but should be seen as an isolated legal act.

No deal was ever reached between Tobias Forge and Simon Söderberg in connection with the email of October 31, 2011. The mail does not contain any specific details about GHOST's activities, nor does it indicate that the musicians would make any capital investments, contribute to GHOST or otherwise take any risks or contain anything else that defines the content of a company agreement. Tobias Forge's intention with the announcement was not a contractual agreement, but constituted only Tobias Forge's personal thoughts about the activities of GHOST. That the

revenues from GHOST's activities would be included in the Swedish Drama Pop were nothing new or something that was decided jointly. Tobias Forge had already long before allowing GHOST's revenues to flow into that company.

In parallel with his mission as musician in GHOST, Simon Söderberg also played in the groups "TIME" and "Magna Carta Cartel".

Simon Söderberg's assignment as a musician in GHOST was ended on November 12, 2016 in connection with the fact that he did not accept the contract proposal submitted to him by Tobias Forge on September 25, 2016 and instead accepted the agreement dated November 9, 2016.

Any agreement with content other than that Simon Söderberg had a assignment as a musician for hire and would invoice for that assignment under the agreed agreement at any time, has not been met between Tobias Forge or his company.

A simple company does not exist and has never existed in which Simon Söderberg has been a partner.

### 10.3 Mauro Rubino

#### 10.3.1 Mauro Rubino Musician for Hire

Mauro Rubino received assignment as a keyboardist in January 2011. Tobias Forge knew Mauro Rubino as a keyboardist. Simon Söderberg, who met Mauro Rubino in a record store, told Tobias Forge that Mauro Rubino could play keyboard in GHOST and asked Tobias Forge if he could ask Mauro Rubino, which Tobias Forge approved.

Mauro Rubino has never participated actively in any questions relating to the business of GHOST, but his commitment has limited to the acceptance of the arbitration proposals submitted by Tobias Forge, see, for example, Appendix 34.

Mauro Rubino was represented by Martin Persner in the email of March 15, 2012, which clearly states that he regarded himself as Musician for Hire in GHOST, no longer considered to be bound by the agreement with Rick Sales. Mauro Rubino also participated in the telephone conference following the email on March 15, 2012, where monthly fee was agreed.

In the email correspondence on July 1-2, 2012, Appendix 11, concerning payments, Mauro Rubino was also included and an agreement reached earlier this year that the musicians were only Musicians for Hire and were thus confirmed by them.

#### 10.3.2 Mauro Rubino Studio musician

In addition to the recording of the Infestissumam album, Mauro Rubino has not participated in any recordings, but only during live performances during tours. Mauro Rubino has a right on the live performance in which he participates, but, in any case, has no share in any copyright associated with GHOST. Mauro Rubino has received compensation for his live performance.

#### 10.3.3 Invoicing

The amounts Mauro Rubino invoiced and received from Tobias Forge's respective company (first Swedish Drama Pop, then Papastrello Ltd) for his assignments is defined as "musician tour ghost", "musician ghost" and retainer.

Mauro Rubino has consistently invoiced for his mission as a live musician in accordance with the fee value as per agreements between him and Tobias Forge or Rick Sales as stated above.

Mauro Rubino also accepted the proposal by fee per email on December 24, 2010, Appendix 3, ie after Tobias Forge has announced that he will receive a new advance so that the music's compensation for 2013 was secured. Mauro Rubino accepted the proposed fee by email on January 10, 2013, which Mauro Rubino would invoice Papastrello Ltd.

Mauro Rubino has received compensation for his appearance directly from the organizer, Appendix 33, in connection with a live performance at Liveshow Colbert on TV.

Mauro Rubino has also invoiced the Swedish Drama Pop fee for "Studio Record engineer" assignments in October 2012, which was in conjunction with the recording of the Infestissimum album, Appendix 18. Swedish Drama Pop out the Studio / Seven Four Entertainment (Universal) studio songs, the studio musicians since Billed Swedish Drama Pop. Tobias Forge released \$ 2 120 for Republic / Seven Four Entertainments for the Studio Musician Quote for Mauro Rubino, Appendix 16. Mauro Rubino then invoiced Swedish Drama Pop 13 135 SEK + VAT, Appendix 18, which at that time was USD 2 120. This Fees have therefore not been included in the compensation received by Mauro Rubino for his tournament with GHOST.

#### 10.3.4 Summary

Mauro Rubino has appeared as Musician for Hire in connection with his involvement in the GHOST and invoiced for his assignments.

Mauro Rubino's main goal with his participation in GHOST has been to receive fees for his assignment as a Musician for Hire.

Mauro Rubino was not part of the GHOST music group until early 2011. He thus became a musician after the purpose of the business was defined, the operation was started by Tobias Forge, the first musical works were already recorded and published and the first concert tour was conducted in October 2010.

Some consent from other musicians was not collected by Tobias Forge on behalf of Mauro Rubino's assignment.

Mauro Rubino has not assumed any responsibility - or posed any risks - for the operations of GHOST and has not involved in any capital investment in the business.

This did not imply that Mauro Rubino had a right to co-decision or control of the business or became partakers of the business in any way. It has been completely decided by Tobias Forge.

Mauro Rubino was not a party to the agreement with Rise Above Records or in the decision to reach an agreement with Rise Above Records.

No agreement was reached with Mauro Rubino either at the meeting of 2 March or 2 April 2011. What was discussed at the meeting is not sufficiently precise or liable to constitute the contractual content of the allegations by Mauro Rubino. Furthermore, it is expressly stated that a written agreement must be drawn up at a later date and then with a precise and liable content regarding rights, obligations or economic distribution, as well as the concrete content of the agreement. However, such a written agreement never met between Tobias Forge and Mauro Rubino.

There was never a deal between Tobias Forge and Mauro Rubino on the occasion of the email of October 31, 2011. The mail does not contain anything specific about GHOST's activities, nor does it suggest that the musicians would make any capital contributions, contribute to GHOST, take some risks or contains anything else that defines the content of a company agreement. Tobias Forge's intention with the announcement was not a contractual agreement, but constituted only Tobias Forge's personal thoughts about the activities of GHOST. That the revenues from GHOST's activities would be included in the Swedish Drama Pop were nothing new or something that was decided jointly. Tobias Forge had already long before allowing GHOST's revenues to flow into that company.

The purpose of the announcement on October 31 was not contractual bargaining but constituted only Tobias Forge's personal thoughts about the activities of GHOST.

Mauro Rubino's share in the OMERCH agreement was a temporary way to pay fees to Mauro Rubino for his assignment as Musician for Hire. Participation in this time-limited agreement cannot be considered sufficiently liable or precise to result in a company agreement being reached between the parties regarding the activities of GHOST, but should be seen as an isolated legal act.

Mauro Rubino has terminated the agreement with Rick Sales and never commissioned Rick Sales for his income directly or indirectly linked to GHOST, such as compensation from SAMI, royalty from recordings, etc. The fact that Tobias Forge and the musicians who at that time had assignments as musicians in GHOST met with Rick Sales cannot in themselves constitute a legal act that defines the content of a company agreement between these parties or results in a company agreement being reached between the parties about the activities in GHOST, but should be seen as an isolated legal act.

Mauro Rubino's mission as a musician in GHOST was ended on November 12, 2016 in connection with the fact that he did not accept the contract proposal submitted to him by Tobias Forge on September 25, 2016 and instead accepted the agreement dated November 9, 2016.

Any agreement with content other than Mauro Rubino's assignment as a musician and to invoice for the assignment under the agreed agreement at any time, has not been met between Tobias Forge or his company.

A simple companies does not exist and has never existed, wherein Mauro Rubino was a party.

In parallel with his assignment as musician in GHOST, Mauro Rubino has maintained a painting company.



## 10.4 Henrik Palm

### 10.4.1 Henrik Palm - Musician for Hire

Henrik Palm was commissioned as a musician in GHOST in March 2015. It was the producer Klas Åhlund who recommended Tobias Forge to contact Henrik Palm. It took a few days for Tobias Forge to contact Henrik Palm, which was due to Tobias Forge's belief that Henrik Palm was tightly linked to the band Henrik Palm, and was playing at that time.

Tobias Forge, along with management Rick Sales, decided that Henrik Palm would invoice Papastrello Ltd \$ 12,000 per month starting from March 2015, announced to Rick Sales on April 5, 2015 by email, appendix 36.

In email correspondence on March 3, 2015, Henrik Palm was notified of the terms of the assignment and that he would invoice Papastrello for the fee, Appendix 37. In the e-mail, Tobias Forge confirms the assignment to Henrik and announces that he receives monthly salary from March, *"despite that we will not be doing much gig in the summer (so does this count as a replacement for the job you did on the record if it feels OK?) We still have to scratch quite a lot before Sweden Rock and then a little in between. 12000 sec gross in the month, I and management have arrived at. Does it sound good? Do you have an individual company or by now? "*

Henrik Palm confirmed this with acceptance by email of March 4, 2015.

In response to March 4, Tobias Forge Henrik Palm informs that "In order for us to pay you, you must be able to invoice." And that he will invoice Tobias Forge's company Papastrello Ltd "Paying to you every month".

Henrik Palm's assignment in GHOST was thus only "Musician for Hire". Some discussions about part of revenue from business were discussed, as evidenced by the email correspondence, not in the negotiations.

None of the other musicians participated in the determination of the terms of reference for Henrik Palm, which remuneration would be due or at what time it would begin its mission. If so, see Martin Persner's email to Rick Sales on April 1, 2015, as Martin Persner wrote on behalf of Henrik Palms, appendix 38. The mail shows that Tobias Forge and RickSales decided on the compensation:"... I do not know what Tobias has in mind for them and I understand that this is something to discuss between Tobias, MGMT and the new boys ... .It seems that Henrik is more initiated in this than Martin is, but they Both seem kinda tired of what to expect and when to invoice etc. "From this email, it also appears that Tobias Forge and RickSales were to negotiate with Henrik Palm.

#### 10.4.2 Henrik Palm - Studio musician

Henrik Palm has participated as studio musician on the Meliora and Popestar album.

Henrik Palm has played according to the instructions given by Tobias Forge and thus not involved in the creation of the music.

#### 10.4.3 Invoicing

Henrik Palm has invoiced Tobias Forge's company Papastrello the fees shown in Appendix 20c.

On April 7, Henrik Palm was notified of the agreement discussed above. In the deal, the musicians were offered a high level of compensation with retroactive effect. Henrik Palm had no comments on the content of the agreement and has invoiced the higher fee from April 1, 2016.

In September, Tobias Forge contacted Henrik Palm to urge him to negotiate his salary. Henrik Palm had switched to bass guitar replacing Martin Persner and Henrik Palm would learn the new bassist

Megan Thomas songs. Tobias Forge considered Henrik Palm to be an asset to GHOST and would reward him with higher salary, which pleased Henrik. Tobias Forge offered USD 2,500, which pleased Henrik Palm.

Henrik Palm accepts the agreement by sending an invoice to Papastrello Ltd in October 2016 with an amount corresponding to the new fee, ie SEK 20,800 (USD 2500). By doing so, Henrik Palm is deemed to have accepted the content of the contract proposal as a whole, as is Rick Sales's opinion after consulting with Henrik Palm.

In e-mail correspondence on 5-7 October 2016, Appendix 39, Henrik Palm announces that he has no intention to create a difficult situation, Tobias Forge's legal advisor Sissi Hagald proposes the company's corporate registration number and announces that "the contract looks good".

#### 10.4.4 Summary

Henrik Palm has in all negotiations with Tobias Forge, acted as Musician for Hire and invoiced his assignments.

Henrik Palm's primary purpose with his participation in GHOST has been to receive fees for his assignments as Musicians for Hire as well as recording musical works.

Henrik Palm took up his assignment as a musician in GHOST at the direct request of Tobias Forge. The mission involved performing the musical works in accordance with Tobias Forge's instructions, Appendix 40.

Henrik Palm thus entered the music band as a musician only after the purpose of the business was defined, the operation was started by Tobias Forge and a number of musical works had been recorded and published.

Henrik Palm's fee was negotiated directly with Tobias Forge, appendix 40. In these negotiations Henrik Palm did not undertake to be responsible for risks in the business or contribute any capital input into the business. The

negotiations did not affect the issue of bonus or share in the profit of the business.

Some consent from other musicians was not collected by Tobias Forge in connection with Henrik Palm's assignment.

This did not imply that Henrik Palm had a right of co-decision or control of the business or what musical task would be created or assigned. It has been completely decided by Tobias Forge.

Henrik Palm was not a party to the agreement with Rise Above Records or in the decision to make an agreement with Rise Above Records- he did not even exist at that time.

There was no agreement with Henrik Palm either at the meeting on March 2 or April 2, 2011, as this was a mission in GHOST at that time. Henrik Palm did not even know at the time when his meetings in GHOST occurred, even less attended to at the meetings.

Henrik Palm was not a party to the agreement with OMERCH.

Henrik Palm was not a party to the agreement with Rick Sales.

Henrik Palm was not the recipient of the email of October 31, 2011, and did not even know the content of the mail when he was introduced to GHOST.

Henrik Palm, in principle, accepted the content of the contract proposal, in particular, that he was considered as a contractor, who was presented to him in April 2016 by invoicing the new fee from April and subsequently invoicing the higher fee of USD 2500 in October 2016.

Henrik Palm's mission as a musician in GHOST was concluded on November 12, 2016 in connection with the fact that he did not accept the contract proposal received by Tobias Forge on September 25, 2016 and instead accepted the agreement dated November 9, 2016.

Any agreement with content other than that Henrik Palm had a mission as a musician and would invoice for the assignment under the agreed agreement at any time, has not been met between Tobias Forge or his company.

A simple company does not exist and has never existed, wherein Henrik Palm was a party.

## 10.5 Martin Hjertstedt

### 10.5.1 Martin Hjertstedt – Musician for Hire

At the end of April 2015, Martin Hjertstedt was engaged as a musician in GHOST. It was on the recommendation of Niels Nielsen to Tobias Forge as Martin Hjertstedt got his assignment.

The fee for Martin Hjertstedt was negotiated and decided by Tobias Forge and it was a compensation of SEK 10,000 per month.

Martin Persner had already attributed RickSales to the new musicians, appendix 38, on April 1, 2015. The mail shows that it was Tobias Forge and RickSales who decided on the remuneration: *"...I don't know what you and Tobias has in mind for them and I understand that this is something to discuss between Tobias, MGMT and the new boys....It seems that Henrik is more initiated in this than Martin is, but they both seem kinda weary about what to expect and when to invoice etc."*

From the same email from Martin Persner, it emerges that Tobias Forge and RickSales were to negotiate with Henrik Palm and Martin Hjertstedt.

#### 10.5.2 Martin Hjertstedt - studio musician

Martin Hjertstedt participated only as a studio musician on the Popestar album. For this assignment, Martin Hjertstedt receives compensation from SAMI.

#### 10.5.3 Summary

Martin Hjertstedt has in all negotiations with Tobias Forge, acted as Musician for Hire and invoiced for his assignments.

Martin Hjertstedt's main purpose with his participation in GHOST has been to receive fees for his assignments as Musicians for Hire as well as recording musical works.

Martin Hjertstedt took up his assignment as a musician in GHOST at the direct request of Tobias Forge to replace Ludwig Kennerberg. The mission involved performing the musical works in accordance with Tobias Forge's instructions.

Martin Hjertstedt thus became a musician only after the purpose of the business was defined and the activities have been in Tobias Forge's respective companies for a long time. A number of musical works had been recorded and published before Martin Hjertstedt assumed the assignment.

Martin Hjertstedt's fee was negotiated directly with Tobias Forge, appendix 41. In these negotiations, Neither Martin Hjertstedt nor Henrik Palm has undertaken to be responsible for risks in the business or contribute any capital investment in the business. The negotiations did not affect the issue of bonus or share in the profit of the business.

Some consent from other musicians was not collected by Tobias Forge on the occasion of Martin Hjertstedt's assignment.

No right of participation has existed as to which musicians would be employed or assigned to Martin Hjertstedt. It has been completely decided by Tobias Forge.

Martin Hjertstedt was not a party to the agreement with Rise Above Records or in the decision to reach an agreement with Rise Above Records.

There was no agreement with Martin Hjertstedt either at the meeting on March 2 or April 2, 2011 because it was not a GHOST assignment at that time. Martin Hjertstedt did not even know at the time when his or her attendance at GHOST occurred, even less attended by the meetings.

Martin Hjertstedt was not a party to the agreement with OMERCH.

Martin Hjertstedt was not a party to the agreement with Rick Sales. Martin Hjertstedt has not been commissioned by Rick Sales.

Martin Hjertstedt was not a recipient of the email of October 31, 2011 and did not even know the content of the mail when he was taken into GHOST.

Martin Hjertstedt's assignment as a musician in GHOST was concluded on November 12, 2016 in connection with the fact that he did not accept the contract proposal submitted to him by Tobias Forge on September 25, 2016 and instead accepted the agreement dated November 9, 2016.

With Martin Hjertstedt, the Invoicing for the musicians who provided extra services beyond the usual, ie other than playing concerts and participating in promotional activities have not been met between Tobias Forge or his company.

Some single companies do not exist and have never existed where Martin Hjertstedt entered as a partner.

## SECTION 11

### LEGAL STATEMENTS

Agreement?

Company agreement?

#### **11. Legal Partnership**

11.1 The legal partnership can be seen as the original form of company if all definitions are reached. Failure to comply with any of the definitions, there is no legal partnership.

#### 11.2 Definitions of Company

The definition for a company to be considered at hand is that an agreement has been entered between two or more legal subjects, with a common purpose and obligation to act for this purpose.

The agreement between the parties can be negotiated in writing, orally or through concluding action. However, the agreement must in every case specify what the company is going to claim, i.e. the parties must take some form of opinion for what the company agreement should contain and what activities the company should conduct.

#### 11.3 Agreement

For an agreement to be met, it is required that the party/parties have an intention to reach an agreement, that the act to meet an agreement is addressed and published, that the legal act is directed toward someone else and above all, enough precise and clear.

The intention of the acting party, or the preparation of such act, is not binding. If that would be the case, the other party would be able to refer to binding fact that the acting party may not definitely have decided upon as yet.



If the parties in a negotiation concludes that a written contract shall be issued, the presumption is that a binding agreement is reached only once the contract is in writing and signed.

What has appeared during the negotiation for an agreement, does not lead to a binding agreement. Neither does pre-agreements in principle or Letter of Intention, even if the main issues are clear and it is clear that further negotiations are to be made with the aim of reaching a final agreement. However, not reaching an agreement in the end may lead to liability for damages (the negative contract interest).

It is only in the case where the content in the agreement has been sufficiently clear and precisely defined, that someone can act as if the agreement has already been concluded.

Such occurs during the negotiation stage prior to an agreement. does not imply bound by the agreement. Neither consensus on main points through an agreement in principle or declarations of intent that shows the parties have the intention to enter into an agreement, for which further negotiations are to be conducted with an aim to a definitive agreement, does also not lead to bound by the agreement. However, it can result in liability if no agreement has been reached.

It is only if the content of the agreement has become sufficiently clear and precise when someone can act as if the agreement has already been concluded through tacit conduct.

#### 11.4 Purpose

Regarding the purpose, it is considered to comprise two parts <sup>3</sup>. First the purpose the partners have joined together to reach and, secondly, the activities they intend to do in order to promote this purpose.

The most typical and common form of the company is the one that aims to make a profit for distribution between the partners. Profit is defined as income less costs. The purpose must be common to the partners, which clearly indicates in the case of a jointly agreed partnership that a profit is to be distributed equally between participants or in relation to their efforts.

The similar basic rule also applies to single proprietorship, ie all partners are treated equally. If the purpose is to process participants with financial benefits other than through profit sharing, it is required that these benefits are allocated, or at least according to the agreement, to all participants in full. If only one of the partners is to receive a profit or other benefits from the business, then no company exists.

Not even when the profit of an agreed joint business is to be shared between the parties, is there always a common purpose that it becomes a company. The dividing of profit can be tied to a common civilian relationship in such a way that this relationship retains its character and the profit only appear as part of this relationship. The important is if the profit is a relevant to the current civilian affair. The fact that a person employed by certain company receives bonus or shares in addition to his permanent salary does not mean that the relationship to the employment relationship or assignment relationship is changed to a company. In general, there is less reason to regard it a company if a person's compensation for work in a company is not dependent on profit but of revenue.<sup>4</sup> In particular, if the ground of appeal is the gross income of the defendant's own work, the nature of the compensation raises more of the

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<sup>3</sup> About trading partnerships and single proprietorships, Håkan Nial, Carl Hemström 4th edition 2008, p. 43

<sup>4</sup> a.a p 54

character of profit in common. The gross income does not regard costs in the business.

#### 11.5 Other circumstances

The importance of profit sharing for the distinction between companies and legal circumstances, of course, implies some uncertainty and the difficulty of assessing whether a company is present. Help may then be called in other circumstances in the parties' interests.

An important distinction is what the parties have agreed on regarding their internal responsibility for loss of business. The fact that a party to the agreement does not have any part in the loss of business is a contradiction that speaks against the existence of a legal company.

The right of co-decision and control of the business may have significance, especially if such right exists to a greater extent can indicate a company relationship.

The parties' name of the agreement may also be of importance. If the parties call their agreement a company, it can be a sign of the importance they attach to being a common spirit and a company. The corresponding effect may result in the parties calling the agreement as an employment or contract of employment. If someone is assigned or gets a job in a company against a fixed salary and/or a bonus on the revenue, the parties cannot make the relationship to a company by calling it that.<sup>5</sup>

11.6 *In summary*, the definition "common purpose", depends on factors as such - simply expressed - is quite fuzzy and whose significance is also not established. A total assessment of all relevant considerations must be done based on the primary factor such as the distribution of profits. If this does not give a clear and decisive result, then other factors are included. If the proven profit share appears to be a minor significant element compared to the fixed salary/fee or other forms of business, consideration

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<sup>5</sup> a.a p.49

will be given to other relevant factors. Among the other factors, involvement in loss is considered to be highly significant.

## SECTION 12

### DOES A SINGLE COMPANY EXIST BETWEEN THE PARTIES?

#### 12.1 Agreements and interests?

Tobias Forge started the GHOST operation already four years prior to Simon Söderberg joining the music group as a musician. The business concerned a business consisting of a rock band with a fanciful image for the purpose to commercialize the music of Tobias Forge through recording, release of recordings and live concerts.

As part of the business, the trademarks of the rock band would be commercialized by so-called merchandising. The purpose of the business was to create a profit for Tobias Forge through this commercialization of his works and brands. Any other partner did not participate, although Tobias Forge discussed his ideas with friend Gustaf Lindström who also listened to Tobias Forge's music.

In 2010, before one of the plaintiffs had an assignment as musicians in GHOST, Tobias Forge reached an agreement with two record companies for commercial reasons.

It is thus incorrect when the plaintiffs claim that Simon Söderberg met with Tobias Forge and Gustaf Lindström in 2010 to conduct joint activities under the name GHOST. The activity was already in existence for a long time by Tobias Forge and Tobias Forge had already published works under the name GHOST, signed an agreement with Iron Pegasus and Rise Above Records on the release of discs as well as completed the rock group's image of costumes and masks.

The decision to publish musical works on MySpace or to release the record Elizabeth, was something Simon Söderberg was not a part of.

Simon Söderberg also had no copyright in the recordings recorded in his studio with him as a studio technician/recording engineer.

On the contrary, Simon Söderberg or the other plaintiffs were not even aware of when the activities in GHOST started and an agreement to conduct joint activities under the name GHOST is therefore not available, neither because of the conclusive act or oral agreements. Tobias Forge also had no intention of entering into any agreement with Simon Söderberg or Mauro Rubino about a joint venture.

Simon Söderberg had only a mission as a musician in GHOST, after Tobias Forge had already recorded and spread most of his work through GHOST's activities. The single Elizabeth had been released and the debut album Opus Eponymous had been recorded and would soon be published under the name GHOST in the context of Tobias Forge's activities. Mauro Rubino received the assignment further sometime later and the other plaintiffs as far as almost seven years after Tobias Forge launched the business in GHOST.

Tobias Forge has not had any intention to transfer his business which he had been running for a few years into a new business in the form of a single partnership with the musicians.

The plaintiffs' involvement in GHOST has therefore only consisted of a civil rights contract, which included performing what Tobias Forge created, ie playing Tobias Forge's musical work in accordance with his instructions, and on the occasions, he decided. In connection with these assignments, oral agreements have been reached on the compensation that would be paid to the respective musicians and that the respective musicians from their company would invoice the compensation.

Initially, the fee to the musicians corresponded to the gross income GHOST received at concerts. Tobias Forge, as stated above, did not pay himself any compensation at that time from GHOST's operations in

addition to the publishing income he received. Although the music fees were paid by money flowing into Tobias Forge's company from the merchandise company, it does not mean that the musicians had a part in that income. It was Tobias Forge who chose to use these revenues to pay the music fees/salary.

Later, when GHOST received higher payments, the musicians received higher fees/salary. During 2012, as discussed in Section 2 above, also a bonus was discussed in relation to the gross turnover of the company on the sale of the recordings. Not even the bonus would be equal to all musicians. At the conversation between Martin Persner and Sissi Hagald at the end of 2011, Martin Persner stated that he would get more than the others. Furthermore, Simon Söderberg would also be distinguished, but then to a proportion smaller than Martin Persner. The other musicians would only receive a fixed fee/salary for their efforts. It was, therefore, not a matter of equal liability.

Moreover, in these discussions, the bonus was never related to the profit, nor was there any equal pay for the profit between the musicians and Tobias Forge. Nor has any equal distribution of the profits in the activities between the musicians and Tobias Forge ever been discussed at any time.

Between Tobias Forge and the plaintiffs there is a conflict of interests as far as the purpose of the business is concerned; For Tobias Forge was the purpose of commercially developing GHOST and generating profit on the works he created, while the purpose of the musicians was to receive as high a fee as possible for their musician and if possible a bonus, without making any capital investments or taking risks in the business.

## 12.2 Capital and liability for loss?

Another reason was that the parties did not enter into any other agreement on the assignment of musicians in GHOST, because none of the plaintiffs - or other musicians acting in GHOST - ever made any capital investment in the business or agreed to answer for any losses in operations.

The plaintiffs claim that they co-funded the business by the fact that part of the income received through the company Lucky You AB after the 2011 festivals summer was re-invested in GHOST. Tobias Forge disputes that it was an investment in the activities of the parties. The parties to the agreement were Lucky You AB and Swedish Drama Pop AB, and the entries, therefore, went to Swedish Drama Pop AB and not to the musicians to any extent.

Swedish Drama Pop invested in a so-called 'backline', that is, amplifier and similar equipment, which required a forthcoming tour to the group In Flames. Otherwise, Tobias Forge could not have completed the GHOST tour.

## 12.3 Co-decisions and control?

As further stated in the above statement, the claimants have also not been able to co-decide or right to control of GHOST's activities. It is exclusively Tobias Forge, who has decided strategy, negotiated and made all the agreements regarding GHOST, including the management agreement with Rick Sales.

There is thus no agreement between the parties and Rick Sales and has never existed. It can thus be said that the plaintiffs were incorrect in the lawsuit claiming that Rick Sales negotiated deals on their behalf, including Universal, as the parties were not contractual parties. This had also been accepted by Martin Persner to Sissi Hagald at the end of 2011. Furthermore, the plaintiffs state that Rick Sales had the authority to



represent GHOST as well as the musicians in contract negotiations with third parties. That is also wrong. Rick Sales has only the power of attorney to enter into agreements on the artist's 'personal appearance' in relation to the concert and nothing else, as stated clearly in paragraphs 1C and 5 of the Management Agreement.

Martin Persner also announced in March 2012 that GHOST was only Tobias Forge's business and that the musicians are so-called. "Musicians for hire". In spite of this, it is also irrelevant that the parties in October 2011 denied the agreement they discussed as "partnership agreements", as it cannot make the parties a company agreement due to the other facts that show that no company has existed.

The fact that the plaintiffs were only Musicians for Hire, was also made clear in email correspondence between plaintiffs and Rick Sales in 2012 in connection with payment of compensation for studio assignments.

- 12.4 *In summary, with regard to the above, it can be concluded that no agreement on a legal partnership exists between Tobias Forge and the plaintiffs.*

Tobias Forge's intention has never been to enter into a simple company with the musicians who have had assignments in GHOST. The discussions and meetings that have taken place between the plaintiffs have not been sufficiently concrete or precise to constitute content of agreement. Further, it was assumed that a written agreement was to be drawn up with the specification and concretization of the respective parties' obligations and rights, which was never realized. Even if it would be considered to have been prepared for a joint venture between the plaintiffs, does not mean that Tobias Forge has been bound by agreements in connection with such measures.

Since there has been no sufficiently clear and precise content of agreement, Tobias Forge has not been able to act as if an agreement has already been concluded through tacit conduct.

On the other hand, Tobias Forge has reached agreements with the plaintiffs about their respective fees for their assignment as Musicians for Hire in GHOST.

None of the plaintiffs were present at the time of the formation of the business and have neither participated in carrying out the business purpose nor were committed to working for the joint business purpose more than fulfill their task of performing – executing -the work Tobias Forge has created in the manner Tobias Forge has instructed. This, in the same way as employed persons, shall carry out their duties in the activity in which they are employed. Tobias Forge has also had no intention of reaching an agreement with the plaintiffs about a joint partnership, transferring his business into a joint venture with the plaintiffs or otherwise sharing income in the business with the plaintiffs.

## SECTION 13

### TRADEMARKS COPYRIGHTS

#### 11. Trademarks etc.

Tobias Forge claimed the GHOST trademark sometime during the period 2006-2008 and in any event, at the latest in connection with GHOST's Myspace page and the publication of the music in March 2010. It is Tobias Forge who has designed the GHOST trademark. The GHOST trademark has not been elected jointly with the plaintiffs, but exclusively by Tobias Forge.

Filing for registration of the GHOST and GRUCIFIX trademarks was submitted to the European Union Intellectual Property Office (EUIPO) on March 8, 2012. GHOST was registered on November 30, 2013 and GRUCIFIX on August 3, 2012. The cost of the trademark registrations and subsequent defence of the registrations has been paid by Tobias Forge.

The plaintiffs claim they have a right to the trademarks through incorporation that is alleged to have taken place through the business.

Tobias Forge however used the trademark GHOST when agreement with Rise Above and Iron Pegasus was made. Further Tobias Forge used the trademark GHOST at the release of the recording Opus Eponymous and in conjunction with the concerts in October 2010 at merchandising. Tobias Forge has never transferred his trademark rights to the plaintiffs.

If the plaintiffs claim themselves, as musicians in Ghost earlier than March 8, 2012, have received an earlier right of the GHOST trademarks than Swedish Drama Pop AB, they should claim that in accordance to the laws regarding trademarks(the title to the trademarks statutory scheme).

As far as music recordings are concerned, musicians play a very real part in the music recordings, insofar as they have participated as performers.

Compensation will be received from the Swedish Artists and Musicians' Association (SAMI). In addition, Tobias Forge holds the IP rights for the works.

## SECTION 14

### EVIDENCE

Tobias Forge is currently referring to the following evidence and reserves the right to supplement the evidence.

Tobias Forge will provide address information to the interviewees in question at a later date.

#### 14.1 Oral evidence

Hearing under the assurance of truth with Tobias Forge regarding the circumstances in 2006-2008 in the formation of the activities of GHOST, the works he created during that period and later; How the name and brand GHOST was created; GHOST's page on the website Myspace and the publication of the works; The recording process of the music at the respective recording as well as the people who watched and played; The creation of GHOST's image including the roles Papa Emeritus and Ghouls; The circumstances surrounding the negotiations with Iron Pegasus, Lucky You AB, Rise Above Records, Rick Sales Entertainment and Global Merchandising Services Ltd; The roles and tasks of the plaintiffs and other musicians in GHOST, compensation and its calculation; Decision making in the business GHOST; Investments and costs in GHOST as well as the events of the autumn of 2016 regarding contractual negotiations with the musicians, to support

- None of the candidates were present at the time of the formation of the business, the GHOST was founded by Tobias Forge assisted by Gustaf Lindström, Gustaf Lindström assisted Tobias Forge in choosing the record company Rise Above Records, the agreement with Rise Above Records was made between Tobias Forge, Gustaf Lindström, and Jonas Olsson; that it was Tobias

Forge and Gustaf Lindström who created, recorded and published the record Elizabeth; Tobias Forge and Gustaf Lindström shared the revenues of the Elizabeth album, Tobias Forge and Gustaf Lindström in April 2010 did not know which guitarists would be hired in addition to themselves, that other musicians besides Simon Söderberg were asked to play in GHOST in June 2010, that Tobias Forge considered to carry through concerts with background music and supernumeraries as musicians in place of other musicians, that the concert tour in October 2010 was considered by Tobias Forge and Gustaf Lindström as one thing and a coming tour in April 2011 as another, that Simon Söderberg was not to the fore as a musician in GHOST until the middle of September 2010

- There has been no common commercial purpose between Tobias Forge and the plaintiffs.
- The plaintiffs have neither participated in the decisions of GHOST's business purposes nor committed to working for the common commercial purpose,
- The plaintiffs have neither contributed capital investments in the GHOST business nor been responsible for losses in the business,
- Tobias Forge has exclusively held decisions and control of the operations of GHOST,
- Tobias Forge designed and drafted the logotype for the GHOST trademark, the GHOST logo was used at the time of making the agreement with Rise Above Records 2010, Tobias Forge alone decided how the logo were to be used or combined with additions,

- The plaintiffs have only had the task of performing - executing
  - the musical works and the image in GHOST that Tobias Forge has created, produced and decided, all according to Tobias instructions,
- the plaintiffs have never been involved in the income from the merchandise company,
- Simon Söderberg did not participate in the recording of Opus Eponymous more than as sound engineer or in the election and negotiations with the record company Rise Above Records,
- Tobias Forge has made agreements with each plaintiff respectively regarding paid assignments as a musician in GHOST,
- the mail on October 31<sup>st</sup> 2011 consisted of Tobias Forge's thoughts regarding GHOST,
- Tobias Forge solely decided to assign music activities to Henrik Palm as a musician, no other musician in GHOST participated in deciding the terms for Henrik Palm or Martin Hjerstedt, that Henrik Palm were to invoice his fee monthly, that Henrik Palm were to have a registered firm of his own to be able to invoice, that Henrik Palm accepted the conditions of the assignment as Musician for Hire.

**Testimonials with Sissi Hagald** regarding the content of talks with Martin Persner at the end of 2011 including compensation and bonus discussions conducted with Martin Persner and the plaintiffs during the period of 2011 - 2016, the negotiations with Rick Sales, Sissi Hagalds' assistance of Tobias Forge the period of 2011 – 2016 and what it consisted of, as well as circumstances regarding the

negotiations between Tobias Forge and the plaintiffs in 2016 in support of:

- That the plaintiffs have only been assigned the task of performing
  - execute - the musical works and the image in GHOST that Tobias Forge has created, produced and decided, according to Tobias instructions,
- That the candidates have received a fee / salary for their assignments,
- That the agreements negotiated constitute employment contracts,
- That no agreements exist with the plaintiffs.

**Testimonials with Niels Nielsen** regarding tour leader of GHOST 2011 - 2012, regarding his assignment in GHOST 2011 – 2012, his discussions with Tobias Forge and the plaintiffs Simon Söderberg and Mauro Rubino, regarding meetings on March 2nd 2011 and April 2nd 2011; regarding meeting with Rick Sales, his involvement and tasks at the recording of Tobias Forges tracks as well as concerts until the day he left GHOST; his understanding of the compensation he and the plaintiffs respectively have received within the frame of his assignment in support of:

- None of the plaintiffs were present at the time of the formation of GHOST, that GHOST was founded by Tobias Forge assisted by Gustaf Lindström, that Gustaf Lindström assisted Tobias Forge in choosing the record company Rise Above Records, that the agreement with Rise Above was made between Tobias Forge, Gustaf Lindström and Jonas Olsson; that it was Tobias Forge and Gustaf Lindström who recorded the albums and published the Elizabeth album, that Tobias Forge and Gustaf Lindström shared the revenues from the Elizabeth album, that Tobias Forge and Gustaf Lindström in April 2010 did not know which guitarists



would be hired in addition to themselves, that other musicians besides Simon Söderberg were asked to play in GHOST in June 2010, that Tobias Forge considered to carry through concerts with background music and supernumeraries as musicians in place of other musicians, that the concert tour in October 2010 was considered by Tobias Forge and Gustaf Lindström as one thing and a coming tour in April 2011 as another, that Simon Söderberg was not to the fore as a musician in GHOST until the middle of September 2010

- Tobias Forge designed and drafted the logotype for the GHOST trademark, that the trademark GHOST was used at the time of making the agreement with Rise Above Records 2010,
- That no joint action of action between Tobias Forge and the appellants never submitted or with him a soul.
- That the plaintiffs have not participated in the compliance of GHOST's business purposes,
- That enforcement and control of the activities of GHOST has been exclusively held by Tobias Forge and that the candidates have only been assigned the task of conducting, in accordance with Tobias Forge's instructions- execute - the musical works and the image in GHOST that Tobias Forge has created, produced and decided,
- That Simon Söderberg did not participate in the recording of the tracks that were published on MySpace, the Elizabeth album or Opus Eponymous in addition to his role as sound engineer.

**Testimonials of witness Colin Young,** financial advisor and accountant in Papastrello Ltd, regarding company structure within the frame of GHOST's businesses, regarding Musicians for Hire,

regarding his contact with the plaintiffs, regarding handling of fees to the plaintiffs, in support of:

- That no joint action between Tobias Forge and the plaintiffs never submitted or with him a soul,
- That the plaintiffs have not participated in the compliance of GHOST's business purposes,
- That enforcement and control of the activities of GHOST has been exclusively held by Tobias Forge and that the candidates have only been assigned the task of conducting, in accordance with Tobias Forge's instructions- execute - the musical works and the image in GHOST that Tobias Forge has created, produced and decided,
- Tobias Forge invoiced for the costs involved in GHOST,
- No agreement was made regarding financial allocation of revenues nor cost allocation in the meeting on April 2nd 2011,
- Tobias Forge was a band leader, songwriter and one who had the full mandate of aesthetics and music,
- Rights, obligations or economic distribution were not mentioned during the meeting on March 2nd respectively April 2nd. that a written contract was to be established with a precise and liable content regarding rights, obligations or financial distribution,
- He did not consider himself bound to the agreement with Rick Sales.

**Testimonials of witness Colin Young,** financial advisor and accountant in Papastrello Ltd, regarding company structure within the frame of GHOST's businesses, regarding Musicians for Hire, regarding his contact with the plaintiffs, regarding handling of fees to the plaintiffs, in support of:

- That enforcement and control of the activities of GHOST has been exclusively held by Tobias Forge
- the plaintiffs have received fees for their assignments,
- the agreements that were negotiated consisted of assignment agreements,
- No agreements or commitments are made between Tobias Forges' businesses and the plaintiffs regarding bonus or shares in the GHOST business.

**Testimonials with Niels Nielsen regarding tour leader of GHOST 2011 - 2012**, regarding his assignment in GHOST 2011 – 2012, his discussions with Tobias Forge and the plaintiffs Simon Söderberg and Mauro Rubino, regarding meetings on March 2nd 2011 and April 2nd 2011; regarding meeting with Rick Sales, his involvement and tasks at the recording of Tobias Forges tracks as well as concerts until the day he left GHOST; his understanding of the compensation he and the plaintiffs respectively have received within the frame of his assignment to **confirm that:**

- That no joint action between Tobias Forge and the appellants never submitted or with him a soul,
- The plaintiffs have not participated in the compliance of GHOST's business purposes,
- That enforcement and control of the activities of GHOST has been exclusively held by Tobias Forge and that the candidates have only been assigned the task of conducting, in accordance with Tobias Forge's instructions- execute - the musical works and the image in GHOST that Tobias Forge has created, produced and decided,

- Tobias Forge was invoiced for the costs involved in GHOST,
- No agreement was made of financial allocation of revenues nor cost allocation in the meeting on April 2nd, 2011 nor at any other occasion,
- Tobias Forge was a bandleader, songwriter and one who had the full mandate of aesthetics and music,
- Any rights, obligations or economic distribution were not mentioned during the meeting on March 2nd respectively April 2nd that a written contract was to be established with a precise and concrete content regarding rights, obligations or financial distribution,

**Testimonials of witness Magnus Strömblad,** accounting consultant, regarding his contact with Tobias Forge and his presentation of structure of a cooperative entity in a meeting with musicians in GHOST, **to confirm that**

- he was never assigned by Tobias Forge,
- Tobias Forge had authority and control of the business of GHOST.

**Testimonials of witness Kristen Mulderig alternatively Rick Sales,** Rick Sales Inc, regarding his/her contact with Tobias Forge since 2012, regarding company structure within the frame of GHOST's businesses, regarding Musicians for Hire, regarding his/her contact with the plaintiffs, regarding fees to the plaintiffs, discussions regarding compensation and bonus with Martin Persner and the plaintiffs during the period of 2011 - 2016, the negotiations, Sissi

Hagalds assistance of Tobias Forge the period of 2011 – 2016 and what it consisted of, **to confirm that**

- authority and control of the business GHOST is exclusively held by Tobias Forge,
- the plaintiffs have received fees for their assignments,
- Simon Söderberg and Mauro Rubino have received compensation as studio musicians from record companies,
- the negotiated agreements have been assignment agreements as Musicians for Hire,
- no agreements or commitments are made between Tobias Forges' businesses and the plaintiffs regarding bonus or shares in the GHOST business,
- the plaintiffs were solely assigned to, in accordance with the instructions of Tobias Forges, perform – execute – the musical tracks and the image of GHOST which Tobias Forge has created, produced and decided upon,
- Tobias Forge is a single party in the agreement with Rick Sales
- none of the plaintiffs have paid commission on their acquired revenues which are directly/indirectly related to GHOST.

#### 14.2 Written evidence

**Appendix 1 (e-mail from Gustaf Lindström February 8 2011, Appendix 4 (e-mail April 22 2010, attachment 6 (e-mail June 26 2010), appendix 7 (e-mail to Per Aranda), appendix 8 (e-mail September 15 2010)**

- To confirm that GHOST was founded by Tobias Forge, assisted by Gustaf Lindström, that Gustaf Lindström assisted

Tobias Forge in choosing the record company Rise Above Records, that the agreement with Rise Above was made between Tobias Forge, Gustaf Lindström and Jonas Olsson; that it was Tobias Forge and Gustaf Lindström who recorded the albums and published the Elizabeth album, that Tobias Forge and Gustaf Lindström shared the revenues from the Elizabeth album, that Tobias Forge and Gustaf Lindström in April 2010 did not know which guitarists would be hired in addition to themselves, that other musicians besides Simon Söderberg were asked to play in GHOST in June 2010, that Tobias Forge considered to carry through concerts with background music and supernumeraries as musicians in place of other musicians, that the concert tour in October 2010 was considered by Tobias Forge and Gustaf Lindström as one thing and a coming tour in April 2011 as another, that Simon Söderberg was not to the fore as a musician in GHOST until the middle of September 2010.

## **Appendix 2 (e-mail April 5 2011)**

To confirm that:

Tobias Forge invoiced for the costs related to GHOST, its tours etc, that none of the musicians who played in GHOST paid any tour related costs, that Simon Söderbergs' understanding after the meetings on March 2<sup>nd</sup> 2011 and April 2<sup>nd</sup> 2011 was that Tobias Forge accounted for the costs related to GHOST, that no agreement was made regarding financial allocation of revenues or cost allocation in the meeting on April 2<sup>nd</sup> 2011, that Tobias Forge was in charge and responsible for the costs of the concerts.

**File appendix 1, Appendix 5 (Agreement with Rise Above) and appendix 3 (e-mail correspondence December 23 - 24 2012)**

To verify that Tobias Forge invented and designed the logotype for the GHOST trademark, that the trademark GHOST was used at the time of making the agreement with Rise Above 2010, that Tobias Forge alone decided how the trademark should be used or combined with additions, that Mauro Rubino accepted the assignment and fee.

**Appendix 9 (photographies masks), appendix 10 (e-mail September 9 2010)**

To verify that the appearance of the masks and the costumes was already decided upon by Tobias Forge prior to the concerts in October 2010.

**File appendix 9 (memory notes meeting March 2 2011), file appendix 10 (Newsletter 2012)**

- To confirm that Tobias Forge was a band leader, songwriter and one who had the full mandate of aesthetics and music. Any rights, obligations or economic distribution were not discussed during the meeting, that a written contract were to be established with a precise and liable content regarding rights, obligations or financial allocation, that the newsletter did not refer to financial questions.

**File appendix 2 (e-mail October 31 2011), appendix 12 (e-mail February 17-18 2012), appendix 19 (e-mail August 31 2013 from Martin Persner)**

To confirm that the mail consisted of Tobias Forges' thoughts regarding GHOST, that all musicians were requested to register their firms in order to invoice Tobias Forges company the compensation that would be

agreed upon, that any joint venture would not take place, that the mail did not consist of any liable information regarding the business of GHOST, that the mail did not oblige the receivers of the e-mail to make any capital investments, contribute to GHOST or in other ways take any risks, that GHOST was Tobias Forges business, that Simon Söderberg did not consider himself participate in the GHOST business, that Simon Söderberg and Mauro Rubino respectively did not have any authority nor insight in the business, that nothing concrete was agreed upon regarding a joint venture or share in the GHOST business, that Simon Söderberg and Mauri Rubino were contractors in the GHOST business, that the business of GHOST as well as recordings are Tobias Forges' possessions and assets by copyright, that nothing was agreed upon regarding shares in future profits, that it was Tobias Forge who decided on profit allocation.

**File appendix 22 (e-mail March 15 2012), file appendix 4 (agreement Rick Sales), file appendix 10 (Newsletter), appendix 13 (e-mail Kristen Mulderig), appendix 11 (e-mail July 1 – 2 2012), appendix 14 (e-mail November 6 2012)**

To confirm that Simon Söderberg and Mauro Rubino accepted that Rick Sales no longer represented Simon Söderberg and Mauro Rubino (and other musicians such as Martin Persner, Rikard Ottosson and Aksel Holmgren), that Simon Söderberg and Mauro Rubino committed themselves to pay commission on activities that directly or indirectly related to the band GHOST, that Simon Söderberg and Mauro Rubino made an agreement with Tobias Forge which implied that the musicians were Musicians for Hire, were not to have any share in Tobias Forges' business and that the musicians were not to take any risk nor contribute with any capital investments, that all musicians at that time knew of and accepted the content of Martin Persners e-mail of March 15<sup>th</sup> 2012, that



the fee was agreed upon as hired musicians in GHOST, that a phone conference with Rick Sales took place on March 23<sup>rd</sup> 2012 whereby musicians Simon Söderberg, Martin Persner, Mauro Rubino, Aksel Holmgren and Rikard Ottosson participated and discussed about compensation based on Martin Persners e-mail on March 15<sup>th</sup> 2012, that Simon Söderberg, Martin Persner, Mauro Rubino, Aksel Holmgren and Rikard Ottosson accepted Martin Persner to represent them in negotiations regarding compensation, that Tobias Forge made an agreement regarding a monthly, fixed fee to the musicians for the period of April – September 2012, that the musicians solely were Musicians for Hire and which is confirmed in the e-mail of Martin Persners on March 15<sup>th</sup> 2012, that no agreement of joint venture in GHOST nor profit sharing or other financial shares was made between Tobias Forge and the other musicians.

**Appendix 14 (e-mail September 15 2012 from Kristen Mulderig), appendix 16 (invoice Swedish Drama Pop to the record company), appendix 17 (Simon Söderbergs invoice regarding studio fee), appendix 18 (Mauro Rubinos invoice regarding studio fee)**

To confirm that Simon Söderberg and Mauro Rubino had been instructed to invoice the record company for their assignments as studio musicians at the recording, Simon Söderberg and Mauro Rubino were 'Musicians for Hire', that Tobias Forge on the account of Universals paid the sums to the studio musicians, that Simon Söderberg and Mauro Rubino invoiced Swedish Drama Pop AB the corresponding sum, that no agreement regarding the music recording was made between Tobias Forge and Simon Söderberg and Mauro Rubino.

**Appendix 34 (e-mail January 3 – 10 2013 regarding compensation)**

To confirm that Simon Söderberg and Mauro Rubino received the assignment fee, that the fee were to be invoiced as "retainer", that a bonus fee was not in question

**Appendices 20a – 20d (invoices 2016)**

To confirm that Simon Söderberg, Martin Persner, Mauro Rubino, Henrik Palm and Martin Hjertstedt accepted assignments as Musicians for Hire.

### **Appendix 33 (compensation Colbert Show)**

To confirm that Mauro Rubino and Simon Söderberg respectively associated with a live performance at Liveshow Colbert on TV, received compensation for their performance directly from the organizer.

### **Appendix 36 (e-mail April 5 2015 Tobias Forge regarding Henrik Palm), appendix 38 (e-mail April 1 2015), Appendix 41 (e-mail April 2 – 5 2015 regarding Henrik Hjertstedt)**

To confirm that Tobias Forge alone decided to assign Henrik Palm as a musician, that no other musician in GHOST participated in deciding the terms for Henrik Palm or Martin Hjertstedt, that Henrik Palm were to invoice a monthly fee, that Henrik Palm were to have his own registered firm in order to invoice, that Henrik Palm accepted the terms of the assignment as Musician for Hire.

### **Appendix 21 (agreement proposal September 25 2016), appendix 23 (e-mail September 25 2016, appendix 24 (e-mail October 4 – 5 2016), appendix 20d (invoice), appendix 20b (invoice), appendix 39 (e-mail October 5 – 7 2016)**

To confirm that the agreement proposal of September 25<sup>th</sup> 2016 referred to assignments such as Musician for Hire, that an increased fee were not to be paid prior to acceptance of the agreement, Henrik Palm invoiced the higher fee than negotiated between Henrik Palm and Tobias Forge, i.e. 2 500 USD which was 500 USD more than what was previously negotiated, that Henrik Palm invoiced the higher fee which had been offered in the agreement proposal in April, that Henrik Palm did not object to the agreement, that Martin Hjertstedt considered the appearance of the agreement proposal as good, that Martin Hjertstedt invoiced the higher

fee stated in the agreement proposal starting April, that Mauro Rubino invoiced the higher fee offered in the agreement proposal in April.

**Appendix 26 (letter October 31 2016), appendix 27 (e-mail November 1 2016), appendix 28 (letter November 2 2016), appendix 29 (agreement proposal from Knd), appendix 30 (Tobias Forges agreement proposal signed) appendix 31 (letter November 9 2016), appendix 32 (e-mail November 28 2016)**

To confirm that there was no agreement between Tobias Forge and Simon Söderberg, Martin Persner, Mauro Rubino, Henrik Palm and Martin Hjertstedt of any kind, that the draft from the plaintiffs on October 14th was rejected, that Tobias Forge did not intend to give any new draft to the plaintiffs, that the assignment and engagement of the plaintiffs in GHOST had been terminated, that an assignment agreement existed, that no agreement was made except for a monthly wage for their services – retainer – between the parties, that all parties' differences were adjusted regarding the Autumn tour, that no agreement was made regarding bonus and royalties.

#### 14.3 Inspection

Recorded interview with Jamie Gomez, the mixer and the producer of the track Opus Eponymous, to verify that Simon Söderberg solely performed technical tasks and did not perform any independent tasks at the recording of the track.

the interview is available at

<https://www.youtube.com/watch?v=fArJ1BP9a5A&feature=youtu.be> and

the statement of the tasks performed by Simon Söderberg is recorded at 1.25.50.

Göteborg on May 14th 2018

Ann-Charlotte Söderlund Björk

List of appendices

1. E-mail from Gustaf Lindström February 8 2011
2. E-mail April 5 2011
3. E-mail December 23 – 24 2012
4. E-mail April 22 2010
5. First page of agreement Rise Above Records – parties
6. E-mail June 26 2010
7. E-mail to Per Aranda June 1 2010
8. E-mail September 15 2010
9. Photographies masks 2010
10. E-mail September 9 2010 reg the masks
11. E-mail July 1- 2 2012
12. E-mail February 17 2012
13. E-mail March 20 2012 from Kristen Mulderig
14. E-mail November 6 2012
15. E-mail September 18 2012
16. Invoice Svensk Drama Pop to SevenFour
17. Simon Söderbergs invoice Studio musicians
18. Mauro Rubinos invoice Studio musicians
19. E-mail August 31– September 2 2013
- 20a. Simon Söderbergs invoicing 2016
- 20b. Mauro Rubinos invoicing 2016
- 20c. Henrik Palms invoicing 2016
- 20d. Martin Hjertstedts invoicing 2016
21. Agreement proposal September 25 2016
22. E-mail September 29 2016 from Sissi Hagald
23. E-mail September 25 2016 from Henrik Palm
24. E-mail October 4 – 5 2016 Sissi Hagald – Henrik Palm
25. E-mail October 4 – 7 2016 reg Martin Hjertstedt
26. Letter October 31 2016 from Inter Law firm
27. E-mail November 1 2016 from Sissi Hagald to Inter Law firm
28. Letter November 2 2016 from Inter Law firm to Sissi Hagald
29. The plaintiffs' agreement proposal November 3 2016

- 30. Tobias Forges agreement proposal signed on November 9 2016
- 31. Letter from Inter Law firm November 8 2016
- 32. E-mail November 28 2016 from Sissi Hagald to Inter law firm
- 33. Compensation to Simon Söderberg and Mauro Rubino reg Colbert Show
- 34. E-mail January 3 – 10 2013 reg compensation 2013
- ~~35. E-mail August 31 (found in appendix 19)~~
- 36. E-mail April 5 2015 reg compensation to Henrik Palm
- 37. E-mail March 3 2015 reg Henrik Palms' terms
- 38. E-mail April 1 2015 Martin Persner to Rick Sales
- 39. E-mail October 5 – 7 2016 Henrik Palm
- 40. E-mail March 4 mars 2015 reg Henrik Palms' terms
- 41. E-mail April 2 – 5 2015 reg Martin Hjertstedts assignment