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SA MUSIC, LLC and HAROLD ARLEN TRUST,
Plaintiffs,

v.

APPLE INC., AMAZON.COM, INC., AMAZON
DIGITAL SERVICES LLC, GOOGLE INC., GOOGLE
LLC, MICROSOFT CORPORATION, PANDORA
MEDIA, INC., THE ORCHARD ENTERPRISES,
INC., ORCHARD ENTERPRISES NY, INC.,
BELIEVE, BELIEVE, SAS, BELIEVE DIGITAL SAS,
ISOLATION NETWORK, INC. d/b/a INGROOVES,
SECOND WIND DIGITAL, THE STATE51
CONSPIRACY LTD, NAXOS OF AMERICA, INC.,
PHONOFILE AS, ADASAM LIMITED,

Case No.

**COMPLAINT
FOR COPYRIGHT
INFRINGEMENT
AND JURY DEMAND**

1 CLEOPATRA RECORDS, INC., PICKWICK GROUP
2 LIMITED, CUGATE LTD., WNTS, IDEAL MUSIC,
3 SHAMI MEDIA INC., BLUE SOUNDS, TVP, INC., J.
4 JOES J. EDIZIONI MUSICALI, MARATHON
5 MEDIA INT. LTD., THOMAS COLLEY, BEST
6 RECORDS, WERNER LAST'S FAVOURITES JAZZ,
7 BROKEN AUDIO, RELOADED MUSIC, VINTAGE
8 MUSIC SL, ACROBAT MUSIC LTD., FUTURE
9 NOISE MUSIC LIMITED, PINK DOT,
10 PRIMEPHONIC USA INC., DWK RECORDS,
11 SENDDIGITAL, CTS DIGITAL, MICHAEL
12 BENNETT, AP MUSIC LTD, JAZZSENTIAL,
13 HASMICK PROMOTIONS LIMITED, HENRY
14 HADAWAY ORGANIZATION LIMITED,
15 ENTERTAIN ME LTD., OVC MEDIA, MACH60
16 MUSIC, AVID GROUP, IMPRESSIONS, GRALIN
17 MUSIC, JAZZ CO., MOVE, XELON
18 ENTERTAINMENT PTY. LTD., CHERISHED
19 RECORDS, RAILROAD, VINTAGE RECORDS,
20 PLENTY JAZZ RECORDS, JAZZ MOON,
21 FAVORITE CLASSICS, HISTORICAL JAZZ,
22 RARITY MUSIC, LIONFISH MUSIC, LLC, TRITON,
23 SMITH & CO B.V., BRISA RECORDS, CLASSICS,
24 ROBA MUSIC VERLAG GMBH, BACCI BROS
25 RECORDS, DIGITAL GRAMOPHONE, PLAZA
26 MAYOR COMPANY LIMITED, BLARICUM C.D.
27 COMPANY (B.C.D.) BV, and John Doe Distributors
28 and John Doe Pirate Labels 1–10,

Defendants.

Introduction

1. This case is about massive music piracy operations in the digital music stores and streaming services of some of the largest tech companies in the world. Apple, Amazon, Google, Microsoft, and Pandora and their distributors have joined with notorious music pirates to sell and stream thousands of pirated recordings embodying copyrighted musical works owned by plaintiffs SA Music, LLC and the Harold Arlen Trust (“Plaintiffs”).

2. Plaintiffs are the legal and/or beneficial copyright owners of musical works authored by Harold Arlen, a premier composer of American music. Arlen wrote and co-wrote some of the most popular modern songs, including *Over the Rainbow* from The Wizard of Oz and many other seminal works in the American

1 songbook, including *I've Got the World on a String*, *Stormy Weather*, *The Devil and*
2 *the Deep Blue Sea*, *Come Rain or Come Shine*, *Get Happy*, *Ill Wind* and *It's Only A*
3 *Paper Moon*. A list of Plaintiffs' copyrighted compositions at issue in this case is
4 annexed as Exhibit A (the "Subject Compositions").

5 3. Arlen's masterpieces have been recorded by the most prominent jazz
6 and popular artists of all time, including Art Tatum, Benny Goodman, Billie
7 Holliday, Cab Calloway, Charlie Parker, Coleman Hawkins, Count Basie, Dizzy
8 Gillespie, Duke Ellington, Ella Fitzgerald, Etta James, Frank Sinatra, John Coltrane,
9 Lena Horne, Louis Armstrong, Miles Davis, Ray Charles, and Sarah Vaughan to
10 name only a few. These monumental works of art are, quite literally, national
11 treasures.

12 4. These and other recordings of Arlen's musical works have been pirated
13 by the Defendants in this case. They are players in the digital music business that
14 participate in, and jointly profit from, making digital phonorecord deliveries, (*i.e.*,
15 downloads and interactive streams), of pirated recordings of the Subject
16 Compositions.

17 5. Digital phonorecord deliveries of musical recordings constitute a
18 reproduction and distribution of the musical work embodied in the digital recording
19 and require a negotiated license from the copyright owner of the musical
20 composition, sometimes referred to as a "mechanical license."

21 6. Defendants have failed to obtain any license that would authorize them
22 to reproduce, distribute, sell or stream the pirated recordings of the Subject
23 Compositions and, as a result, Defendants have infringed Plaintiffs' exclusive rights
24 of reproduction and distribution of the Subject Compositions, under 17 U.S.C. §§
25 106(1) and 106(3).

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1 7. Further, the activity of making digital phonorecord deliveries of pirated
2 recordings of the Subject Compositions does not qualify for a compulsory license
3 under Section 115 of the Copyright Act.

4 8. A list of the pirated recordings of the Subject Compositions that
5 Defendants have reproduced and distributed without authorization, including by
6 making digital phonorecord deliveries, and various methods of reproduction and
7 distribution, thus far identified, is set forth in the Infringement Chart annexed as
8 Exhibit B.

9 9. Over 6,000 pirated recordings of the Subject Compositions have been
10 separately reproduced and distributed as digital phonorecord deliveries by
11 Defendants as set forth in the Infringement Chart annexed as Exhibit B. Defendants
12 have infringed these works in concerted and distinct distribution chains, each of
13 which gives rise to an award for statutory damages under the Copyright Act.

14 10. To put this case in context, in 2007, Jammie Thomas-Rasset, a single
15 mother of four in Brainerd, Minnesota, was found liable, after three separate jury
16 trials, for copyright infringement for using file sharing software that enabled the
17 unauthorized downloading and distribution of 24 recordings by the Goo Goo Dolls
18 and Def Leppard, among others. The juries awarded statutory damages in all three
19 trials of up to \$80,000 per infringement. The Eighth Circuit Court of Appeals
20 ultimately affirmed statutory damages in the amount of \$9,250 for each infringed
21 recording, for a total award of \$222,000. Ms. Thomas-Rasset declared bankruptcy
22 as she had “no other option.”

23 11. In 2009, Joel Tenenbaum, a Massachusetts college student, who also
24 used file-sharing software that permitted others to download 30 recordings by Limp
25 Bizkit and Blink-182, was found liable and the jury awarded statutory damages of
26 \$22,500 per recording, for a judgment that totaled \$675,000 forcing Mr. Tenenbaum
27 to file for Chapter 7 bankruptcy.

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1 12. Unlike Ms. Thomas-Rassett and Mr. Tenenbaum who were not alleged
2 to have sold their infringing recordings or profited from their conduct, Defendants in
3 this case have engaged in massive music piracy operation for the purpose of
4 generating profits from their sales and streams of pirated recordings and by other
5 means.

6 13. The copyright infringement operation detailed in this Complaint is only
7 the latest in a long line of piracy schemes that have plagued composers, publishers,
8 and record labels since the inception of the music industry over 100 years ago, when
9 the perforated rolls used by player pianos to perform musical works were pirated.
10 See *Aeolian Co. v. Royal Music Co.*, 196 F. 926 (W.D.N.Y. 1912).

11 14. As the technology employed by the music industry to reproduce
12 musical works advanced, bootlegging efforts by music pirates kept pace. In the
13 1960s and 1970s, organized criminal enterprises engaged in record and tape piracy
14 operations on a scale that is dwarfed by the infringing conduct explained herein.
15 Like the Defendants in this case, the “tape pirates” and “record pirates” of years past
16 unlawfully duplicated popular pre-existing recordings, and then claimed their
17 liability was limited by the compulsory license provision of the 1909 Copyright Act,
18 Section 1(e).

19 15. The landmark case *Duchess Music Corp. v. Stern*, 458 F.2d 1305 (9th
20 Cir. 1972) settled the issue as to whether tape pirates could limit their liability for
21 piracy under the compulsory license provision of the 1909 Copyright Act. In
22 *Duchess*, the defendant tape pirate engaged in the same conduct identified in this
23 Complaint, and claimed her conduct was lawful because the compulsory license
24 provision of the Copyright Act authorized the reproduction and distribution of the
25 musical works embodied on the recordings she pirated. The Ninth Circuit rejected
26 the argument, stating, “She may not continue her piracy under the flag of
27 compulsory licensing.” The *Duchess* court concluded that the tape pirates’ activity
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