

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Case No: _____

GOLDEN UNICORN ENTERPRISES,)
INC.; and BIG DOG BOOKS, LLC, <i>on</i>)
<i>behalf of themselves and all those</i>)
<i>similarly situated,</i>)
)
Plaintiffs,)
)
vs.)
)
AUDIBLE, Inc.,)
)
Defendant.)

COMPLAINT
(Class Action)
(Jury Trial Demanded)

Plaintiffs Golden Unicorn Enterprises, Inc., and Big Dog Books, LLC, by and through their undersigned counsel and on behalf of themselves and all those similarly situated, complain of Defendant Audible, Inc. (“Audible”), as follows. Plaintiffs, by way of this Class Action Complaint (the “Action”) make these allegations on information and belief except as to the actions of Plaintiffs, which are based on Plaintiffs’ own knowledge.

INTRODUCTION

1. This Action seeks to recover royalty¹ payments owed to Plaintiffs and class members for audio distribution rights in their works (hereinafter, the “Works”) that Defendant

¹ In this Complaint, “royalty” refers to payments that were contractually due and/or paid to self-published authors and copyright holders based on actual or purported revenue realized by Defendant Audible. In some contexts, “royalties” denotes residual payments made to an author or initial copyright registrant by a party to whom copyrights have been sold or otherwise assigned. The use of the word “royalty” in this Complaint is not intended to imply that any Plaintiff or Class member sold or otherwise assigned any copyrights to Audible; rather, the Authors licensed to Audible only the rights to distribute recordings of the Authors’ Works.

Audible systemically withheld from thousands of authors, in bad faith, and in violation of its contracts with those authors.

2. Audible is a distributor of audio recordings (“Audiobooks”) of over 200,000 novels and nonfiction books that are written by thousands of authors. Audible has maintained a secret system of accounting for distribution of the Audiobooks that results in authors and/or copyright holders (collectively, the “Authors”) being paid far less than 25% to 40% of the value of the Audiobooks it distributes, the percentages for which they contracted. This central feature of this accounting subterfuge is that Audible provides its customers and subscribers with far more Audiobooks than are reflected in the terms that it reveals publicly and the numbers it reveals to Authors. This course of behavior breaches the terms of the contracts between Audible and the Authors, as explained in greater detail below, unjustly enriches Audible, and breaches the duty of good faith and fair dealing that a party to any contract owes to its counterparty.

3. The gap between the value of the actual Audiobook distributions and the value on which Audible calculated royalties was revealed to Authors on or around October 19, 2020, by a glitch in the software that Audible used to report sales and royalty numbers to authors. Without this chance occurrence, Authors would still be in the dark.

JURISDICTION AND VENUE

4. Plaintiffs and Defendant are domiciled in different states.

5. On information and belief, the members of Plaintiffs’ proposed Class number in the thousands and include residents of every state or nearly every state in the United States.

6. The matter in controversy in this Action exceeds \$5,000,000, exclusive of interest and costs.

7. The contracts to which Plaintiffs and Defendant are parties provide that any dispute between the parties be adjudicated by a court or courts located in the County of New York, New York State. Similarly, the respective contract(s) to which Defendant and each member of the proposed Class are parties provided that any dispute between the parties be adjudicated by a court or courts located in the County of New York, New York State.

8. By their own terms, these contracts are governed by New York State law.

9. Through the venue and choice-of-law provisions of these contracts, Defendant and all Class members have submitted to the jurisdiction of the courts of New York State and to all federal courts located there.

10. Through these contracts and pursuant to 28 U.S.C. § 1332(d), venue is proper in this Court, and this Court has jurisdiction over the subject matter of this action.

11. To the extent any of Plaintiffs' and the Class's legal claims under the law of any state are not deemed subject to the contracts' venue and choice-of-law provisions, this Court may nonetheless exercise pendent jurisdiction over such claims pursuant to 28 U.S.C. § 1367(a) because they are part of the same case and controversy.

PARTIES

A. Plaintiffs

12. Plaintiff Golden Unicorn Enterprises, Inc. ("Golden Unicorn"), is a Colorado corporation with its principal place of business located in Parker, Douglas County, Colorado. Plaintiff Golden Unicorn Enterprises, Inc., is thus a citizen of Colorado. Plaintiff Golden Unicorn Enterprises asserts both individual and representative claims.

13. Jan M. Bonthu is the sole shareholder of Golden Unicorn. For all purposes relevant to this lawsuit, Bonthu writes under the pseudonym or pen name "J.S. Scott".

14. Bonthu is the author of approximately forty novels. These include the “Billionaire’s Obsession” series and several other romance series.

15. Defendant Audible has distributed approximately twenty-two of Bonthu’s self-published Works in Audiobook form, directly and/or in partnership with Audible’s affiliated companies, since February 2014. Substantially all of these books were distributed pursuant to agreements between Audible and Plaintiff Golden Unicorn.

16. Plaintiff Big Dog Books, LLC (“Big Dog Books”), is a North Carolina limited-liability company with its principal place of business located in Raleigh, Wake County, North Carolina. Elizabeth Leone Noble is the sole member and sole manager. Elizabeth Leone Noble is a citizen and resident of Raleigh, Wake County, North Carolina. Plaintiff Big Dog Books is thus a citizen of North Carolina. Plaintiff Big Dog Books asserts both individual and representative claims.

17. For all purposes relevant to this lawsuit, Noble writes and has written under the pseudonyms or pen names “Sawyer Bennett” and “S. Bennett”.

18. Noble has authored more than eighty novels. These include the “Cold Fury” series, several other romance series, and several works of general fiction.

19. Directly and/or in partnership with affiliated companies, Defendant Audible has distributed approximately forty-three of Noble’s self-published titles in Audiobook form pursuant to the Contract since Audible began to distribute Audiobooks of self-published Works in or around 2011. All of these forty-three books were distributed pursuant to agreements between Audible and Plaintiff Big Dog Books.

20. Plaintiffs and other Class members are authors and other copyright holders (collectively, “Authors”) who granted Audible audio distribution rights in exchange for “royalty”

payments, which per contract are to be calculated as percentages of Audible’s revenue from Audiobooks that are actually distributed to customers, net of contractually specified amounts for items such as taxes, promotional discounts, and returns of Audiobooks.

B. Defendant

21. Defendant Audible is a Delaware corporation. Its principal place of business is at One Washington Place, Newark, Essex County, New Jersey 07102. Audible is therefore a citizen of Delaware and New Jersey.

22. Defendant Audible owns and operates an online platform, www.acx.com (“ACX”), to which Authors can upload Audiobooks that they have produced or whose production they have separately arranged. As an alternative, ACX allows Authors to upload their Works in text form to facilitate narration and production by producers who use the ACX platform.

23. Audible is a wholly owned subsidiary of Amazon.com, Inc. (“Amazon”), the giant online retail and media company, having been acquired for approximately \$300,000,000 in March 2008. While Amazon does not report financial data for its Audible unit, Amazon as a whole reported \$21.3 billion in net income on net sales of \$386 billion in fiscal and calendar 2020. It reported book value – assets net of liabilities – of \$114.8 billion as of June 30, 2021. Amazon’s market value approached \$1.7 trillion as of August 13, 2021, based on 506,440,520 outstanding shares and a closing share price of \$3,293.97.

FACTS

I. The Audiobook Business.

24. Books and other written works have been recorded for listeners for nearly a century. Many of the original users were blind, and they depended on the recordings as their only means of consuming written literature. Such recordings gained broader popularity in the 1980s as “books on

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