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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE WESTERN DISTRICT OF WASHINGTON**

10 RAY HENDERSON MUSIC CO., INC.,

11
12 Plaintiff,

13 v.

14 AMAZON.COM, INC., AMAZON
15 DIGITAL SERVICES LLC,
16 VALLEYARM DIGITAL LIMITED,
LENANDES LTD, GIACOMO VERANI,
and LIMITLESS INT. RECORDINGS,

17 Defendants.
18

**COMPLAINT FOR
COPYRIGHT INFRINGEMENT
JURY DEMAND**

19 **Basis for Jurisdiction**

20 1. The Court has jurisdiction over the subject matter of this action against
21 Defendants Google LLC, Valleyarm Digital Limited, Lenandes Ltd, Giacomo Verani,
22 and Limitless Int. Recordings pursuant to 28 U.S.C. § 1338(a) because this is an action
23 for copyright infringement arising under the Copyright Act of 1976, 17 U.S.C. §§
24 101, 106, 115, 501, 602 *et seq.*
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Introduction

2. Plaintiff is the legal and/or beneficial copyright owner of musical works authored by Ray Henderson one of the premier composers of American music.

3. Ray Henderson wrote or co-wrote some of the most popular modern songs, including many seminal works in the American songbook, including *Bye Bye Blackbird*, *Has Anybody Seen My Girl?* (a/k/a "*Five Foot Two, Eyes of Blue*"), *I'm Sitting on Top of the World*, *Life Is Just a Bowl of Cherries*, *Varsity Drag*, *The Best Things in Life Are Free*, *Button Up Your Overcoat* and *Animal Crackers in My Soup*.

4. The Composition Chart annexed as Exhibit A provides a list of Plaintiff's copyrighted compositions at issue in this case (the "Subject Compositions").

5. The works of Henderson have been recorded by the most prominent jazz and popular artists of all time, including Aretha Franklin, Frank Sinatra, Ray Charles, Bing Crosby, Judy Garland, Dean Martin, Fred Astaire, John Coltrane, Louis Armstrong, Miles Davis, and Sarah Vaughan to name only a few. These monumental works of art are, quite literally, national treasures.

6. These and other recordings of Plaintiff's copyrighted musical works have been pirated by the Defendants in this case. Defendants are all players in the digital music business that participate in, and jointly profit from, making digital phonorecord deliveries (*i.e.*, downloads) of pirated recordings of the Subject Compositions.

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

8. Defendants have failed to obtain any license that would authorize them to reproduce, distribute, or sell the recordings of the Subject Compositions identified on Exhibit B and, as a result, Defendants have infringed Plaintiff's exclusive rights of

1 reproduction and distribution of the Subject Compositions, under 17 U.S.C. §§ 106(1)
2 and 106(3).

3 9. Further, the activity of making digital phonorecord deliveries of pirated
4 recordings of the Subject Compositions does not qualify for a compulsory license or
5 as a covered activity under Section 115 of the Copyright Act.

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

10 11. All of the recordings identified on Exhibit B are pirated. Plaintiff has
11 thus far identified over 60 pirated recordings of the Subject Compositions that have
12 been separately reproduced and distributed as digital phonorecord deliveries by
13 Defendants as set forth in the Infringement Chart annexed as Exhibit B. Defendants
14 have infringed these works in a concerted and distinct distribution chain.

15 **Defendants' Piracy is Massive and Flagrant**

16 12. The scope and flagrant nature of Defendants' piracy cannot be
17 understated. It is obvious that the recordings listed in Exhibit B are pirated by virtue
18 of the scope of the Limitless catalog, the replication of the original album artwork
19 (while removing the original label logos), and the continued distribution of legitimate
20 versions of the recordings by the rightful record label owners on Amazon.

21 13. Limitless, which has no web presence and no listing on Discogs.com, is
22 selling recordings by virtually every well-known recording artist from the 1930s
23 through the 1960s, including Aretha Franklin, Frank Sinatra, Duke Ellington, Ella
24 Fitzgerald, Miles Davis, Louis Armstrong, Mel Torme, Ray Charles, Sarah Vaughan,
25 and Judy Garland.
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14. In addition, strong evidence of the piracy can be gleaned directly from the Amazon Play store from the comparison of the bootlegged Limitless catalog entries side-by-side with legal recordings being sold by legitimate record labels.

15. Album cover art has been an essential part of the packaging and marketing and labels have taken great care to create album artwork commensurate with the music it accompanied. Not so with Limitless, which has often either stolen the album art and music wholesale or employed stock artwork for its bootlegged albums.

16. Invariably, Limitless has simply applied a silver border with its name written around the original release artwork and obscuring the original label logo as exemplified by the following screenshots:



17. In many instances, Amazon Play is selling the legitimate release by the original label side by side with Limitless's bootlegged copy. For example, in 1957, Columbia released a Miles Davis recording of *Bye Bye Blackbird* on his album, Round Midnight, widely recognized by jazz critics as "a landmark album in hard bop and one of the greatest jazz albums of all time." Columbia continues to sell the album on

Amazon, but now in direct competition with Defendants who have pirated the original recording and artwork, obscured the Columbia logo, and are selling their pirated copy at a significant discount, as evidenced by the following Amazon screenshots:



Bye Bye Blackbird
by Miles Davis
★★★★★ ~ 2
MP3 Music
Listen with Music Unlimited
Or \$1.29 to buy MP3



Bye Bye Blackbird
by Miles Davis
MP3 Music
Listen with Music Unlimited
Or \$0.89 to buy MP3

https://www.amazon.com/s?k=miles+davis+round+mignight+bye+bye&i=digital-music&ref=nb_sb_noss (11/30/2019)

18. Similarly, in 1962, Capitol Records released the album The Tender, the Moving, the Swinging, by Aretha Franklin, which included her recording of the Henderson composition *Sittin' On Top Of The World*. The album was Franklin's first commercial success and Columbia still sells the album and recording on Amazon in direct competition with Defendants who, again, have appropriated album artwork (eliminating the Columbia logo) and are selling the bootleg for significantly less as evidenced by the following Amazon screenshot:



I'm Sitting on Top of the World
by Aretha Franklin
MP3 Music
Listen with Music Unlimited
Or \$1.29 to buy MP3



I'm Sitting on Top of the World
by Aretha Franklin
MP3 Music
Listen with Music Unlimited
Or \$0.89 to buy MP3

https://www.amazon.com/s?k=Aretha+Franklin+i%27m+sitting+on+top+of+the+world&i=digital-music&ref=nb_sb_noss (11/19/2019)

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