

1 Richard S. Busch (SBN 319881)
E-Mail: *rbusch@kingballow.com*
2 **KING & BALLOW**
3 1999 Avenue of the Stars, Suite 1100
Los Angeles, CA 90067
4 Telephone: (424) 253-1255
5 Facsimile: (888) 688-0482
Attorney for Plaintiff
6

7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**

9 **YELLOW ROSE PRODUCTIONS, INC.,**
10 *a Corporation on behalf of Bill Engvall*

Case Number: 22-cv-00809

11 Plaintiff,

**COMPLAINT FOR
COPYRIGHT
INFRINGEMENT**

12 vs.

13 **PANDORA MEDIA, LLC,**
14 *a limited liability company*

DEMAND FOR JURY TRIAL

15 Defendant.
16
17

18 Plaintiff YELLOW ROSE PRODUCTIONS, INC., on behalf of Bill Engvall,
19 by and through its attorneys of record, alleges as follows:

20 **JURISDICTION**

21 1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
22 1331 as the action arises under the original and exclusive jurisdiction of the federal
23 court and 28 U.S.C. § 1338(a) as the controversy arises under the Copyright Act of
24 1976 (17 U.S.C. § 101 *et seq.*).

25 2. This Court has personal jurisdiction over Defendant as discussed fully
26 below.
27

1 3. This Court has general personal jurisdiction over Pandora Media,
2 LLC (“Pandora”) because Pandora’s principal place of business is in Oakland,
3 California, while also having a substantial office in Santa Monica, California,
4 meaning that Pandora is at home in the State of California. Furthermore:

5 a. Upon information and belief, through January 28, 2022, Pandora was
6 qualified to do business in California and was registered as a foreign
7 corporation with the California Secretary of State.

8 b. Pandora is also registered as a foreign limited liability company with
9 the California Secretary of State.

10 c. Pandora’s designated DMCA Copyright Agent identified in its
11 “Intellectual Property Policy” on its website is located in California at
12 2100 Franklin Street, 7th Floor, Oakland, California 94612.

13 d. Pandora has previously admitted in other federal court filings that
14 California has jurisdiction over it. *See*, Wixen Music Publishing, Inc.
15 v. Pandora Media, Inc., Case No. 2:19-cv-5278-SVW (C.D. Cal.), Dkt.
16 15 (Pandora Media, Inc.’s Answer) at ¶¶ 16-17 (“Pandora admits that
17 [it] has availed itself of California law . . . and venue is proper in the
18 [Central District of California]”).

19 4. This Court has specific personal jurisdiction over Pandora because its
20 suit-related conduct creates a substantial connection with the State of California
21 and this Judicial District. YELLOW ROSE PRODUCTIONS, INC., on behalf of
22 Bill Engvall, (hereinafter “Engvall”) is a copyright owner of properly registered
23 spoken word literary works (the “Works” or “Engvall’s Works”) (*see* Exhibit A).
24 Upon information and belief, Pandora has generated substantial revenue from
25 exploitation of the Works in California, as further discussed below:

26 a. Pandora actively and purposely does business in California, as
27 evidenced by its (i) subscribers and users in California, which Pandora

1 actively reaches out to through, at a minimum, its website
2 (www.pandora.com) and mobile app; (ii) contracts and other
3 transactions that it has entered into in California; (iii) revenue
4 generated from California residents and businesses in connection with
5 its service; and (iv) advertisements that target California residents.

6 b. Pandora has purposefully availed itself of California law and could
7 and did reasonably anticipate being brought into this Court because,
8 among other reasons, Pandora (i) has been engaged and is engaged in
9 infringing conduct within the State of California and this District,
10 including by knowingly, intentionally, and repeatedly streaming
11 sound recordings and the Works over the Internet to California
12 residents via its services; (ii) knew or should have known that the harm
13 caused by its repeated unlicensed public performance of the Works
14 over the Internet was aimed at comedy writers and comedy publishers,
15 including Plaintiff, who control the Works and are managed and
16 administered in or near Los Angeles County, California, a global hub
17 of the entertainment industry; and (iii) knew or should have known
18 that Plaintiff, an industry leading comedian, actor and comedy writer
19 for nearly 40 years, would suffer, and in fact did suffer, the brunt of
20 the harm caused by Pandora's unauthorized acts in California and
21 around the world.

22 VENUE

23 5. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b),
24 and § 1400(a), as a substantial part of the events or omissions giving rise to the
25 claim occurred in this district, including for example, by the maintenance of
26 Pandora's corporate office in Santa Monica, California. Plaintiff has its principal
27

1 place of business in this District and has been injured in this District as a result of
2 Pandora’s infringing conduct.

3 **PARTIES**

4 6. Plaintiff, YELLOW ROSE PRODUCTIONS, INC., represents the
5 intellectual property rights of Bill Engvall, who is an actor, writer, and comedian
6 who resides in Utah. YELLOW ROSE PRODUCTIONS, INC. is a corporation in
7 the care of JP Williams and Jennifer Riker of Parallel Entertainment located at 9696
8 Culver Boulevard, Suite 308, Culver City, CA 90232.

9 7. Defendant, Pandora, is a Delaware limited liability company with a
10 principal place of business at 2100 Franklin Street, Suite 700, Oakland, California
11 94612. According to its website, Pandora maintains another corporate office in
12 California, located at 3000 Ocean Park Boulevard, Suite 3050, Santa Monica,
13 California 90405.

14 **PRELIMINARY STATEMENT**

15 8. Just as there is with music, there are two copyrights involved in the
16 recorded performance of a literary copyrighted work: a copyright in the sound
17 recording, and a separate copyright in the underlying spoken word composition
18 (Engvall’s compositions, as noted, are referred to herein as “the Works” or
19 “Engvall’s Works”). Pursuant to 17 U.S.C. §§ 106 and 204 of the Copyright Act of
20 1976, copyright owners have the exclusive right to, among other things, reproduce,
21 distribute, license, and publicly perform their works. Anyone wishing to obtain the
22 right to do so, must get a license from the respective copyright owner in both of
23 these copyrights, and pay agreed to royalties. The failure to do so constitutes
24 copyright infringement. As discussed below, Pandora not only did not obtain any
25 copyright in Engvall’s Works but admitted that it did not do so in Security and
26 Exchange Commission (SEC) filings, and admitted that it would very likely face
27 copyright infringement liability as a result. But Pandora did what most goliaths do:

1 it decided it would infringe now to ensure it had this very valuable intellectual
2 property on its platform to remain competitive, and deal with the consequences
3 later. Later is now.

4 **STATEMENT OF FACTS**

5 9. For generations society has turned to comedy as a place of refuge to
6 escape the troubles of their life and view their struggles through a filter of laughter.
7 There's something about watching comedians on stage talking about everyday
8 problems that just transports a person from a place of sadness or frustration to one
9 of hope and happiness, and Bill Engvall is a master at meeting his audience where
10 they're at in life.

11 10. For the past thirty-four (34) years, Bill Engvall has helped millions of
12 people laugh at everyday situations that would otherwise not be funny. From his
13 early days on *A Pair of Jokers* with Rosie O'Donnell, to the Blue Collar Comedy
14 Tour, which ran for six (6) years, Mr. Engvall has been a natural in the art of
15 comedy, touching on everyday life topics such as marriage, parenting, and of
16 course self-deprecation, which is everyone's favorite.

17 11. Mr. Engvall, a proud Texan, was named Best Male Standup comedian
18 at the American Comedy Awards in 1992, and his comedy album *Here's Your Sign*,
19 was certified Platinum and peaked at #5 on the Billboard Country album chart. A
20 man of many talents, Mr. Engvall was a semifinalist on *Dancing with the Stars* in
21 2013, which is not an easy feat, as well as a disc jockey in Dallas Texas, and the
22 game show host of *Lingo* on the Game Show Network.

23 12. While Mr. Engvall is best known for his stand-up comedy, he has
24 continued to expand his mark in the entertainment world as an actor, appearing in
25 movies such as *Delta Farce* and *Catching Faith*, as well as television shows like
26 *The Golden Palace*, *Designing Women*, *Family Guy*, and *Last Man Standing* with
27 his long-time friend Tim Allen.

1 13. Mr. Engvall’s quick wit and easygoing personality, have drawn
2 millions of fans to his comedy tours, and driven them to purchase his albums and
3 watch his music videos. Yet, Defendant took and exploited the Works solely to
4 make money while knowing it had no license and had not paid, and would not be
5 paying, royalties to Mr. Engvall for the Works.

6 14. According to www.pandora.com, Pandora is the largest digital
7 broadcast and streaming music provider in the U.S. “providing a highly-
8 personalized listening experience to approximately 70 million listeners and users
9 each month” through “its mobile app, the web, and integrations with more than
10 2,000 connected products.”

11 15. One would think that entertainment giants like Pandora would honor
12 the legacy of such an amazing talent, and instead it has chosen to illegally profit
13 from the creative mind and literary/comedic works of Mr. Engvall.

14 16. In fact, Defendant has made fifty-one (51) of the Works available for
15 dissemination to the public via their digital broadcast radio service knowing full
16 well that it did not possess a valid license to publicly perform the Works. (*See*
17 Exhibit A). In addition to no license, it also made no royalty payments for the
18 Works. The Works are contained on the albums, “Dorkfish”, “Here’s Your Sign”,
19 “Now That’s Awesome (Live)”, and “Cheap Drunk: Autobiography”. Plaintiff has
20 duly complied with all required provisions of the copyright laws of the United
21 States applicable to the Works, including but not limited to, registering copyrights
22 in and to said Works with the United States Copyright Office (*see* Exhibit A for
23 applicable copyright registration numbers) on or about March 3, 1997, November
24 5, 1997, October 19, 1998, July 26, 2002, and October 21, 2002 respectively.

25 17. Further, it is required by law, and fully understood, that digital service
26 providers, like Pandora, must also get a mechanical digital reproduction license
27 from the owner of the underlying composition in order to make the underlying
28

1 composition of a recording available for reproduction and distribution through
2 interactive streaming. This is true even where the digital service provider has a
3 license to interactively stream a sound recording. Pandora made all fifty-one (51)
4 of these Works available via its Pandora Premium interactive streaming service,
5 also knowing full well that it did not possess a valid license to not only publicly
6 perform his works but also no license to distribute and reproduce the Works.
7 Pandora made no royalty payments for the public performance and no royalty
8 payments for the reproduction of the Works. The end result is Pandora took
9 Engvall's Works, gained listeners, subscribers and market share with full
10 knowledge it did not have licenses and made no royalty payments for the Works,
11 to increase its stock price helping them to reorganize the company with Sirius XM
12 (although the two companies remain to this day completely separate corporations)
13 for billions all while depriving Engvall of his royalties and the benefits of his
14 ongoing legacy.

15 18. As of January 28, 2022, www.pandora.com advertised that Bill
16 Engvall had 227,000 monthly listeners. If each listener listened to only one (1)
17 available work per month, that's 2,724,000 broadcasts or/interactive streams per
18 year at a minimum. In fact, as of 2020, more than six hundred million streams
19 (600,000,000) of the Works had streamed on Pandora alone. Unfortunately,
20 Engvall has not received a fraction of a penny for any of these broadcasts or streams
21 of the Works from Pandora.

22 19. For years therefore Pandora has illegally made reproductions and
23 digital broadcasts on its servers and provided streaming access to its users without
24 a proper public performance license and, when applicable, a reproduction right
25 license. This infringement continues on a daily basis as the Works are broadcast on
26 Pandora radio and/or remain available for interactive streaming on Pandora
27 Premium.

1 WHEREFORE, Plaintiff prays for judgment and relief, as follows:

2 45. For Judgment in favor of Plaintiff and against Defendant.

3 46. For a declaration and finding that Defendant has willfully infringed
4 Plaintiff's copyrighted work in violation of the Copyright Act;

5 47. For declaration and finding that Defendant is directly, vicariously,
6 and/or contributorily liable for copyright infringement pursuant to 17 U.S.C. §
7 504(a)(1) and (b), including a finding that Defendant is liable for actual damages,
8 as well as for Defendant's profits;

9 48. For an accounting of all profits, income, receipts, or other benefits
10 derived by Defendant from the production, copying, display, promotion,
11 distribution, broadcast, public performance, or sale of products and services or
12 other media, either now known or hereafter devised, that improperly or unlawfully
13 infringe Plaintiff's copyright pursuant to 17 U.S.C. § 504(a)(1) and (b);

14 49. For statutory damages, upon election prior to final judgment in the
15 alternative to actual damages and profits, for willful copyright infringement
16 pursuant to 17 U.S.C. § 504(c);

17 50. For costs of suit herein, including an award of attorneys' fees pursuant
18 to 17 U.S.C. § 505;

19 51. For pre-judgment and post-judgment interest;

20 52. For a running royalty and/or ownership share in the Infringing Work
21 following judgment in an amount to be proven at trial, or in the alternative, for the
22 entry of an injunction requiring Defendants, their officers, agents, servants,
23 employees, representatives, successors, licensees, partners, attorneys, and assigns,
24 and all persons acting in concert or participation with each or any one of them to
25 be permanently enjoined from directly or indirectly infringing, reproducing,
26 displaying, promoting, advertising, distributing, or selling any work that infringes,
27

1 contributorily infringes, or vicariously infringes Plaintiff's rights in the work
2 protected by the Copyright Act;

3 53. For such other and further relief as the Court may deem just and proper.

4 **DEMAND FOR JURY TRIAL**

5 Pursuant to Federal Rule of Civil Procedure 38(b), and otherwise, Plaintiff
6 respectfully demands a jury trial on all issues raised in this complaint.

7 PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 38(b), AND
8 OTHERWISE, PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES
9 RAISED IN THIS COMPLAINT.

10
11 Dated: February 7, 2022

Respectfully submitted,

12 By: /s/ Richard S. Busch

13 Richard S. Busch

14 Attorney for Plaintiff
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

	Literary Work Name	Copyright Registration #	Copyright Registration Date	Release Name
1	The 90's - Live	PA0001195212	7/26/2002	Now That's Awesome (Live)
2	Bar Scene In California - Live	PA0001195213	7/26/2002	Now That's Awesome (Live)
3	Now That's Awesome (Comedy Bit) - Live	PA0001195214	7/26/2002	Now That's Awesome (Live)
4	The Dog Had to Be Trained - Live	PA0001195215	7/26/2002	Now That's Awesome (Live)
5	Pound Puppies - Live	PA0001195216	7/26/2002	Now That's Awesome (Live)
6	Smoker Aquarium - Live	PA0001195217	7/26/2002	Now That's Awesome (Live)
7	Pads - Live	PA0001195218	7/26/2002	Now That's Awesome (Live)
8	When Did Shrapnel Become a Fashion Accessory - Live	PA0001195219	7/26/2002	Now That's Awesome (Live)
9	Too Much Information (Cause I'm the Dad) - Live	PA0001195220	7/26/2002	Now That's Awesome (Live)
10	White Trash Road Race - Live	PA0001195221	7/26/2002	Now That's Awesome (Live)
11	A Snake in the Toilet - Live	PA0001195222	7/26/2002	Now That's Awesome (Live)
12	Surfing Lesson - Live	PA0001195223	7/26/2002	Now That's Awesome (Live)
13	People Amaze Me (Here's Your Sign) - Live	PA0001195224	7/26/2002	Now That's Awesome (Live)
14	Freshness Emergency	PA0001133766	10/21/2002	Cheap Drunk: Autobiography
15	Grading Your Biological Output	PA0001133767	10/21/2002	Cheap Drunk: Autobiography
16	Driver's Ed	PA0001133768	10/21/2002	Cheap Drunk: Autobiography
17	Old Fashioned	PA0001133769	10/21/2002	Cheap Drunk: Autobiography
18	Every Public Bathroom in America	PA0001133770	10/21/2002	Cheap Drunk: Autobiography
19	Cigarettes Equal Pain	PA0001133771	10/21/2002	Cheap Drunk: Autobiography
20	Vicodinland	PA0001133772	10/21/2002	Cheap Drunk: Autobiography

COMPLAINT FOR COPYRIGHT INFRINGEMENT
EXHIBIT A

EXHIBIT A

21	Never Have My Own Animal Show	PA0001133773	10/21/2002	Cheap Drunk: Autobiography
22	"Nice" Stops at Midnight	PA0001133774	10/21/2002	Cheap Drunk: Autobiography
23	After Twenty Years of Marriage	PA0001133775	10/21/2002	Cheap Drunk: Autobiography
24	Bizzare Magazines	PA0001133776	10/21/2002	Cheap Drunk: Autobiography
25	Encore - Here's Your Sign	PA0001133777	10/21/2002	Cheap Drunk: Autobiography
26	I Love Golf	PA0000844901	3/3/1997	Here's Your Sign
27	We've Got a Full House	PA0000844903	3/3/1997	Here's Your Sign
28	Going to the Fair	PA0000844902	3/3/1997	Here's Your Sign
29	Here's Your Sign	PA0000844904	3/3/1997	Here's Your Sign
30	Nobody Disciplines Their Kids Anymore	PA0000844905	3/3/1997	Here's Your Sign
31	Things Have Changed	PA0000844900	3/3/1997	Here's Your Sign
32	Caught Big Time	PA0000822050	11/5/1997	Here's Your Sign
33	I.G. Joe	PA0000844906	3/3/1997	Here's Your Sign
34	Baby Barf and the Turkey Hunt	PA0000844907	3/3/1997	Here's Your Sign
35	Tell Me What I'm Thinking	PA0000844908	3/3/1997	Here's Your Sign
36	Love Magic	PA0000844909	3/3/1997	Here's Your Sign
37	Factory Outlet Malls	PAu002345074	10/19/1998	Dorkfish
38	Flying	PAu002345075	10/19/1998	Dorkfish
39	Smokers	PAu002345076	10/19/1998	Dorkfish
40	Weather and News	PAu002345077	10/19/1998	Dorkfish
41	Bungee Jumping and Parachuting	PAu002345078	10/19/1998	Dorkfish
42	My Daughter's Growing Up	PAu002345079	10/19/1998	Dorkfish
43	T-Ball and Indian Guides	PAu002345080	10/19/1998	Dorkfish
44	Minivan	PAu002345081	10/19/1998	Dorkfish
45	Discovery Channel	PAu002345082	10/19/1998	Dorkfish
46	Dorkfish	PAu002345083	10/19/1998	Dorkfish
47	Whale Watching	PAu002345084	10/19/1998	Dorkfish
48	Broke Food	PAu002345085	10/19/1998	Dorkfish
49	More Here's Your Sign	PAu002345086	10/19/1998	Dorkfish
50	Bronco Busting	PAu002345087	10/19/1998	Dorkfish
51	Deer Hunting	PAu002345088	10/19/1998	Dorkfish