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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**

17 SA MUSIC, LLC, WILLIAM KOLBERT,
AS TRUSTEE OF THE HAROLD ARLEN
18 TRUST, RAY HENDERSON MUSIC CO.,
INC., FOUR JAYS MUSIC COMPANY,
19 and JULIA RIVA,

20 Plaintiffs,

21 v.

22 APPLE, INC. ,
GENEPOOL DISTRIBUTION LTD., and
23 IDEAL MUSIC LIMITED,

24 Defendants.

**COMPLAINT FOR
COPYRIGHT INFRINGEMENT
AND DEMAND FOR
JURY TRIAL**

25 **Basis for Jurisdiction**

26 1. The Court has jurisdiction over the subject matter of this action against
27 all Defendants pursuant to 28 U.S.C. § 1338(a) because this is an action for copyright
28

1 infringement arising under the Copyright Act of 1976, 17 U.S.C. §§ 101, 106, 115,
2 501, 602 *et seq.*

3 **Introduction**

4 2. Plaintiffs are the legal and/or beneficial copyright owners of musical
5 works authored by Harold Arlen, Ray Henderson, and Harry Warren, three of the
6 premier composers of American music.

7 3. Harold Arlen wrote or co-wrote some of the most popular modern songs,
8 including *Over the Rainbow* from *The Wizard of Oz* and many other seminal works in
9 the American songbook, including *I've Got the World on a String*, *Stormy Weather*,
10 *The Devil and the Deep Blue Sea*, *Come Rain or Come Shine*, *Get Happy*, *Ill Wind* and
11 *It's Only A Paper Moon*.

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

17 5. Harry Warren wrote over 800 songs, including *At Last*, *Chattanooga*
18 *Choo Choo*, *I Only Have Eyes for You*, *You Must Have Been a Beautiful Baby*, *Jeepers*
19 *Creepers*, *The Gold Diggers' Song (We're in the Money)*, *Lullaby of Broadway*, *You'll*
20 *Never Know*, *On the Atchison, Topeka and the Santa Fe*, *That's Amore*, *Nagasaki*,
21 *There Will Never Be Another You*, and *The More I See You*.

22 6. The Composition Chart annexed as Exhibit A provides a list of Plaintiffs'
23 copyrighted compositions at issue in this case (the "Subject Compositions").

24 7. The works of Arlen, Henderson, and Warren have been recorded by the
25 most prominent jazz and popular artists of all time, including Art Tatum, Benny
26 Goodman, Billie Holliday, Cab Calloway, Ella Fitzgerald, Ethel Waters, Frank Sinatra,
27 Judy Garland, Lena Horne, Louis Armstrong, Miles Davis, Ray Charles, Sarah
28 Vaughan, and Tony Bennett to name only a few. These monumental works of art are,

1 quite literally, national treasures. These and other recordings of Plaintiffs' copyrighted
2 musical works have been pirated by the Defendants in this case.

3 8. Defendants are all players in the digital music business that participate in,
4 and jointly profit from, making digital phonorecord deliveries (*i.e.*, downloads) of
5 pirated recordings of the Subject Compositions.

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

10 10. Defendants have failed to obtain any license that would authorize them to
11 reproduce, distribute, or sell the recordings of the Subject Compositions identified in
12 the Infringement Charts annexed as Exhibits B-D and as a result, Defendants have
13 infringed Plaintiffs' exclusive rights of reproduction and distribution of the Subject
14 Compositions, under 17 U.S.C. §§ 106(1) and 106(3).

15 11. Further, the activity of making digital phonorecord deliveries of pirated
16 recordings of the Subject Compositions does not qualify for a compulsory license
17 under Section 115 of the Copyright Act.

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

19 12. The scope and flagrant nature of Defendants' piracy cannot be
20 understated. It is obvious that the recordings listed in Exhibits B-D are pirated by virtue
21 of the scope of the Ideal Music catalog, the replication of the original album artwork,
22 and the distribution of legitimate versions of the recordings by the rightful record label
23 owners in the iTunes store.

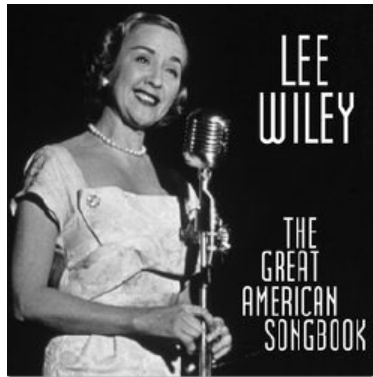
24 13. A list of the pirated recordings of the Subject Compositions that
25 Defendants have reproduced and distributed without authorization, including by
26 making digital phonorecord deliveries, thus far identified, is set forth in the
27 Infringement Charts annexed as Exhibits B-D.

28

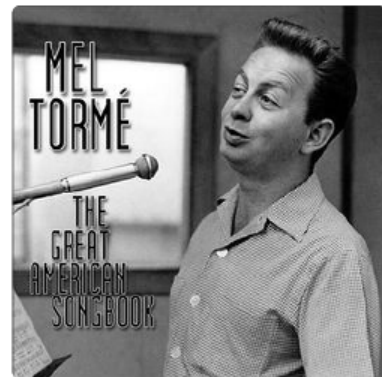
1 14. All the recordings identified on Exhibits B-D are pirated. Plaintiffs have
2 thus far identified over 100 pirated recordings of the Subject Compositions that have
3 been separately reproduced and distributed by Defendants in the iTunes store as set
4 forth in the Infringement Charts annexed as Exhibits B-D.

5 15. In addition, Defendants created unauthorized compilations of a particular
6 recording artist's greatest works and made them available for sale as albums called
7 The Great American Songbook.

8 16. Ideal Music and/or Genepool delivered the following albums to Apple
9 which offered them for sale on iTunes:



16 (AdamID 571613098)



17 (AdamID 571613098)

18 17. Ideal Music did the same for a series of albums they called "Big Band
19 Legends" comprised of unauthorized compilations of legendary band leaders,
20 including Count Basie, Harry James, and Ted Heath.

21 18. Ideal Music and/or Genepool delivered the following albums to Apple
22 which offered them for sale on iTunes:



28 (AdamID 874689196)



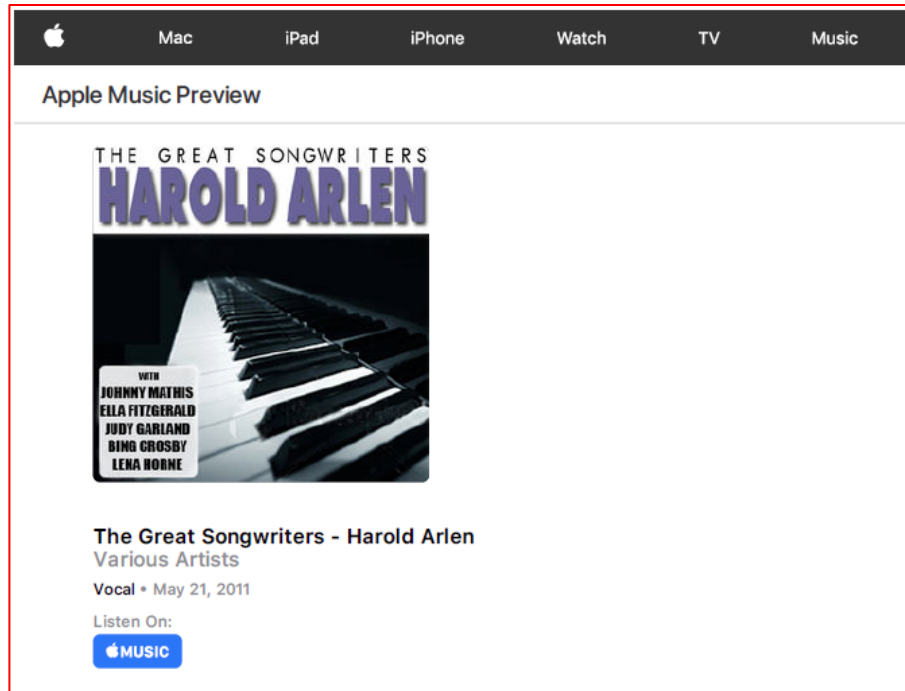
(AdamID 916867409)



(AdamID 916867409)

1 19. Defendants have also created unauthorized compilations of works by
2 individual composers and offered them for sale on iTunes.

3 20. On the album The Great Songwriters – Harold Arlen, Defendants
4 compiled 40 works of Harold Arlen recorded by legendary performers, including Billie
5 Holiday, Benny Goodman, Louis Armstrong, Sara Vaughn, and Judy Garland, and
6 offered the album for sale on iTunes:



19 21. Further, Ideal Music has no web presence and no listing on Discogs.com,
20 yet it sold recordings by virtually every well-known recording artist from the 1930-
21 1970.

22 22. All of this should have made it obvious that Ideal Music is a huge music
23 piracy operation. Genepool and Apple had actual knowledge of, and/or willfully chose
24 to ignore, the evidence of piracy and participated in the infringement on a massive
25 scale.

26 23. To put this case in context, in 2007, Jammie Thomas-Rasset, a single
27 mother of four in Brainerd, Minnesota, was found liable, after three separate jury trials,
28 for copyright infringement for using file sharing software that enabled the

1 unauthorized downloading and distribution of 24 recordings by the Goo Goo Dolls
2 and Def Leppard, among others. The juries awarded statutory damages in all three
3 trials of up to \$80,000 per infringement. The Eighth Circuit Court of Appeals
4 ultimately affirmed statutory damages in the amount of \$9,250 for each infringed
5 recording, for a total award of \$222,000. Ms. Thomas-Rassett declared bankruptcy as
6 she had “no other option.”

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

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

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

21 27. As the technology employed by the music industry to reproduce musical
22 works advanced, bootlegging efforts by music pirates kept pace. In the 1960s and
23 1970s, organized criminal enterprises engaged in record and tape piracy operations on
24 a scale that is dwarfed by the infringing conduct explained herein. Like the Defendants
25 in this case, the “tape pirates” and “record pirates” of years past unlawfully duplicated
26 popular pre-existing recordings, and then claimed their liability was limited by the
27 compulsory license provision of the 1909 Copyright Act, § 1(e).

28

1 28. The landmark case *Duchess Music Corp. v. Stern*, 458 F.2d 1305 (9th Cir.
2 1972) settled the issue as to whether tape pirates could limit their liability for piracy
3 under the compulsory license provision of the 1909 Copyright Act. In *Duchess*, the
4 defendant tape pirate engaged in the same conduct identified in this Complaint, and
5 claimed her conduct was lawful because the compulsory license provision of the
6 Copyright Act authorized the reproduction and distribution of the musical works
7 embodied on the recordings she pirated. The Ninth Circuit rejected the argument,
8 stating, “She may not continue her piracy under the flag of compulsory licensing.” The
9 *Duchess* court concluded that the tape pirates’ activity was ineligible for a compulsory
10 license and that reproduction of a musical composition on a pirated recording infringed
11 the copyright in the composition, even when a compulsory license was claimed.¹

12 29. The holding in *Duchess* was codified when the Copyright Act was revised
13 in 1976. The statutory bar against compulsory licensing of pirated recordings continues
14 in the recent amendments to Section 115 of the Copyright Act, which provides that
15 reproduction and distribution of pirated sound recordings is not a covered activity
16 under Section 115 and is ineligible for a compulsory license.

17 30. Defendants are nothing more than modern tape pirates and their conduct
18 constitutes willful copyright infringement of the Subject Compositions in violation of
19 the United States Copyright Act [17 U.S.C. §§ 101, 106, 115, 501, 602 *et seq.*] (the
20 “Copyright Act”).

21
22
23
24 ¹ The criminal conduct of “tape pirates” became a priority of the Attorney General of the
25 United States, Edward H. Levi, in 1975 when the Justice Department determined that decisions
26 reached by four Circuit Courts of Appeals, including the Ninth Circuit in *Duchess*, rendered tape
27 pirates criminally liable even where the statutory royalty was tendered. See *Heilman v. Levi*, 391
28 F.Supp. 1106 (E.D.Wisc. 1975). Criminal copyright infringement sentences continue to this day.
See *Matter of Zaragoza-Vaquero*, 26 I&N Dec. 814 (BIA 2016)(defendant sentenced to 33 months
in prison and ordered to be removed from the United States for selling bootleg copies of music CDs
at a Florida flea market, as a crime involving moral turpitude).

1 **The Parties**

2 ***SA Music, LLC***

3 31. Plaintiff SA Music, LLC is a Nevada limited liability company and Sam
4 Arlen is the sole member of the company.

5 ***The Harold Arlen Trust***

6 32. Plaintiff William Kolbert is the Trustee of the Harold Arlen Trust (the
7 “Harold Arlen Trust”), a trust created by Harold Arlen in his will. Sam Arlen is a
8 beneficiary of the trust.

9 ***Ray Henderson Music Co. Inc.***

10 33. Plaintiff Ray Henderson Music Co. Inc. is a Delaware corporation with a
11 principal place of business in Maryland.

12 ***Four Jays Music Company***

13 34. Plaintiff Four Jays Music Company is a California corporation with a
14 principal place of business at 421 E. 6th St. in Los Angeles, California.

15 ***Julia Riva***

16 35. Plaintiff Julia Riva is Harry Warren’s granddaughter and the President of
17 Four Jays Music Company. Julia Riva is a resident of Los Angeles, California.

18 ***Apple***

19 36. Defendant Apple Inc. (“Apple”) is a corporation organized under the laws
20 of the State of California with a place of business at 1 Apple Park Way in Cupertino,
21 California.

22 37. Apple owns and operates the U.S. iTunes Store (“iTunes”), a digital
23 music store that sells permanent downloads. iTunes opened in April 2003 and has been
24 the largest music vendor in the United States since April 2008 and the largest music
25 vendor in the world since February 2010. As of January 2017, the iTunes Store offered
26 between 35-40 million recordings for download.

27
28

1 38. Apple specifically selected and contracted with Genepool and/or Ideal
2 Music (directly and/or through a distributor) to provide its digital music catalog to be
3 sold in its iTunes store on negotiated financial terms.

4 39. Apple received all the recordings of the Subject Compositions identified
5 in Exhibits B-D from Genepool and/or Ideal Music in California. Apple then
6 reproduced, distributed and sold these pirated recordings of the Subject Compositions
7 in iTunes, without any licenses, as permanent downloads among other types of digital
8 phonorecord deliveries.

9 ***Genepool***

10 40. Upon information and belief, Defendant Genepool Distribution Ltd.
11 (“Genepool”) is a business entity organized under the laws of the United Kingdom
12 with a place of business at 8 Bovisand Court, Bovisand, Plymouth, Devon, PL9 0AD,
13 United Kingdom.

14 41. Genepool engages in the distribution of digital music to the iTunes store
15 and has delivered thousands of recordings to Apple for sale throughout the U.S.

16 42. Genepool specifically selected and contracted with Ideal Music to provide
17 the Ideal Music digital music catalog to be sold in the iTunes store on negotiated
18 financial terms.

19 43. Genepool (and or its distributor(s)) unlawfully reproduced and distributed
20 the pirated recordings of the Subject Compositions to Apple at the direction of Ideal
21 Music and unlawfully authorized its distributor(s) and Apple to make digital
22 phonorecord deliveries in the iTunes store, as specifically set forth in Exhibits B-D.

23 ***Ideal Music***

24 44. Upon information and belief, Defendant Ideal Music Limited (“Ideal
25 Music”) is a business entity organized under the laws of the United Kingdom with a
26 place of business at 10 Wades Grove, London, N21 1BH.

27 45. Ideal Music, without any authority, duplicated pre-existing recordings
28 embodying the Subject Compositions, distributed them to Genepool (and/or other

1 distributors) and Apple, without any license, unlawfully authorized distribution and
2 delivery of the pirated recordings to Apple for sale in its online music store, and
3 unlawfully authorized Genepool and Apple to make digital phonorecord deliveries in
4 the iTunes store as specifically set forth in the annexed Exhibits B-D.

5 46. Upon information and belief, Ideal Music is simply duplicating
6 recordings of the Subject Compositions made by others without permission and
7 authorizing Genepool (and or other distributors), and Apple to sell reproductions of
8 the pirated copies for profit in the iTunes store.

9 **Jurisdiction, Venue and Joinder**

10 47. This Court has personal jurisdiction over Defendants because they have
11 a principal place of business in this Judicial District and/or purposefully availed or
12 directed their infringing activities in this Judicial District. Apple has its principal
13 offices in this district. Defendants Genepool and Ideal Music are business entities
14 located in the United Kingdom and have purposefully availed themselves and/or
15 directed their infringing activity at this Judicial District.

16 48. Further, Plaintiffs' copyright infringement claims arise out of (a) the
17 reproduction and distribution of pirated recordings of the Subject Compositions listed
18 in Exhibits B-D, occurring in Northern District of California, directly by Defendants
19 and/or at their purposeful direction and availment, including the infringing
20 distribution, delivery and reproduction of pirated recordings embodying Plaintiffs'
21 compositions to Apple in Northern District of California; (b) infringing distribution,
22 delivery and reproduction of pirated recordings embodying Plaintiffs' compositions to
23 Apple in Northern District of California; (c) the infringing sale of pirated recordings
24 of Subject Compositions to Northern District of California residents; and/or (d)
25 transactions consummated within Northern District of California concerning
26 reproduction, distribution and delivery of the pirated recordings of the Subject
27 Compositions.

28

1 49. Ideal Music intentionally directed its distributor Genepool to distribute
2 the pirated recordings of the Subject Compositions identified in Exhibits B-D to Apple
3 for sale in its online music store and unlawfully authorized Apple to reproduce and
4 distribute pirated recordings of the Subject Compositions in its iTunes music store.

5 50. Ideal and Genepool intentionally distributed and delivered the pirated
6 recordings of the Subject Compositions identified in Exhibits B-D to Apple, and
7 unlawfully authorized Apple to reproduce these pirated recordings of the Subject
8 Compositions in their digital music stores and to sell permanent downloads to
9 California consumers. Genepool and Ideal Music received royalties and royalty
10 statements for all of Apple’s sales of permanent downloads of the pirated recordings
11 of the Subject Compositions in its iTunes digital music store.

12 51. Apple reproduced the pirated recordings of the Subject Compositions and
13 made available, distributed, and sold the pirated recordings of the Subject
14 Compositions to Californians from the iTunes store.

15 52. Venue is proper in this District pursuant to 28 U.S.C §§ 1391(b), 1391(c)
16 and 1400(a) because Apple has its principal place of business in this district. In
17 addition, Defendants are subject to personal jurisdiction in this Judicial District and
18 have committed unlawful acts of infringement in California and in this Judicial
19 District.

20 53. Joinder of Ideal Music, Genepool, and Apple is proper under Fed. R. Civ.
21 P. 20 because Defendants are jointly and severally liable as members of a distinct
22 distribution chain for the acts of copyright infringement identified herein.

23 **Harold Arlen**

24 54. Harold Arlen (1905–1986) was a master composer and a highly regarded
25 contributor to the Great American Songbook. The son of a synagogue cantor, Arlen
26 was born in Buffalo, New York and emerged as one of the greatest American
27 composers and songwriters, writing extraordinarily complex melodies and harmonies
28 that remained accessible to a broad popular audience.

1 55. Early in his career, Arlen wrote songs for musicals, including the entire
2 scores for Broadway shows such as Cotton Club Parade, Life Begins at 8:40, Bloomer
3 Girl, St. Louis Woman, Jamaica and Saratoga, among others.

4 56. Arlen was also active in Hollywood and composed the music for some of
5 the greatest film musicals of all time, most notably all the music in the 1939 motion
6 picture classic “The Wizard of Oz,” including *Ding, Dong! The Witch Is Dead, We're*
7 *Off To See The Wizard*, and *Over The Rainbow*.

8 57. *Over The Rainbow*, performed by Judy Garland in the film, won the
9 Academy Award for Best Original Song. The song is one of the most enduring
10 standards of the 20th century and was voted number one on the "Songs of the Century"
11 list compiled by the Recording Industry Association of America and the National
12 Endowment for the Arts. The American Film Institute also ranked *Over The Rainbow*
13 the greatest movie song of all time.

14 58. Arlen successfully collaborated with the greatest of the Tin Pan Alley
15 lyricists, including E.Y. “Yip” Harburg, Ira Gershwin, and Johnny Mercer.

16 59. Arlen’s partnership with Harburg extended over many decades. With
17 Billy Rose, they wrote *It's Only A Paper Moon* in 1933. They followed up with a
18 successful revue, *Life Begins at 8:40*, which included lyric collaborations with his old
19 friend, Ira Gershwin, including *Fun to Be Fooled, You're A Builder Upper*, and *Let's*
20 *Take A Walk Around The Block*.

21 60. Arlen was inducted into the Songwriters Hall of Fame in 1971 and was
22 honored with its highest accolade, the Johnny Mercer Award, in 1982. In 1996, Arlen
23 was honored by the United States Postal Service with his own stamp:



1 **SA Music LLC and the Harold Arlen Trust**

2 61. Harold Arlen’s son, Sam Arlen, acquired the U.S. copyrights in the
3 Subject Compositions between 1989 and 2013, by termination notices that he, as sole
4 statutory heir under Section 304 of the Copyright Act of 1976, served and filed with
5 Copyright Office.

6 62. In 2018, Sam Arlen assigned the U.S. copyrights in the Subject
7 Compositions, as set forth in the Composition Chart annexed as Exhibit A, along with
8 all accrued causes of action, to his company, SA Music, LLC. SA Music, LLC is the
9 legal and/or beneficial owner of the U.S. copyright in certain of the Subject
10 Compositions as identified in Exhibit A, along with all accrued causes of action.

11 63. Plaintiff Harold Arlen Trust acquired the U.S. copyrights identified in
12 the Composition Chart annexed as Exhibit A by operation of will and through
13 termination notices served and filed by Harold Arlen during his lifetime with the U.S.
14 Copyright Office under Section 304 of the Copyright Act of 1976.

15 64. Plaintiff Harold Arlen Trust is the legal owner of certain of the U.S.
16 copyright in certain of the Subject Compositions as identified in Exhibit A, along with
17 all accrued causes of action.

18 **Ray Henderson**

19 65. Ray Henderson (1896-1970) was born in Buffalo, New York and studied
20 piano and composition at the Chicago Conservatory where he cultivated a melodic
21 style that helped him write enduring American standards, such as *Life Is Just A Bowl*
22 *of Cherries*, *Bye Bye Blackbird*, and *Five Foot Two Eyes Of Blue*.

23 66. Henderson was part of the most successful songwriting team of the late
24 1920s and 1930s, Henderson, Brown and DeSylva. The threesome created several
25 memorable hits from the era including *It All Depends On You*, *Broken Hearted*, and *If*
26 *I Had A Talking Picture of You*.

27 67. Henderson contributed to several Broadway shows throughout his career
28 including *Manhattan Mary*, *George White’s Scandals*, *Good News*, *Hold Everything*,

1 Three Cheers, Follow Through, Flying High, Hot-Cha, Strike Me Pink, Ziegfeld
2 Follies of 1943 and Say When. In 1956, Henderson’s songwriting life was the subject
3 of a film called “The Best Things In Life Are Free” starring Gordon MacRae, Dan
4 Dailey and Ernest Borgnine as the real-life songwriting team of Buddy DeSylva, Lew
5 Brown and Ray Henderson.



13 68. Ray Henderson was among those selected for the inaugural induction into
14 the Songwriters Hall of Fame in 1970.

15
16 **Ray Henderson Music Co. Inc.**

17 69. Ray Henderson Music Co. Inc. is a Delaware corporation formed by Ray
18 Henderson’s children. Ray Henderson Music Co. Inc. acquired the copyrights in the
19 respective Subject Compositions by assignment from his children who acquired the
20 copyrights by termination notices timely served and filed with U.S. Copyright Office
21 under Section 304 of the Copyright Act of 1976.

22 70. Plaintiff Ray Henderson Music Co. Inc. is the legal owner of the U.S.
23 copyright in certain of the Subject Compositions as identified in Exhibit A, along with
24 all causes of action.

25 **Harry Warren**

26 71. Harry Warren (1893-1981) has perhaps contributed more to the great
27 American songbook than any other songwriter in history. Warren was born to Italian
28

1 immigrant parents in Brooklyn, New York. After serving in the US Navy in World
2 War I, Warren began writing songs.

3 72. In the years 1931 to 1945, Warren wrote more hit songs than Irving
4 Berlin. He was nominated for the Academy Award for Best Song eleven times (more
5 than Berlin, George Gershwin, Cole Porter or Richard Rodgers) and won three Oscars
6 for composing *Lullaby of Broadway*, *You'll Never Know*, and *On the Atchison, Topeka*
7 *and the Santa Fe*.



15 73. Warren wrote over 800 songs including *Chattanooga Choo Choo*, the first
16 song to receive a gold record, presented by RCA Victor in 1942, for sales of 1.2 million
17 copies. Over the course of his career, Warren wrote 81 top 10 hits, including timeless
18 classics such as *At Last*, *I Only Have Eyes For You*, *That's Amore*, *You Must Have*
19 *Been A Beautiful Baby*, *Jeepers Creepers*, and *The Gold Diggers' Song (We're in the*
20 *Money)*.

21 74. Warren was one of America's most prolific film composers, and his songs
22 have been featured in over 300 films. Harry Warren was inducted into the Songwriters
23 Hall of Fame in 1971.

24 **Four Jays Music Company & Julia Riva**

25 75. In 1955 Harry Warren formed the Four Jays Music Company, a California
26 corporation, to own the copyrights in his musical works.

27 76. Four Jays Music Company acquired the copyrights in the respective
28 Subject Compositions by assignment from Harry Warren and third party music

1 publishers, as well as by assignment by Harry Warren’s wife, daughter, and
2 grandchildren, who acquired the copyrights by termination notices timely served and
3 filed with U.S. Copyright Office under Section 304 of the Copyright Act of 1976.

4 77. Plaintiff Four Jays Music Company is a legal owner of the U.S. copyright
5 in certain of the Subject Compositions as identified in Exhibit A, along with all accrued
6 causes of action.

7 78. Julia Riva is a legal owner of the U.S. copyright in certain of the Subject
8 Compositions as identified in Exhibit A, along with all accrued causes of action, as a
9 result of termination notices filed and served on or after January 1, 1997.

10 **The Subject Compositions**

11 79. Plaintiffs are the owners of the musical compositions listed in the
12 Composition Chart annexed as Exhibit A (collectively, the “Subject Compositions”)
13 that are the subject of this action.

14 80. The copyrights for all the Subject Compositions have been registered and
15 renewed with the U.S. Copyright Office, and each Subject Composition is the subject
16 of a valid U.S. copyright. The Composition Chart annexed as Exhibit A identifies the
17 copyright registration numbers for each of the Subject Compositions.

18 81. Plaintiffs are the owners of a share in each of the Subject Compositions
19 in the percentages listed on Exhibit A.

20 82. As discussed more fully below, the Defendants have infringed, and are
21 continuing to infringe, the copyright in each of the Subject Compositions by willfully
22 reproducing and distributing them without a license.

23 **Background**

24 83. Before digital music distribution, recorded music was physically
25 distributed through brick-and-mortar stores that were confined by the limitations of
26 shelf space. Recording artists signed exclusive recording contracts with record labels
27 in order to have their records pressed and distributed in national record stores.

28

1 84. It is hard to imagine that a person walking into Tower Records, off the
2 street, with arms full of CDs and vinyl records and claiming to be the record label for
3 Frank Sinatra, Louis Armstrong and Ella Fitzgerald, could succeed in having that store
4 sell their copies directly next to the same albums released by legendary record labels,
5 Capitol, RCA and Columbia, and at a lower price.

6 85. Yet, this exact practice occurs every day in the digital music business,
7 where there is unlimited digital shelf space (for example, there are more than 40
8 million recordings in the iTunes store) and a complete willingness by the digital music
9 stores to seek popular and iconic recordings from any source, legitimate or not,
10 provided they participate in sharing the proceeds.

11 86. The iconic status of the pirated recordings of the Subject Compositions at
12 issue in this case cannot be overstated. Any list of the most popular singers and
13 musicians of any period between 1930 and 1970 would be replete with the artists who
14 have recorded Plaintiffs' musical works, some of them multiple times.

15 87. All the recordings on the Infringement Charts (Exhs. B-D) embodying the
16 Subject Compositions are pirated copies, or "bootlegs." Defendants' digital
17 phonorecord deliveries of these pirated copies were all made without authorization
18 from the copyright owners of the sound recordings or those who originally "fixed"
19 them as required by Section 115 (discussed below), and the copyright owners of the
20 Subject Compositions.

21 88. Defendants all generate illicit revenue for themselves when these and
22 other pirated copies are sold or distributed. Plaintiffs have not authorized any
23 reproduction or distribution of these pirate recordings of the Subject Compositions (or
24 any identified on Exhibits B-D) and it is an infringement for which all the Defendants
25 are jointly and severally liable.

26
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28

1 **The Pirated Recordings**

2 89. All the recordings identified in Exhibits B-D are pirated and all the
3 corresponding Subject Compositions are unlicensed. For all of the infringements
4 identified in Exhibits B-D, Defendants have taken recordings of the Subject
5 Compositions – in which they hold no rights – and reproduced and distributed pirated
6 copies of them to the public, for profit, without authorization, and without obtaining a
7 license to reproduce and distribute the Subject Composition embodied in each
8 respective pirated recording.

9 90. Virtually all the recordings at issue in this case were originally made
10 between 1930 and 1972. Because of the consolidation in the music industry, many of
11 the record labels that originally released these recordings have been acquired or
12 otherwise consolidated by the three remaining major labels, Sony, Universal, and
13 Warner, and their catalogs were absorbed into the major labels’ “back catalog.” This
14 consolidation occurred well before the first digital music stores started operating in the
15 early 2000s.

16 91. Since Ideal Music did not exist prior to 1999, and it did not originally
17 “fix” any of the relevant recordings, the only way for it to acquire the rights to duplicate
18 and distribute them would be to purchase or license rights in these recordings and the
19 compositions they embody.

20 92. Ideal Music, however, never acquired any license or authority from
21 Plaintiffs. Further, Ideal Music never acquired permission or the rights to reproduce or
22 distribute any of these back-catalog recordings from the major labels.

23 93. Defendants all simply duplicated pirated records of the Subject
24 Compositions without permission and sold the pirated copies for profit.

25 **Defendants Have Infringed the Subject Compositions**

26 94. Section 115 of the Copyright Act expressly excludes Defendants’
27 reproduction and distribution of pirated recordings of the Subject Compositions as a
28 covered activity eligible for a compulsory license under Section 115 and Defendants

1 have failed to obtain any licenses for the Subject Compositions that authorize such
2 activity.

3 95. The Infringement Charts annexed as Exhibits B-D set forth each pirated
4 recording of the Subject Compositions thus far identified by Plaintiffs that Defendants
5 have reproduced, distributed, imported, and/or made available for sale as digital
6 phonorecord deliveries in the Apple online store without authorization.

7 96. The various types of unauthorized reproductions, distributions, and/or
8 digital phonorecord delivery configurations of each of the pirated recordings of the
9 Subject Compositions made and/or authorized by Defendants are discussed briefly
10 below.

11 ***Permanent Downloads***

12 97. Permanent download means a digital transmission of a sound recording
13 of a musical work in the form of a download, where such sound recording is accessible
14 for listening without restriction as to the amount of time or number of times it may be
15 accessed.

16 98. Apple has made available, reproduced, and distributed permanent
17 downloads of the recordings of the Subject Compositions listed on Exhibits B-D to its
18 customers.

19 99. Apple was unlawfully authorized and directed to do so by Ideal Music,
20 Genepool, and/or their distributor(s).

21 100. Reproducing or distributing permanent downloads of recordings of the
22 Subject Compositions requires licenses from the copyright owners of the Subject
23 Compositions and all the Defendants failed to obtain such licenses for each entry on
24 the Infringement Charts at Exhibits B-D.

25 101. The reproduction and distribution of permanent downloads of recordings
26 of the Subject Compositions by Apple, and the authorization of this activity by Ideal
27 Music, Genepool, and/or their distributor(s), infringes Plaintiffs' exclusive
28 reproduction and distribution rights under 17 U.S.C. § 106(1) and (3).

Promotional Clips

1
2 102. Defendant Apple has a feature in iTunes that allowed users to interactive
3 stream a sample, promotional clip, of the recordings that were available for sale as
4 permanent downloads.

5 103. These promotional clips are 30–90 seconds long and their purpose was to
6 encourage the purchase of the tracks as permanent downloads.

7 104. iTunes reproduced and distributed copies of the recordings of the Subject
8 Compositions identified on Exhibits B-D as promotional clips in iTunes

9 105. These promotional clips of recordings of the Subject Compositions are
10 interactive streams that require a license from the copyright owners of the Subject
11 Compositions and Defendants all failed to obtain such licenses for each entry on the
12 Infringement Chart annexed as Exhibits B-D.

13 106. Defendant Apple’s reproduction and distribution of promotional clips of
14 pirated recordings of the Subject Compositions, and authorization of this activity by
15 Genepool and/or Ideal Music, infringes Plaintiffs’ exclusive reproduction and
16 distribution rights under 17 U.S.C. § 106(1) and (3).

17 *Server Copies*

18 107. Apple has reproduced at least one copy of each recording of the Subject
19 Compositions identified on Exhibits B-D on its servers for sale of permanent
20 downloads in its online store as server copies.

21 108. Apple was unlawfully authorized to engage in this activity by Ideal
22 Music, Genepool, and/or their distributor(s).

23 109. Making server copies of any of the recordings embodying the Subject
24 Compositions identified on Exhibits B-D requires a license from the copyright owners
25 of the Subject Compositions.

26 110. All Defendants failed to obtain such licenses for each of the recordings
27 embodying the Subject Compositions identified on Exhibits B-D.

28

1 111. Apple's reproduction of server copies of pirated recordings of the Subject
2 Compositions for sale of permanent downloads in its online store, and authorization of
3 this activity by Ideal Music, Genepool, and/or its distributor(s), as well the distribution
4 of the server copies of pirated recordings of Subject Composition to Apple by Ideal
5 Music, Genepool, and/or their distributor(s), infringes Plaintiffs' exclusive
6 reproduction and distribution rights under 17 U.S.C. § 106(1) and (3).

7
Making Available

8 112. Defendants have made and continue to make available, or authorize
9 making available, permanent downloads of the recordings of the Subject Compositions
10 identified on Exhibits B-D to the public by delivering, uploading and/or offering them
11 as permanent downloads in Apple's online store.

12 113. Defendant Apple's making available recordings of the Subject
13 Compositions identified on Exhibits B-D for permanent downloads, and authorization
14 of this activity, by Ideal Music, Genepool, and/or their distributor(s), requires a license
15 from the copyright owners of the Subject Compositions

16 114. Defendants failed to obtain such licenses for each recording of the Subject
17 Compositions identified on Exhibits B-D and have thereby infringed Plaintiffs'
18 exclusive distribution rights under 17 U.S.C. § 106(3) as a "deemed distribution."
19 *A&M Records v. Napster*, 239 F.3d 1004, 1014 (9th Cir. 2001); *Perfect 10, Inc. v.*
20 *Apple.com, Inc.*, 487 F.3d 701 718–19 (9th Cir. 2007).

21
Importation

22 115. Importation of phonorecords of a musical composition acquired outside
23 the U.S. requires authorization of the owner of the copyright of the musical
24 composition under Section 602 of the Copyright Act. Importation without the authority
25 of the owner of the copyright in that composition is an infringement of the exclusive
26 distribution rights under 17 U.S.C. § 106(3).

1 116. Defendants have engaged in the unauthorized importation of
2 phonorecords of the Subject Compositions, acquired outside the U.S., by digital
3 phonorecord deliveries, or other means.

4 117. Ideal Music and Genepool are located outside the United States.
5 Defendants have engaged in the importation of phonorecords of each recording
6 embodying the Subject Compositions listed on Exhibits B-D into the United States by
7 digital phonorecord delivery, or other delivery of phonorecords.

8 118. None of the Defendants obtained importation authorization from the U.S.
9 copyright owners of the Subject Compositions.

10 119. Defendants' respective importations of phonorecords embodying the
11 Subject Compositions identified on Exhibits B-D infringe Plaintiffs' exclusive
12 importation rights under 17 U.S.C. § 602 and distribution rights under 17 U.S.C. §
13 106(3).

14 **Willfulness**

15 120. The infringing conduct of all the Defendants is willful. Ideal Music knows
16 that it does not have authority to reproduce, distribute or for importation of the
17 recordings of the Subject Compositions listed on Exhibits B-D, or to authorize these
18 actions by Genepool and Apple. Ideal Music has pirated thousands of recordings and
19 sold them in the United States through Apple's online store.

20 121. Similarly, Genepool did not perform any investigation or due diligence to
21 confirm that Ideal Music had authorization to reproduce, distribute, make, or authorize
22 the making of digital phonorecord deliveries, or the importation, of the recordings of
23 the Subject Compositions identified on Exhibits B-D.

24 122. In fact, Genepool and Apple have had knowledge of the infringing
25 conduct of Ideal Music but nevertheless continued to make digital phonorecord
26 deliveries and other reproductions and distributions of the pirated recordings of the
27 Subject Compositions that Ideal Music provided without any licenses, and/or were
28 recklessly indifferent or willfully blind to their own infringing conduct.

1 123. Further, Apple had knowledge of their own infringing conduct and that
2 of Ideal Music and Genepool but continued to work with them and make digital
3 phonorecord deliveries and other reproductions and distributions of the pirated
4 recordings of the Subject Compositions that Ideal Music, Genepool, and/or their
5 distributor(s) provide and/or were recklessly indifferent or willfully blind to their own
6 infringing conduct.

7 124. Finally, Apple has willfully failed to employ adequate human resources,
8 screening mechanisms, or use of digital fingerprinting technology to detect unlawfully
9 duplicated recordings in their stores that it routinely uses for other services.

10 125. In addition to the recordings identified on Exhibits B-D, there are
11 believed to be many other pirated recordings of the Subject Compositions that
12 Defendants have reproduced and distributed without authorization that Plaintiffs have
13 not yet identified or that are no longer available on Apple's online store.

14 126. The infringement by Defendants of each Subject Composition on each
15 pirated recording identified in the Infringement Chart at Exhibits B-D began as of the
16 date of upload, receipt, delivery to and/or reproduction by Apple of server copies of
17 the pirated recordings of the Subject Compositions designated for reproduction and
18 distribution by Ideal Music, Genepool, and/or their distributor(s) in Apple's online
19 store and continued through August 2019 in this case of Apple when, upon information
20 and belief, the Ideal Music catalog was deactivated from the iTunes store by Genepool
21 and/or Ideal Music. The infringements identified in Exhibits B-D all occurred within
22 three years prior to the filing this Complaint.

23 127. By their conduct described above, Defendants have infringed and are
24 continuing to infringe Plaintiffs' copyrights on a regular basis in violation of 17 U.S.C.
25 §§ 101, 106, 115, 501, 602 *et seq.*

26 128. As a direct and proximate result of Defendants' infringement, Plaintiffs
27 are entitled to elect either an award of actual damages, including Defendants' profits,
28 or statutory damages under 17 U.S.C. § 504(c).

1 129. Defendants' infringement is and has been willful, intentional, purposeful
2 and with willful disregard of the rights of Plaintiffs. Anything less than maximum
3 statutory damage awards would encourage infringement, amount to a slap on the wrist,
4 and reward Defendants for their willful infringement on a grand scale.

5 130. Plaintiffs are also entitled to their costs, including reasonable attorneys'
6 fees, pursuant to 17 U.S.C. § 505.

7 131. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a permanent
8 injunction prohibiting Defendants from reproducing, distributing, importing and
9 selling the pirated recordings of the Subject Compositions without license or
10 authorization in violation of the Copyright Act.

11 **First Claim for Copyright Infringement by**
12 **SA Music LLC and William Kolbert, as Trustee**
13 **of the Harold Arlen Trust Against All Defendants**

14 132. Plaintiffs repeat every allegation of the Complaint.

15 133. Plaintiffs SA Music LLC and William Kolbert as Trustee of the Harold
16 Harlen Trust claim that Defendants Apple, Genepool, and Ideal Music have unlawfully
17 reproduced, distributed, and imported unauthorized recordings embodying the Subject
18 Compositions including, but not limited to, those identified in Exhibit B by the
19 methods identified herein, and/or have unlawfully directed or authorized this activity.

20 134. Defendants have thereby willfully infringed Plaintiffs' copyrights in the
21 Subject Compositions in violation of the Copyright Act.

22 **Second Claim for Copyright Infringement by**
23 **Ray Henderson Music Co., Inc. Against All Defendants**

24 135. Plaintiffs repeat every allegation of the Complaint.

25 136. Plaintiff Ray Henderson Music Co., Inc. claims that Defendants Apple,
26 Genepool, and Ideal Music have unlawfully reproduced, distributed, and imported
27 unauthorized recordings embodying the Subject Compositions including, but not
28 limited to, those identified in Exhibit C by the methods identified herein, and/or have
unlawfully directed or authorized this activity.

1 137. Defendants have thereby willfully infringed Plaintiff's copyrights in the
2 Subject Compositions in violation of the Copyright Act.

3 **Third Claim for Copyright Infringement by**
4 **Four Jays Music Company and Julia Riva Against All Defendants**

5 138. Plaintiffs repeat every allegation of the Complaint.

6 139. Plaintiffs Four Jays Music Company and Julia Riva claim that Defendants
7 Apple, Genepool, and Ideal Music have unlawfully reproduced, distributed, and
8 imported unauthorized recordings embodying the Subject Compositions including, but
9 not limited to, those identified in Exhibit D by the methods identified herein, and/or
10 have unlawfully directed or authorized this activity.

11 140. Defendants have thereby willfully infringed Plaintiff's copyrights in the
12 Subject Compositions in violation of the Copyright Act.

13 **Prayer for Relief**

14 WHEREFORE, Plaintiffs respectfully request that judgment be entered against
15 Defendants, jointly and severally, on each claim stated above, as follows:

- 16 1. A declaration that Defendants have infringed Plaintiffs' copyrights in the
17 Subject Compositions in violation of the Copyright Act;
- 18 2. A declaration that each of Defendants' infringements was willful;
- 19 3. At Plaintiffs' election, an award of Plaintiffs' actual damages, including
20 Defendants' profits, or a separate award of statutory damages in amounts
21 to be determined by the jury for all infringements involved in the action,
22 with respect to any one work, for which any one infringer is liable
23 individually, or for which any two or more infringers are liable jointly
24 and severally;
- 25 4. A permanent injunction barring the Defendants from continued
26 infringement of Plaintiffs' copyrights in the Subject Compositions
27 pursuant to 17 U.S.C. § 502; and
28

1 5. Reasonable attorneys’ fees and costs of this action, statutory pre-
2 judgment interest, and such other relief as this Court may deem just and
3 proper.

4 Respectfully submitted,

5
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27 *Attorneys for Plaintiffs*
28

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Local Civil Rule 38, and otherwise, Plaintiffs respectfully demand a trial by jury on all issues so triable.

Dated: New York, New York
April 30, 2020

Respectfully submitted,

By: /s/ Allen Hyman
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