

3:06-CV-3929-EDL

EDF ADR

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

I.(a) PLAINTIFFS

CHARLES AMAMGBO, on Behalf of Himself and All Others
Similarly Situated

DEFENDANTS

SONY BMG MUSIC ENTERTAINMENT, SONY CORPORATION OF AMERICA, BERTELSMANN, INC., UNIVERSAL MUSIC GROUP, (See Attachment "A")

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)

ALAMEDA COUNTY

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

THE TERRELL LAW GROUP, 223 25th Street, Richmond, CA 94804 510-237-9700

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN 'X' IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

- (PLACE AN "X" IN ONE BOX ONLY)
- Original Proceeding
 - Removed from State Court
 - Remanded from Appellate Court
 - Reinstated or Reopened
 - Transferred from Another district (specify)
 - Multidistrict Litigation
 - Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 161 Medicare Act <input type="checkbox"/> 162 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 163 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 190 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 196 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 316 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 346 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 356 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 366 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 660 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 400 State Reappointment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 480 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 860 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 896 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 960 Constitutionality of State Statutes <input type="checkbox"/> 980 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 246 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 446 Amer w/ disab - Empl <input type="checkbox"/> 446 Amer w/ disab - Other <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV	PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 536 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 560 Civil Rights <input type="checkbox"/> 566 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (408(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 866 RSI (406(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

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VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

The Sherman Act, State Antitrust and Unfair Deceptive Acts and Practice Statutes and For Unjust Enrichment pursuant to state law.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$ _____ CHECK YES ONLY if demanded in complaint:
 UNDER F.R.C.P. 23 JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)
 (PLACE AND "X" IN ONE BOX ONLY) SAN FRANCISCO/OAKLAND SAN JOSE

DATE 4/22/04 SIGNATURE OF ATTORNEY OF RECORD [Signature]

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E-filing

FILED
JAN 27 2006
COURT REPORTER
CLERK OF SUPERIOR COURT
SAN FRANCISCO, CALIFORNIA

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Free P&H
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Attorneys for Plaintiff Charles Amamgbo

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CHARLES AMAMGBO, on Behalf of
Himself and All Others Similarly Situated,

Case No.: **C06-03927**

EDL

Plaintiffs,

CLASS ACTION

v.

**COMPLAINT FOR VIOLATION OF
THE SHERMAN ACT, STATE
ANTITRUST & UNFAIR DECEPTIVE
ACTS & PRACTICE STATUTES AND
FOR UNJUST ENRICHMENT UNDER
STATE LAW**

SONY BMG MUSIC ENTERTAINMENT,
SONY CORPORATION OF AMERICA,
BERTELSMANN, INC., UNIVERSAL
MUSIC GROUP, TIME WARNER, INC.,
WARNER MUSIC GROUP CORP, AND
EMI GROUP, PLC,

Defendants.

1 Plaintiff Charles Amangbo, on behalf of himself and the classes defined herein (the
2 “Classes”), based on information and belief and investigation of counsel, except for information
3 based on his personal knowledge, alleges as follows:

4 **INTRODUCTION**

5 1. This action is brought by Plaintiff on behalf of all persons and entities who have
6 paid inflated prices for: (1) digitally formatted music offered for sale on the Internet (“Online
7 Music”) and (2) compact discs (“CDs”). In furtherance of, and as an integral part of, their
8 conspiracy to fix and maintain prices, Defendants, a combination of the major music labels and
9 media conglomerates, restrained the availability and distribution of Online Music. Defendants
10 engaged in a prolonged pattern of concerted conduct to prevent and delay Online Music from
11 becoming a competitive alternative to their near monopoly of the CD market. Ultimately, when
12 Online Music became inevitable, Defendants then conspired to fix and maintain the prices for such
13 product. As a result of Defendants’ conspiratorial and anticompetitive conduct, Plaintiff and
14 members of the Classes have paid more for Online Music and CDs than they would have in a
15 market free from Defendants’ competitive restraint.

16 2. Defendants’ conduct violates, *inter alia*, the Sherman Act, state antitrust and unfair
17 competition statutes and state common laws of unjust enrichment. Plaintiff seeks an order
18 enjoining Defendants’ anticompetitive conduct and damages for himself and the Classes as a result
19 of Defendants’ unlawful conduct.

20 **PARTIES**

21 3. Plaintiff Charles Amangbo is a resident of Oakland, California. Plaintiff Amangbo
22 has purchased CDs, as well as Online Music, produced, licensed, distributed and/or sold by one or
23 more of the Defendants, in the four years preceding the filing of this Complaint. As a result of
24 Defendants’ unlawful conduct alleged in this Complaint, Plaintiff has paid artificially inflated
25 prices for CDs and Online Music and has suffered antitrust injury as a result.

26 4. Defendant Sony BMG Music Entertainment (“Sony BMG”) is a Delaware general
27 partnership, with its principal place of business in New York and a corporate office in Santa
28 Monica, California. Defendant Sony BMG was formed as a joint venture of Defendant Sony

1 Corporation and Bertelsmann AG to operate their merged music operations. Around August 2004,
2 Defendants Sony and Bertelsmann merged their U.S. music operations and purportedly transferred
3 their respective musical copyrights, licensing agreements and royalty rights to Defendant Sony
4 BMG. As a result of its formation, Sony BMG now owns and controls music released under such
5 record labels as Arista, Columbia, Epic, and RCA Records. Defendant Sony BMG produces,
6 licenses and distributes Online Music and CDs through a wide variety a retailers, some of whom
7 are owned and/or controlled by Defendant Sony BMG or their corporate parents, Defendants Sony
8 and Bertelsmann.

9 5. Defendant Sony Corporation of America (“Sony”) is a New York corporation with
10 its principal place of business in New York, and is the U.S. subsidiary of Sony Corporation, which
11 is based in Tokyo, Japan. In addition to its music operations and large electronics business, Sony
12 also owns Sony Pictures Entertainment, Columbia TriStar Pictures, and Sony Playstation.

13 6. Defendant Bertelsmann, Inc. (“Bertelsmann”) is a Delaware corporation with its
14 principal place of business in New York, and is the U.S. subsidiary of Bertelsmann AG, whose
15 headquarters is in Giitersloh, Germany. Bertelsmann AG also owns dozens of radio and television
16 stations in Europe; major book publishers including Random House, Bantam-Dell, Crown, Fodor’s,
17 Ballantine, Doubleday, and Knopf; the Columbia House CD club; and major magazines such as
18 Family Circle, Parents, and YM.

19 7. Defendant Universal Music Group (“UMG”) is a Delaware corporation with its
20 headquarters in Santa Monica, California. Defendant UMG is a subsidiary of Vivendi Universal
21 S.A., headquartered in Paris, France. Vivendi is a conglomerate that, in addition to its music
22 business, owns many of the leading media and telecommunication companies in Europe and Africa
23 and is also one of the world’s largest video game developers. UMG owns and controls music sold
24 under such record labels as Mercury, Interscope, Geffen, A&M, Island Def Jam, Philips and
25 Polydor Records. Defendant UMG produces, licenses and distributes Online Music and CDs
26 through a wide variety of retailers, some of whom are owned and/or controlled by Defendant UMG.

27 8. Defendant Warner Music Group Corp. (“Warner”) is a Delaware corporation with
28 its principal corporate headquarters located in New York City. Warner owns and controls music

1 released under such record labels as Warner Bros., Asylum, Bad Boy, We Put Out, Reprise, Sire
2 Atlantic, Elektra, and London Records. Defendant Warner produces, licenses and distributes,
3 Online Music and CDs through a wide variety of retailers, some of whom are owned and/or
4 controlled by Defendant Warner or its corporate parent Time Warner.

5 9. Defendant Time Warner, Inc. ("Time Warner") is the largest media conglomerate in
6 the world, with its headquarters in New York City. In addition to Warner Music Group Corp., it
7 owns America Online ("AOL"), HBO, CNN, Court TV, TBS, TNT, the WB Network, Turner
8 Classic Movies, Cartoon Network, Time Warner Cable, Road Runner Hi-Speed Internet
9 Kablevision, New Line Cinema, Warner Brothers Studios, Castle Rock Entertainment,
10 HannaBarbera, Warner Books, Time Life, Little Brown, Sports Illustrated, Fortune, Money, People
11 Entertainment Weekly, Southern Living, Field & Stream, Golf Magazine, DC Comics, America
12 Online, CompuServe, Netscape, MapQuest, Warner Brothers Theme Parks, and the Atlanta Braves.

13 10. Defendant EMI Group, PLC ("EMI") is headquartered in London. EMI operates in
14 over 25 countries, and operates in the United States through wholly-owned subsidiaries including
15 EMI Group North America, Inc., a Delaware corporation. At various times, Defendant EMI has
16 signed and released music from The Beatles, The Beach Boys, The Byrds, The Hollies and Pink
17 Floyd. Defendant EMI owns and controls music released under such record labels as Apple, Blue
18 Note, Capitol, Chrysalis and Virgin Records. Its largest United States operation is Capitol Records,
19 a Delaware corporation headquartered in Los Angeles. Its other major subsidiaries in the United
20 States are Astralwerks, Caroline Distribution, EMI Christian Music Group, EMI CMG Distribution,
21 EMI Gospel, EMI Latin, EMI Music Publishing Nashville and Virgin Records. Defendant EMI
22 produces, licenses and distributes Online Music and CDs through a wide variety of retailers at least
23 one of whom is owned and/or controlled by Defendant EMI.

24 11. Defendants Sony BMG, Sony, Bertelsmann, UMG, Time Warner, Warner and EMI
25 are collectively referred to herein as "Defendants." UMG, Sony BMG, EMI, and Warner are
26 collectively referred to herein as "Defendant Labels." Defendants, directly or through a division
27 parent, subsidiary or agent, have had actual knowledge of, and have knowingly participated in, the
28 conspiracy to fix the prices for Online Music and CDs, including the restraint of the availability and

1 distribution of Online Music.

2 12. The acts charged in this Complaint to have been done by Defendants were
3 authorized, ordered, and done by their officers, employees, agents, members or representatives
4 while actively engaged in the management, direction, control or transaction of the business or
5 affairs of each of the Defendants.

6 **UNNAMED CO-CONSPIRATORS**

7 13. Co-conspirator Recording Industry Association of America (the "RIAA") is a trade
8 organization claiming to represent companies that "create, manufacture and/or distribute
9 approximately 90% of all legitimate sound recordings produced and sold in the United States." It is
10 located at 1330 Connecticut Avenue, NW, Suite 300, Washington, DC 20036. The RIAA lobbies
11 on behalf of the industry and frequently represents its members in litigation. All Defendant Labels
12 are members of the RIAA, directly or through their subsidiaries, and Defendant Labels have control
13 over the organization by providing a majority of its budget and nominating the majority of its board
14 of directors. RIAA has conspired with Defendants and participated in the illegal activities
15 described herein. The self-described function of the RIAA "is to foster a business and legal climate
16 that supports and promotes our members' creative and financial vitality." In fact, RIAA provides
17 Defendants with a forum to exchange competitive information and to coordinate their scheme to
18 restrain the availability and commercial development of Online Music.

19 14. Various other persons, firms, corporations, or joint ventures not named as
20 defendants in this lawsuit, the identities of which are presently unknown, may have participated as
21 coconspirators with each of the Defendants' illegal activities in this Complaint and have performed
22 acts and made statements in furtherance of the illegal combination and conspiracy.

23 **JURISDICTION AND VENUE**

24 15. This Court has jurisdiction pursuant to §§ 4 and 16 of the Clayton Act, 15 U.S.C.
25 §§ 15 and 26, and 28 U.S.C. §§ 1331 and 1337.

26 16. This Court also has diversity jurisdiction over the Classes pursuant to 28 U.S.C.
27 §§ 1332(d)(2) and (6) of the Class Action Fairness Act of 2005, because one or more members of
28 the Classes defined herein are citizens of a State different from one or more Defendants and the

1 aggregate amount in controversy exceeds five million dollars (\$5,000,000), exclusive of interest
2 and costs.

3 17. Venue is proper in this District pursuant to §§ 4, 12 and 16 of the Clayton Act,
4 15 U.S.C. §§ 15, 22, and 26, and 28 U.S.C. § 1391, because Defendants transact business in this
5 District, and because thousands of Class members are located in this District. Further, related
6 litigation against Defendants is ongoing in this District. Additionally, a substantial part of the
7 interstate trade and commerce involved and affected by the alleged violations of the antitrust laws
8 was and is carried on in part within this District. The acts complained of have had, and will have,
9 substantial anticompetitive effects in this District.

10 TRADE AND COMMERCE

11 18. During the Class Period, each of the Defendants, itself or through their affiliates,
12 agents or subsidiaries, produced, licensed, distributed and/or sold Online Music and CDs in a
13 continuous and uninterrupted flow of intrastate and interstate commerce throughout the United
14 States.

15 RELEVANT MARKET

16 19. As to claims so requiring, the relevant product markets for purposes of this action
17 are the market for Online Music and the market for CDs. The relevant geographic market is the
18 United States.

19 20. Defendant Labels are the four largest music labels and control in excess of 85% of
20 the market for all Online Music sold in the United States and in excess of 85% of the market for all
21 CDs sold in the United States. Defendant Labels function as an oligopoly. Jointly they exercise
22 market power over and dominate the market for Online Music and the market for CDs.

23 FACTUAL BACKGROUND OF DEFENDANTS' ANTICOMPETITIVE CONDUCT

24 21. Defendant Labels produce, license and distribute Online Music and CDs to retailers
25 for sale throughout the United States and in some instances sell Online Music and CDs directly to
26 consumers through Internet sites, record clubs and other entities which they own or control. For
27 example, Defendants Bertelsmann, EMI, Sony, and Time Warner sold music directly to consumers
28 over the Internet through their Music.net joint venture. Defendants Sony and UMG sold Online

1 Music directly to consumers through their joint venture Pressplay. Defendant Sony sells Online
2 Music directly to consumers using its online store Sony Connect. Defendant Sony BMG sells CDs
3 to consumers directly on Sony Music Store and other channels. Defendant UMG, through
4 Universal Music Store, sells CDs directly to consumers. Defendant BMG sells music directly to
5 consumers through its BMG Music Club service. Defendant BMG's parent Bertelsmann AG
6 acquired Columbia House, BMG Music Club's only large competitor in the United States, through
7 which it sells CDs directly to consumers. Defendant Time Warner sells Online Music to consumers
8 on its online store AOL Music Now. Defendant Time Warner sells CDs directly to consumers
9 using AOL Music and through other channels.

10 22. The music industry and the markets for Online Music and CDs have been changing
11 rapidly in recent years due to technological advances and consumer preferences. Transmitting
12 music electronically to consumers via the Internet has worked a revolutionary change to the
13 business model of Defendant Labels by exponentially increasing the speed and amount of music
14 that can be distributed while dramatically reducing costs associated with music production,
15 distribution and sale through the now traditional medium of CDs. Pricing for CDs accounts for
16 costs such as producing a master disc, copies of the disc, the CD case, artwork, label, branding anti-
17 shoplifting packaging; importing the CDs into the United States; shipping CDs to distribution
18 warehouses and then to record stores; labor to unpack and shelve the CDs and man the cash
19 registers; and returning and/or destroying unsold inventory. All of these costs are eliminated when
20 music is distributed online.

21 23. In addition to being far cheaper and instantaneous, online distribution of music
22 benefits the consumer, who does not have to drive to a store, does not have to worry about care and
23 storage of the CD, and can instantly store the purchased music onto a computer or portable music
24 device such as Apple's iPod or an MP3 player. Indeed, for many consumers, Online Music is the
25 proverbial "better mousetrap," Online Music is eminently portable, allows consumers to choose and
26 purchase only those selections they desire instead of entire CDs, and allows consumers to load
27 enormous audio libraries into their portable music devices. But for Defendants' anticompetitive
28 conduct, Online Music would be dramatically less expensive than CDs.

1 24. The underlying Online Music technology (the ability to collect payment and to
2 transmit music digitally over the Internet) has been available at least as early as 1994. In a
3 competitive market, lower costs and strong demand for these improved technologies would have
4 created a larger market for low-cost Online Music years earlier as consumers switched from CDs to
5 purchasing Online Music en masse, much as they switched from cassette tapes to CDs a generation
6 earlier. This change-over has not happened yet because Defendants have used their near complete
7 monopoly over music licensing to stifle the growth and efficiencies of the Online Music market.
8 For example, in 1998, Defendants, acting through their trade organization and co-conspirator, the
9 RIAA, sued to enjoin the importation or sale in the United States of the Diamond Rio portable
10 music player, the direct forerunner of the enormously popular Apple iPod. This lawsuit proved
11 unsuccessful, and as the technology of portable music players improved, demand increased.

12 25. The distribution of digital music exploded in the late 1990s with the emergence of
13 Napster, the most popular online music service (which had tens of millions of users), Kazaa and
14 other services offering free peer to peer file sharing, i.e., the ability of one person to share Online
15 Music with anyone else via a website. These services demonstrated the viability of distributing
16 music online. Although Napster initially provided file sharing for free, ultimately it attempted to
17 negotiate with Defendants to charge for Online Music. Defendants rejected offers by Napster to
18 license their music catalogues for sale online. Defendants' concerted refusal to deal with Napster
19 thus eventually forced the most promising and popular Online Music service into bankruptcy. The
20 Napster brand has since been resurrected and Defendants Sony and UMG are minority shareholders
21 in the venture.

22 26. During the summer of 2001, and while Defendants were successfully shutting down
23 Napster, Defendants formed two joint ventures to sell Online Music: MusicNet and Pressplay. At
24 the time, MusicNet was owned by BMG, Warner and EMI, while UMG and Sony owned
25 Pressplay. These were not serious commercial ventures, but rather attempts to occupy the market
26 with frustrating and ineffectual services in order to head off viable Online Music competitors from
27 forming and gaining popularity after Napster's demise. Defendants placed so many onerous
28 restrictions on the music files once they were downloaded that one prominent computer industry

1 magazine noted that “nobody in their right mind will want to use” the services. For example,
2 Pressplay allowed only ten songs to be burned to a CD per month, and no more than two of them
3 could be by the same artist. On MusicNet, downloaded songs would expire every 30 days and had
4 to be downloaded again and again each month, and customers were forced to download software
5 that would “take over their computers” by automatically changing default settings and placing
6 shortcuts on their desktops, to name a few of the software’s unwanted features. Neither service
7 allowed music to be played on the Apple iPod, the most popular portable music player, nor did
8 either service make Defendants’ whole catalog available for download. Even the songs that were
9 available for download on MusicNet and Pressplay were in a below-CD quality audio format
10 despite the wide availability of technology that would have cured this substantial defect.
11 Predictably, neither MusicNet nor Pressplay had success with consumers.

12 27. Nonetheless, as of mid-2001 Defendants continued to hold firm to their concerted
13 decision not to license any Online Music services to provide their music catalogues for sale to
14 consumers. This refusal to grant meaningful licenses to an entity which Defendants did not own or
15 control delayed and retarded the eventual growth of the Online Music market. Defendants sought
16 to forestall and then distort the development of the Online Music market because it would decrease
17 Defendants’ CD sales and their considerable profit margins on CDs.

18 28. Not only were MusicNet and Pressplay inferior to Napster and other services, but
19 Defendants imposed anticompetitive conditions upon Online Music services that licensed music via
20 MusicNet. The pricing structure of the contract was such that the licensee would have to pay
21 penalties in the form of higher prices for Defendants’ music if the licensee licensed music from any
22 company other than MusicNet. This not only restrained trade in the Online Music business, but
23 also prevented the small independent labels that competed with Defendants from obtaining access
24 to online outlets.

25 29. Defendants were paid shares of the total revenue generated by a joint venture
26 licensee rather than receive money on a per song basis. Because each Defendant Label’s financial
27 interest in the joint ventures was therefore linked to the total sales of all the labels rather than its
28 own market share, Defendant Labels had no incentive to compete with one another.

1 30. The financial structure of the joint ventures encouraged Defendant Labels to engage
2 in cartel behavior rather than competition. Defendants are no strangers to lawsuits and government
3 investigations for anticompetitive behavior related to sales of recorded music. Beginning in the
4 mid-1990's, discount retailers such as Target and Circuit City entered the CD market, offering
5 discounts and gaining market share from traditional music retailers, threatening "the high and stable
6 profit margins for CDs." Defendants were sued by numerous State Attorneys General and private
7 plaintiffs for allegedly agreeing to impose minimum advertised price policies that harshly penalized
8 retailers for selling below the price set by the record labels. Defendants settled the suit in 2003 for
9 this illegal anticompetitive behavior for \$140 million and an injunction against further minimum
10 advertised price policies.

11 31. In another example of recent anticompetitive behavior, the Attorney General of New
12 York and the Federal Communications Commission are further investigating Defendants for their
13 "payola" schemes of paying radio stations for playing certain songs, an illegal practice that locks
14 out new artists and smaller record companies. Sony BMG and Warner have settled with the New
15 York Attorney General, while the case against the rest of the Defendants is ongoing.

16 32. The MusicNet and Pressplay joint ventures also provided Defendants with
17 opportunities and forums to meet and further conspire to cooperate to maintain the prices of all
18 their music products. In antitrust cases brought by the creditors of the bankrupt Napster against the
19 record labels, the court wrote:

20 [E]ven a naïf must realize that in forming and operating a joint venture, [record
21 label] representatives must necessarily meet and discuss pricing and
22 licensing . . . [t]hese joint ventures bear the indicia of entities designed to allow
23 [record labels] to use their copyrights and extensive market power to dominate the
24 market for digital music distribution. Even on the undeveloped record before the
25 court, these joint ventures look bad, sound bad and smell bad.

26 The joint venture provided the vehicles through which Defendants attempted to control the
27 emergence and growth of Online Music in order to protect their sales of and margins on CDs.

28 33. It was not until the phenomenal success of Apple's iPod portable music players and
the creation of Apple's iTunes Music Service that Defendants finally relented and allowed their
music to be licensed for online distribution in a form not crippled by heavy restrictions or

1 distributed by one of their collusive joint ventures. Thus, widespread distribution of Online Music
2 through iTunes, to be played on iPods, occurred more than eight years after the underlying
3 technology became widely available.

4 34. In sum, Defendants' concerted refusals to deal with Napster and to authorize an
5 independent Online Music entity to distribute and sell downloads were designed to maintain the
6 sales volume, pricing and profits they obtained through CDs. Defendants sought to delay the
7 Online Music market through their joint ventures and, when they could not hold back market forces
8 any longer, they conspired to set the wholesale price of Online Music at supracompetitive levels to
9 protect the CD market.

10 35. Defendants have continued to nakedly restrain trade in the market for Online Music
11 by engaging in price-fixing. When Defendants first entered the market with their joint ventures,
12 they charged as little as \$10 for 50 songs, or 20 cents per song. Defendants have now agreed to a
13 wholesale price floor at which they sell Online Music to retailers at or about 70 cents per song.
14 Further restraining competition in the Online Music market, Defendants use their market power to
15 coerce Online Music retailers to sign "most favored nation" agreements that specify that the
16 retailers must pay each of the Defendant Labels the same amount. By setting a wholesale price
17 floor at 70 cents per song, Defendants have fixed and maintained the price of Online Music at
18 supracompetitive levels. Additionally, virtually all songs were licensed by Defendant Labels at the
19 exact same price without regard to the artist, its popularity, its length or vintage. Now Defendants
20 are collectively pressuring Apple to raise its price above the current 99 cents per song. By
21 comparison, an online music service that serves the much smaller independent or "indie label"
22 market, eMusic, charges \$10 for each 40 songs, or 25 cents per song.

23 36. Defendants' price-fixing of Online Music is also the subject of a pending
24 investigation by New York State Attorney General Eliot Spitzer who subpoenaed Defendants for
25 information on the wholesale prices they charge for Online Music. On March 3, 2006, the United
26 States Department of Justice opened an investigation into collusion and price-fixing of Online
27 Music by the Defendant Labels. The Defendant Labels either have received or will soon receive
28 formal "civil investigative demands," which are similar to subpoenas.

1 37. A primary motive for Defendants' suppression of trade in the Online Music market
2 was to protect their investment in the CD market and allow them to maintain their enormous profits
3 until they transitioned from highly profitable CDs to Online Music. The advantages of Online
4 Music distribution, unless the price is fixed at the appropriate price, threaten this investment in
5 three ways. First, there is only a limited amount of shelf space in record stores and Defendants use
6 their market power to crowd out all but the most popular CDs produced and distributed by smaller
7 competing labels. Online Music sites, by contrast, can offer an unlimited amount of music, giving
8 consumers more access to the catalogues, artists and songs of Defendant Labels' competitors. The
9 emerging Online Music market is a threat to Defendants' oligopoly. Second, the Online Music
10 market allows consumers to choose and only pay for the songs they want, rather than being forced
11 to buy an entire CD mostly full of what they perceive as "filler." Third, Online Music threatens
12 Defendants' practice of bundling content. Bundling allows Defendants to engage in price
13 discrimination against consumers with different preferences. Even if some consumers do not
14 perceive the additional songs on each CD to be worthless filler, they still accord them different
15 values. For example, if "A" is willing to pay \$3 for song one and \$2 for song two, and "B" has the
16 opposite preference, the vendor's maximum revenue would be \$8 if they were sold separately,
17 because it is not able to charge more than \$2 each and still make four sales. However, if the two
18 songs were bundled together and sold for \$5, the company would have revenue of \$10.

19 38. Before Online Music, selling songs together was the only practical way to sell
20 music. Few people would want to eject a CD from a CD player and put in a new one at the end of
21 every song, and material and packaging prices made selling music by individual song even more
22 impractical. When purchasing Online Music, consumers now have the choice of purchasing entire
23 albums or individual songs. Enormously popular iPods and MP3 players allow consumers to group
24 individual songs by artist, genre, play lists, album name or otherwise according to their own
25 personal preferences. The new and expanding Online Music market demonstrates that the vast
26 majority of consumers prefer to purchase individual songs. This preference was not lost on
27 Defendants, who quickly realized that failure to price Online Music, where consumers could
28 purchase a single song instead of an entire album, at less than supracompetitive levels would

1 seriously erode the CD market and Defendants' profits.

2 39. By conspiring to restrain the growth of Online Music and to set a price floor for
3 Online Music at supracompetitive levels, Defendants have protected their ability to maintain sales
4 of CDs at prices higher than they would be but for Defendants' anticompetitive conduct.

5 **CLASS ACTION ALLEGATIONS**

6 40. Plaintiff brings this action on behalf of himself, and all others similarly situated,
7 pursuant to Rule 23(b)(2) and (3) of the Federal Rules of Civil Procedure. Plaintiff seeks to
8 represent the following Classes:

9 **Injunctive Relief Class**

10 41. All persons or entities in the United States (excluding federal, state and local
11 governmental entities, Defendants, their directors, officers and members of their families) that
12 purchase Online Music produced, manufactured, licensed, distributed and/or sold by Defendants.

13 **End-Purchaser Online Music Damages Class**

14 42. All persons or entities in the United States (excluding federal, state and local
15 governmental entities, Defendants, their directors, officers and members of their families) that
16 purchased Online Music produced, manufactured, distributed and/or sold by Defendants from
17 March 7, 2002 through the conclusion of the trial this matter ("Class Period"), other than those who
18 purchased Online Music directly from Defendants or an entity owned or controlled by Defendants.

19 **End-Purchaser CD Damages Class**

20 43. All persons or entities in the United States (excluding federal, state and local
21 governmental entities, Defendants, their directors, officers and members of their families) that
22 purchased CDs produced, manufactured, distributed and/or sold by Defendants during the Class
23 Period, other than those who purchased CDs directly from Defendants or an entity owned or
24 controlled by Defendants.

25 44. Excluded from each of the Classes are Defendants, their directors, officers and
26 members of their families; any entity which any Defendant owns, controls or has controlling
27 interest; the affiliates, legal representatives, attorneys, heirs or assigns of any Defendant; and any
28 federal, state or local governmental entity.

1 45. The Classes are so numerous that joinder of all members is impracticable. There are
2 thousands of members in the Classes who are geographically dispersed throughout the United
3 States and Indirect Purchaser States.

4 46. Plaintiffs' claims are typical of the claims of the members of the Classes because
5 Plaintiff and all Class members were damaged by the same wrongful conduct of the Defendants
6 alleged herein.

7 47. There are questions of law and fact common to the Classes which predominate over
8 any questions affecting only individual Class members. Such common questions include:

9 a. Whether Defendants violated the Sherman Act and relevant Indirect
10 Purchaser State antitrust statutes by engaging in a continuing combination and conspiracy to
11 restrain the availability and distribution of Online Music and fix and maintain the prices for Online
12 Music and CDs;

13 b. The duration and extent of the alleged combination or conspiracy;

14 c. Whether Defendants and each of them participated in any such combination
15 or conspiracy;

16 d. Whether Defendants fixed the price of Online Music at supracompetitive
17 levels;

18 e. Whether Defendants fixed the price of CDs at supracompetitive levels; and

19 f. Whether Defendants' conduct caused damage to Plaintiff and members of
20 the Classes, and if so, the appropriate measure of such damages.

21 48. The claims of the Plaintiff are typical of the claims of the Classes, and Plaintiff has
22 no interest adverse to the interests of other members of the Classes.

23 49. Plaintiff will fairly and adequately protect the interests of the Classes and has
24 retained counsel experienced and competent in the prosecution of complex class actions and
25 antitrust litigation.

26 50. A class action is superior to other available methods for the fair and efficient
27 adjudication of the controversy. Such treatment will permit a large number of similarly situated
28 persons to prosecute their common claims in a single forum simultaneously, efficiently, and

1 without duplication of effort and expense that numerous individual actions would engender. Class
2 treatment will also permit the adjudication of relatively small claims by many Class members who
3 could not afford to individually litigate an antitrust claim against large corporate Defendants. There
4 are no difficulties likely to be encountered in the management of this class action that would
5 preclude its maintenance as a class action, and no superior alternative exists for the fair and
6 efficient adjudication of the controversy.

7 51. Defendants have acted on grounds generally applicable to the Classes, thereby
8 making final injunctive relief or corresponding declaratory relief appropriate with respect to all
9 Classes.

10
11 **COUNT I**

12 **For Violation of Section 1 of the Sherman Act**
(On Behalf of All Classes)

13 52. Plaintiff realleges and incorporates by reference each and every allegation set forth
14 above. This Count is brought pursuant to 15 U.S.C. §§ 1 and 15 U.S.C. § 16, for injunctive relief
15 as to all Classes.

16 53. The record music industry is dominated by four entities—Defendant Labels EMI,
17 Sony BMG, UMG and Warner—which collectively function as a highly concentrated, tightly-knit
18 oligopoly. Together, Defendant Labels account for over 85% of music sold to end-purchasers in
19 the United States. The relatively few firms and their market-share stability over time have created
20 an industry environment which enables and facilitates Defendants’ ability to coordinate their
21 pricing and other related practices. This market-share stability is inconsistent with an industry that
22 has been subject to sweeping advancements in technology and changes in public taste and fashion
23 for music and the vehicles and media through which music is distributed and sold.

24 54. The recorded-music industry is also characterized by high barriers to entry by new
25 firms, thus further enhancing Defendants’ significant market power. The high degree of
26 concentration in the industry and the significant barriers to entry have insulated Defendants from
27 price competition from new entrants to the market.

28 55. Beginning at least as early as March 7, 2002 the exact date being unknown to

1 Plaintiff, and continuing to the present, Defendants and their coconspirators have engaged in a
2 continuing combination, conspiracy, and common course of conduct in unreasonable restraint of
3 interstate trade and commerce in violation of § 1 of the Sherman Act, 15 U.S.C. § 1. As more fully
4 described herein, the combination, conspiracy and common course of conduct engaged in by
5 Defendants consisted of a continuing agreement, understanding and concert action among the
6 Defendants and their co-conspirators, the substantial terms of which were to restrain the availability
7 and distribution of Online Music and then to fix and maintain at artificially high and non-
8 competitive levels the prices at which they sold Online Music. By restraining trade in and fixing
9 the price of Online Music, Defendants were able to further their scheme to protect the market for
10 sales of CDs and maintain at artificially high and non-competitive levels the prices at which they
11 sold CDs. As a result of their conspiracy, combination and common course of conduct, and despite
12 declining costs of production associated with the introduction of new technologies, Defendants
13 have maintained the prices of Online Music and CDs at supracompetitive levels.

14 56. Pursuant to their combination, conspiracy and concerted action, Defendants have
15 adopted and adhered to virtually identical and parallel methods of distribution (including the use of
16 contracts with substantially identical material terms) and pricing (including the use of lockstep,
17 identical pricing for virtually every song in their catalogues for Online Music). Defendants are the
18 pivotal and controlling link between the artistic production of the recorded-music product on the
19 one hand, and the marketing and distribution of that product on the other. Defendants distribute
20 recorded music throughout the United States, including recordings produced under Defendants'
21 own labels as well as recordings produced by certain independent music companies.

22 57. Currently Defendants sell Online Music to retailers and distributors at or about
23 70 cents per song despite improvements in technology of the distribution of Online Music and cost
24 savings with producing CDs, and exponentially increased sales volume that have dramatically
25 reduced marginal costs. Defendants have priced Online Music at supracompetitive levels to protect
26 the market, sales volume, and prices for CDs. Were Defendants to sell Online Music at or
27 approaching competitive pricing levels, sales for CDs would decrease dramatically without
28 concomitant price reductions. In consequence, Defendants' conspiracy to restrain the availability

1 and distribution of Online Music, and to fix and maintain the price of Online Music, enables
2 Defendants to maintain CD prices at supracompetitive levels.

3 58. During the Class Period, each Defendant took actions to restrain the availability and
4 distribution of Online Music. Once it became clear that they could not stem the tide of
5 technological advances, Defendants adopted, at or about the same time, identical terms of sale and
6 pricing schemes for Online Music. Pursuant to their combination, conspiracy and concerted action,
7 Defendants have consistently adopted and adhered to coordinated parallel-pricing schemes.

8 59. Defendants' current business practices are also the subject of pending investigations
9 by the New York State Attorney General, which subpoenaed Defendants for information on the
10 wholesale prices they charge for Online Music and the Department of Justice, which has also
11 demanded information of Defendants.

12 60. Defendants have used and continue to use trade associations, including the RIAA,
13 and meetings to restrain and control the sale of Online Music and to plan strategy and communicate
14 pricing. During meetings of the recording industry, Defendants discussed how to put Napster out
15 of business and rein in similar threats by distributors of Online Music to their pricing and
16 distribution oligopoly. At a recent meeting, Defendants openly discussed adopting a variable
17 online price scheme (i.e., to charge more for certain singles and less for others).

18 61. Each of the Defendants has engaged in one or more overt acts in furtherance of the
19 contract, combination and/or conspiracy alleged. In consequence, the aforesaid combination and
20 conspiracy had the following effects, among others:

21 a. Plaintiff and other members of the Classes were deprived of the benefits of
22 free and open competition in the purchase of Defendants' Online Music and CDs;

23 b. Defendants' Online Music prices were raised, fixed and maintained at
24 artificially high and non-competitive levels;

25 c. Defendants' CD prices were maintained at artificially high and
26 noncompetitive levels;

27 d. Plaintiff and other members of the Classes were forced to pay artificially
28 high, non-competitive prices for Online Music and CDs; and

1 e. Price competition among Defendants in the sale of Online Music, and as a
2 direct consequence in the sale of CDs, was restrained, suppressed and eliminated.

3 62. During the time period covered by this Complaint, Plaintiff and other members of
4 the Classes purchased substantial quantities of Online Music and CDs sold by Defendants. By
5 reason of the violations of § 1 of the Sherman Act, Plaintiff and other members of the Classes paid
6 more for Online Music and CDs than they would have in the absence of the illegal combination,
7 conspiracy and common course of conduct and, as a result, have been injured in their business and
8 property and have suffered damages in an amount currently undetermined.

9 63. Defendants have acted on grounds generally applicable to the Classes, thereby
10 making final injunctive relief appropriate with respect to the Classes as a whole.

11 COUNT II

12 **For Violation of State Antitrust and Unfair Deceptive Acts and Practice Statutes** 13 **(On Behalf of End Purchaser Online Music and CD Damages Classes)**

14 64. Plaintiff realleges and incorporates by reference each of the allegations set forth
15 above.

16 65. This Count is alleged against all Defendants on behalf of the End Purchaser Online
17 Music and CD Damages Classes. Defendants' conduct as alleged herein violates the antitrust and
18 unfair and deceptive acts and practices laws of each of the following jurisdictions:

19 a. Alaska: The aforementioned practices by Defendants were and are in
20 violation of Unfair Trade Practices and Consumer Protection Act, Alaska Stat. §§ 45.50.471, *et*
21 *seq.*;

22 b. Arizona: The aforementioned practices by Defendants were and are in
23 violation of the Arizona Uniform State Antitrust Act, Ariz. Rev. Stat. §§ 44-1401, *et seq.*; and the
24 Constitution of the State of Arizona, Art. 14, § 15;

25 c. Arkansas: The aforementioned practices by Defendants were and are in,
26 violation of Ark. Code §§ 4-88-101, *et seq.*;

27 d. California: The aforementioned practices by Defendants were and are in
28 violation of the Cartwright Act, California Business and Professions Code §§ 16700, *et seq.*; and

1 the Unfair Competition Law, California Business and Professions Code §§ 17200, *et seq.*;

2 e. Colorado: The aforementioned practices by Defendants were and are in
3 violation of the Colorado Consumer Protection Act, C.R.S. 6-1-101, *et seq.*;

4 f. Connecticut: The aforementioned practices by Defendants were and are in
5 violation of Conn. Gen. Stat. §§ 42-110b, *et seq.*;

6 g. Delaware: The aforementioned practices by Defendants were and are in
7 violation of the Consumer Fraud Act, 6 Del. C. §§ 2511, *et seq.*; and the Deceptive Trade Practices
8 Act, 6 Del. C. §§ 2531, *et seq.*;

9 h. District of Columbia: The aforementioned practices by Defendants were and
10 are in violation of the District of Columbia Antitrust Act, D.C. Code §§ 28-4501, *et seq.*; and the
11 District of Columbia Consumer Protection Act, D.C. Code §§ 28-3901, *et seq.*;

12 i. Florida: The aforementioned practices by Defendants were and are in
13 violation of the Florida Deceptive and Unfair Trade Practices Act, §§ 501.20 1, *et seq.*;

14 j. Georgia: The aforementioned practices by Defendants were and are in
15 violation of the Georgia Fair Business Practices Act, O.C.G.A. §§ 10-1-390, *et seq.*;

16 k. Hawaii: The aforementioned practices by Defendants were and are in
17 violation of the Hawaii antitrust statute, HRS §§ 480-1, *et seq.*; and the Unfair Practices Act, HRS
18 §§ 481-1, *et seq.*;

19 l. Idaho: The aforementioned practices by Defendants were and are in
20 violation of the Consumer Protection Act, Idaho Code §§ 48-601, *et seq.*;

21 m. Illinois: The aforementioned practices by Defendants were and are in
22 violation of the Consumer Fraud and Deceptive Business Practices Act, ILCS 510/1; Uniform
23 Deceptive Trade Practices Act, 815 ILCS 510/1; and the Illinois Antitrust Act, 740 ILCS 10/1;

24 n. Iowa: The aforementioned practices by Defendants were and are in violation
25 of the Iowa Competition Law, Iowa Code §§ 533.1, *et seq.*; and Iowa Consumer Fraud Act, Iowa
26 Code §§ 714.16;

27 o. Kansas: The aforementioned practices by Defendants were and are in
28 violation of the Kansas Unfair Trade and Consumer Protection Act, K.S.A. §§ 50-501, *et seq.*;

1 p. Kentucky: The aforementioned practices by Defendants were and are in
2 violation of the Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et seq.*;

3 q. Maine: The aforementioned practices by Defendants were and are in
4 violation of the Maine Trade Regulation Law of 1954, 10 M.R.S.A. §§ 1101, *et seq.*, and the Maine
5 Unfair Trade Practices Act, 5 M.R.S.A., §§ 205-A, *et seq.*;

6 r. Maryland: The aforementioned practices by Defendants were and are in
7 violation of the Consumer Protection Act, Md. Com. Law Code §§ 13-101, *et seq.*;

8 s. Massachusetts: The aforementioned practices by Defendants were and are in
9 violation of the Massachusetts Consumer Protection Act, M.G.L. Ch. 93A, *et seq.*;

10 t. Michigan: The aforementioned practices by Defendants were and are in
11 violation of the Michigan Antitrust Reform Act, MCL §§ 445.772, *et seq.*;

12 u. Minnesota: The aforementioned practices by Defendants were and are in
13 violation of the Minnesota Antitrust Act of 1971, Minn. Stat. §§ 325D.49, *et seq.*; and Minnesota
14 Prevention of Consumer Fraud Act, Minn. Stat. § 325F.69;

15 v. Missouri: The aforementioned practices by Defendants were and are in
16 violation of the Missouri Merchandising Practices Act, Mo. Rev. Stat. §§ 407.010, *et seq.*;

17 w. Montana: The aforementioned practices by Defendants were and are in
18 violation of the Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code
19 §§ 3014-101, *et seq.*;

20 x. Nebraska: The aforementioned practices by Defendants were and are in
21 violation of the Nebraska Consumer Protection Act, Neb. Rev. Stat. §§ 59-1601, *et seq.*;

22 y. Nevada: The aforementioned practices by Defendants were and are in
23 violation of the Nevada Unfair Trade Practice Act, Nev. Rev. Stat. §§ 598A.010, *et seq.*;

24 z. New Hampshire: The aforementioned practices by Defendants were and are
25 in violation of N.H. Rev. Stat. §§ 358-A: 1, *et seq.*;

26 aa. New Jersey: The aforementioned practices by Defendants were and are in
27 violation of the New Jersey Consumer Fraud Act, N.J.S.A. §§ 56:8-1, *et seq.*;

28 bb. New Mexico: The aforementioned practices by Defendants were and are in

1 violation of the New Mexico Antitrust Act, N.M. Stat. Ann. §§ 57-1-1, *et seq.*; and the New
2 Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57-12-3;

3 cc. New York: The aforementioned practices by Defendants were and are in
4 violation of the New York Donnelly Act, Gen. Bus. Law §§ 349, *et seq.*; and/or New York General
5 Business Law § 349;

6 dd. North Carolina: The aforementioned practices by Defendants were and are
7 in violation of the North Carolina Unfair Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-1, *et*
8 *seq.*;

9 ee. North Dakota: The aforementioned practices by Defendants were and are in
10 violation of North Dakota's antitrust law, North Dakota Cent. Code §§ 51-08.1, *et seq.*; § 51-15-02;

11 ff. Ohio: The aforementioned practices by Defendants were and are in violation
12 of Ohio Consumer Sales Practices Act §§ 1345.01, *et seq.*;

13 gg. Pennsylvania: The aforementioned practices by Defendants were and are in
14 violation of the Unfair Trade Practice and Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.*;

15 hh. Puerto Rico: The aforementioned practices by Defendants were and are in
16 violation of Puerto Rico's antitrust law, 10 LPRA §§ 257, *et seq.*; 32 LPRA § 5141;

17 ii. Rhode Island: The aforementioned practices by Defendants were and are in
18 violation of Rhode Island Deceptive Trade Practices Act, R.I. Gen. Laws §§ 6-13.1-1, *et seq.*;

19 jj. South Carolina: The aforementioned practices by Defendants were and are
20 in violation of S.C. Code Laws §§ 39-5-10, *et seq.*;

21 kk. South Dakota: The aforementioned practices by Defendants were and are in
22 violation of South Dakota's antitrust law, S.D. Codified Laws §§ 37-1-3.1, *et seq.*;

23 ll. Tennessee: The aforementioned practices by Defendants were and are in
24 violation of the Tennessee Trade Practices Act, Tenn. Code Ann. §§ 47-25-101, *et seq.*; and the
25 Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.*;

26 mm. The aforementioned practices by Defendants were and are in violation of
27 Tex. Bus. & Com. Code §§ 17.41, *et seq.*;

28 nn. Utah: The aforementioned practices by Defendants were and are in violation

1 of Utah Code §§ 76-10-911, *et seq.*;

2 oo. Vermont: The aforementioned practices by Defendants were and are in
3 violation of Vermont antitrust law, Vermont Stat. §§ 2451, *et seq.*;

4 pp. Virginia: The aforementioned practices by Defendants were and are in
5 violation of Va. Code §§ 59.1-198, *et seq.*;

6 qq. Washington: The aforementioned practices by Defendants were and are in
7 violation of Wash. Rev. Code §§ 19.86.010, *et seq.*;

8 rr. West Virginia: The aforementioned practices by Defendants were and are in
9 violation of the West Virginia Antitrust Act, Chapter 47, Article 18, §§ 1, *et seq.*, West Virginia
10 Consumer Credit Protection Act, W.Va. Code §§ 46A-1-101, *et seq.*; §§ 47-11A-1, *et seq.*; and

11 ss. Wisconsin: The aforementioned practices by Defendants were and are in
12 violation of the Wisconsin Antitrust Act, Wis. Stat. §§ 133.01, *et seq.*

13 66. As a result of Defendants' violations of the aforementioned state laws prohibiting
14 unfair competition, Plaintiff and the Classes are entitled to bring this claim and to recover herein
15 compensatory damages, punitive and special damages including, but not limited to, treble damages,
16 reasonable attorneys' fees, and costs and other injunctive or declaratory relief as may be available.

17
18 **COUNT III**

19 **Unjust Enrichment Under State Law**
(On Behalf of End-Purchaser Online Music and CD) Damages Classes)

20 67. Plaintiff realleges and incorporates by reference each of the allegations set forth
21 above.

22 68. This Count is alleged against all Defendants, on behalf of the End Purchaser Online
23 Music and CD Damages classes. Defendants have benefited financially from their unlawful and
24 inequitable acts alleged in this Complaint. Defendants' financial benefits resulting from their
25 unlawful and inequitable conduct are traceable to overpayments for Online Music and CDs
26 stemming from Defendants' combination and conspiracy to restrain trade in Online Music and set
27 the prices for Online Music, and for CDs, at supracompetitive levels.

28 69. The Classes have conferred upon Defendants an economic benefit, in the nature of

1 profits resulting from unlawful overcharges, to the economic detriment of Plaintiff and the
2 members of the Classes.

3 70. The economic benefit of overcharges and unlawful profits derived by Defendants
4 through charging supracompetitive and artificially inflated prices for Online Music and CDs is a
5 direct and proximate result of Defendants' unlawful practices.

6 71. The financial benefits derived by Defendants by reason of their unlawful conduct
7 rightfully belong to Plaintiff and the Classes, as they have paid anticompetitive prices during the
8 Class Period, inuring to the benefit of Defendants.

9 72. It would be inequitable for the Defendants to be permitted to retain any of the
10 overcharges for Online Music and CDs derived from Defendants' unfair and unconscionable
11 methods, acts and trade practices alleged in this Complaint.

12 73. Defendants should be compelled to disgorge into a common fund for the benefit of
13 Plaintiff and the Classes all unlawful or inequitable proceeds received by them.

14 74. A constructive trust should be imposed upon all sums unlawfully or inequitably
15 received by Defendants traceable to Plaintiff and the Classes from which Plaintiff and the other
16 Class members may make claims for restitution.

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1 **REQUEST FOR RELIEF**

2 WHEREFORE, Plaintiff requests that the Court declare, adjudge and decree the following:

3 A. That this action may be maintained as a class action pursuant to Rule (b)(2) of the
4 Federal Rules of Civil Procedure with respect to Plaintiffs' claims for declaratory, equitable and
5 injunctive relief, and Rule (b)(3) of the Federal Rules of Civil Procedure with respect to the claims
6 for damages and other monetary relief, and naming Plaintiff as representative of the Classes and his
7 counsel as counsel for the Classes;

8 B. That the conduct alleged herein constitutes an unlawful contract, combination or
9 conspiracy to restrain trade and fix and maintain prices in violation of § 1 of the Sherman Act, of
10 the state antitrust and unfair deceptive acts and practices statutes set forth herein, and the common
11 law of unjust enrichment;

12 C. That Plaintiff and the Classes are entitled to any additional damages, penalties and
13 other monetary relief provided by applicable law, including treble damages;

14 D. That Defendants disgorge money illegally obtained from the Classes as a result of
15 their unlawful activities and that members of the Classes are entitled to restitution;

16 E. That Plaintiff and each member of the Classes are entitled to the amounts by which
17 the Defendants have been unjustly enriched;

18 F. That Defendants are enjoined from continuing the illegal activities alleged herein;

19 G. That Plaintiff and the Classes recover their costs of suit, including reasonable
20 attorneys' fees and expenses as provided by law; and

21 H. That Plaintiff and the Classes are granted such other, further, and different relief as
22 the nature of the case may require or as may be determined to be just, equitable, and proper by this
23 Court.

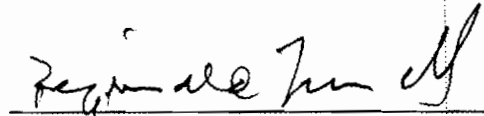
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JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

DATED: 6/22/06

THE TERRELL LAW GROUP
REGINALD TERRELL



223 25TH Street
Richmond, CA 94804