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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DMR

CARLTON DOUGLAS RIDENHOUR, d/b/a "CHUCK D", INDIVIDUALLY AND AS A MEMBER OF "PUBLIC ENEMY", ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED, Plaintiff, v. UMG RECORDINGS, INC. a Delaware Corporation. Defendant.	CASE NO. CV 11 5321 **CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiff Carlton Douglas Ridenhour (d/b/a "Chuck D"), individually and as a member of the hip-hop group "Public Enemy," individually and on behalf all those similarly situated, alleges upon personal knowledge as to himself and his own acts, and upon information and belief as to all other matters, based upon, *inter alia*, the investigation made by and through his attorneys, as follows:

I. NATURE OF THE ACTION

1. Plaintiff brings this nationwide class action for breach of contract and statutory violations of California and/or New York law against defendant UMG Recordings, Inc., a Delaware corporation with its headquarters in the State of California that undertakes significant business activity in this District, and its divisions, related and affiliated entities, owned and distributed record labels, and predecessors in interest, including, but not limited to The Island Def Jam Motown Music Group, Universal Music Group Nashville, Universal Republic Records, Interscope-Geffen-A&M, Universal Music Latin Entertainment, Decca Label Group, Universal Music Enterprises, V2/Co-Operative Music, The Verve Music Group, Show-Dog-Universal Music, Universal Music UK, and Fontana Distribution (collectively, "UMG"), for UMG's failure to properly account to Plaintiff and the Class for royalties stemming from the leasing and/or licensing of Plaintiff and Class members' musical performances or recordings produced by them that were sold by "Music Download Providers" and "Ringtone Providers" (collectively referred to herein as "Digital Content Providers") through digital download and distribution.

2. Plaintiff seeks monetary damages, injunctive, and/or declaratory relief against UMG for UMG's willful violation of contracts between itself and recording artists and/or music producers through which UMG obtained recording artists' and producers' master recordings in exchange for the payment of certain royalties to these artists and producers (hereinafter "Standard Recording Agreements"). UMG has unilaterally breached these contracts, however, by deciding to pay its recording artists and producers a fraction of the actual amount owed to them for the leasing and/or licensing (hereinafter "licensing") of master recordings to Digital Content Providers.

3. On information and belief, UMG has entered into licensing agreements with Digital Content Providers whereby these Providers are permitted to sell UMG's catalogue of master recordings (including those made and/or produced by Plaintiff and Class members under its Standard Recording Agreements) to end users via digital distribution.

4. On information and belief, under its licensing agreements with Music Download Providers, UMG receives approximately seventy percent (70%) for every licensed, digital download sold by the Music Download Provider to an end user.

5. On information and belief, under its licensing agreements with Ringtone Providers, UMG receives approximately fifty percent (50%) of the retail sale price of every licensed, digital download sold by the Ringtone Provider to an end user.

6. Under the Standard Recording Agreements at issue in this case, when UMG licenses master recordings produced under these agreements to third parties, UMG is required to pay its recording artists and producers a royalty equivalent to fifty percent (50%) of all net receipts received by UMG from these third party-licensees (hereinafter "Royalty Provisions"). The Royalty Provisions apply to master recordings licensed by UMG to Digital Content Providers for their sale through digital distribution.

7. Rather than paying its recording artists and producers half of the net receipts it received (and continues to receive) from Digital Content Providers, however, UMG wrongfully treats each such digital download as a "sale" of a physical phonorecord (i.e., an LP, EP, CD, or cassette tape) through its "Normal Retail Channels," which are governed by much lower royalty provisions in UMG's Standard Recording Agreements. In doing so, based on information and belief, UMG has:

(a) Failed to properly account for and pay Plaintiff and other Class members moneys owed from the licensing of master recordings to Digital Content Providers;

(b) Underreported the actual number of digital downloads that occur by treating downloads as sales of physical product that might be returned;

(c) Deducted, without authorization or legal authority, container/packaging deductions when no such deductions are applicable to digital downloads; and/or

(d) Reduced its royalty payments by improperly taking "audiophile deductions."[1]

8. In addition, UMG illegally withholds a certain percentage of royalties owed to Plaintiff and Class members as "reserves." These reserves are meant to offset losses related to the return of unsold records; however, digital downloads are incapable of being returned, as there is no physical product to return.

9. During the applicable Class Period, UMG has, in a wide-spread, calculated manner, violated the Royalty Provisions of its Standard Recording Agreements with Plaintiff and Class members by (a) failing to make proper royalty payments to Plaintiff and Class members and/or (b) failing to properly credit Plaintiff and Class members' royalty accounts. As a result of UMG's ongoing breach of the Royalty Provisions, Plaintiff and Class members have suffered hundreds of millions of dollars in damages.

10. The conclusion that UMG has acted improperly follows from the Ninth Circuit Court of Appeals ruling on September 3, 2010 that UMG and one of its owned and distributed record labels, Aftermath Records, failed as a matter of law to properly account for and pay such income to its royalty participants. The ruling of the Ninth Circuit in that case became final when the U.S. Supreme Court recently declined review. *See F.B.T. Productions, Inc. v. Aftermath Records,* 621 F.3d 958 (9th Cir. Sept. 3, 2010), *cert. denied,* 79 U.S.L.W. 3370 (March 21, 2011) (hereinafter "*F.B.T. Productions*").

11. In holding that UMG's agreements with "iTunes [the market leader in the digital downloads of recorded music], cellular phone carriers [primarily Sprint, Verizon, and AT&T] and other third parties to use its sound recordings to produce and sell permanent downloads and mastertones . . . ***qualify as licenses***" (*id.* at 964) (emphasis added), the Ninth Circuit found that the

[1] Audiophile records are those marketed in specially priced catalog series by reason of their superior sound quality or other distinctive technical characteristics.

agreements at issue unambiguously provided for much higher royalty payments than UMG had previously paid and rejected UMG's arguments to the contrary.

12. As in *F.B.T. Productions*, Plaintiff alleges here that the digital download income received by UMG from Music Download Providers and Ringtone Providers are based on "leases" or "licenses," and not "sales," as those terms are defined in UMG's Standard Recording Agreements with these Providers. As such, just as in *F.B.T. Productions*, UMG has not properly accounted for the appropriate amount of royalties owed to Plaintiff and Class members. By this lawsuit, Plaintiff seeks to compel UMG to account to and pay all of its recording artists and music producers their rightful share of the licensing income paid to UMG for digital downloads.

13. Accordingly, Plaintiff seeks damages on behalf of himself and the Class, as well as an accounting and judgment declaring the proper method of calculating payments of royalties or crediting royalty accounts with respect to the licensing of master recordings to third-party Digital Content Providers. Further, Plaintiff requests that this Court order UMG to adhere to the proper methodology for calculation of such royalties in the future.

II. THE PARTIES

A. Plaintiff

14. Plaintiff, Carlton Douglas Ridenhour, d/b/a "Chuck D," is a musician, song writer, recording artist, and performing artist who resides in the State of California.

15. Mr. Ridenhour is best known for being one of the founding members of the hip-hop group Public Enemy. Public Enemy's style has been described by music critics as containing "elements of free jazz, hard funk, even musique concrete . . . creating a dense, ferocious sound unlike anything that came before." In 2004, Rolling Stone Magazine ranked Public Enemy number forty-four on its list of the "Immortals: 100 Greatest Artists of All Time," and in 2007, Public Enemy was inducted into the Long Island Music Hall of Fame.

16. Public Enemy is best known for politically-charged hits like, "Fight the Power," "Bring the Noise," "911 is a Joke," "Don't Believe the Hype," and "By the Time I get to Arizona."

"Fight the Power" was named the greatest hip-hop song of all time by VH1 and the 80th best song of all time by Acclaimed Music.

B. Defendant

17. Defendant, UMG Recordings, Inc., ("UMG") is a Delaware corporation with its headquarters in the State of California. At all relevant times, UMG was and continues to be in the business of exploiting the sound recordings of musical performances and the audio-visual recordings of such performances. UMG's exploitation includes, but is not limited to, producing, manufacturing, distributing, licensing, and selling these recordings.

18. UMG holds, and exploits, the largest music catalog in the world. UMG's catalog includes some of the best selling artists of the 20th Century, including many legacy artists, such as: ABBA, Louis Armstrong, Chuck Berry, James Brown, The Carpenters, Eric Clapton, Patsy Cline, John Coltrane, The Commodores, Bing Crosby, Count Basie, Bo Diddley, Bill Evans, Ella Fitzgerald, The Four Tops, Judy Garland, Marvin Gaye, Jimi Hendrix, Billie Holiday, Buddy Holly, The Jackson Five, The Mamas & The Papas, Bob Marley, Nirvana, The Police, Smokey Robinson, Cat Stevens, Rod Stewart, Sublime, The Supremes, The Temptations, Conway Twitty, Muddy Waters, Hank Williams, and The Who.

19. UMG has at least twelve major divisions/labels:

(a) Interscope-Geffen-A&M;

(b) The Island Def Jam Motown Music Group;

(c) Universal Republic Records;

(d) Universal Music Group Nashville;

(e) Universal Music Latin Entertainment;

(f) The Verve Music Group;

(g) Decca Label Group;

(h) Universal Music Enterprises;

(i) V2/Co-Operative Music;

(j) Fontana Distribution;

(k) Show Dog-Universal Music; and

(l) Universal Music UK

20. These major divisions are further subdivided into at least 33 smaller divisions/labels.

21. The Island Def Jam Motown Music Group is one of three UMG divisions in North America to market the works of primarily mainstream pop, rock, and urban performers (the others are Interscope-Geffen-A&M and the Universal Republic Records). The Island Def Jam Motown Music Group was formed in 1999 when UMG merged two divisions - Island Records and, Def Jam Recordings - into a single division.

22. Def Jam Recordings, Inc ("Def Jam") was founded in 1984 and became part of UMG in 1998. Def Jam Recordings currently operates under UMG's Island Def Jam Motown Music Group. UMG handles royalty payments for Def Jam's recording artists.

III. JURISDICTION AND VENUE

23. Personal jurisdiction exists in this Court pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2).

24. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) & (c).

IV. SUBSTANTIVE ALLEGATIONS

A. Music Download Services

25. "Music Download Services" allow consumers to purchase and download digital versions of master recordings directly to their computers or other electronic storage devices ("Music Downloads"). There is no physical packaging and returns are not permitted. However, Music Downloads often have various restrictions in place to prevent the consumer from copying and/or sharing the Music Download with others. Oftentimes, these restrictions are enforced through a Digital Rights Management system ("DRM") that encrypts the content. Music Download Services are offered by "Music Download Providers."

26. On information and belief, in order to allow users to purchase digital copies of the master recordings owned by record labels, Music Download Providers have signed *licensing*

agreements with UMG and other record labels. Depending on the licensing agreement with the record label, Music Download Providers generally either: (a) charge a flat, per-download fee to end users; or (b) operate as a subscription service, allowing consumers to access digital copies of the master recordings for a set monthly fee for as long as they continue paying the monthly subscription charge. Some providers offer both options. UMG appears to generally provide licensing royalty rates for streaming services but provides sales royalty rates for downloads.

27. The first, commercially-successful Music Download Provider, Ritmoteca.com, was founded in or around 1999. Ritmoteca.com, signed "licensing" agreements with UMG, Sony Music Entertainment, Bertelsmann Music Group, and Warner Music Group between 1999 and 2000. These licensing agreements allowed Ritmoteca to offer its customers 300,000 tracks for download at prices between 99¢ and $1.99 per track, or $9.99 per album. Ritmoteca folded during the dot-com bust in April 2000.

28. Shortly thereafter, in or around 2001, other music download services were developed by both the major record labels and by independent companies. UMG's own attempt at a music download service, "Pressplay," was largely unsuccessful due to its high prices, tight restrictions, and competition with illegal downloading sites.

29. When Apple launched its iTunes Store in April 2003, and offered "legal" Music Downloads for, on average, 99¢ per track or $9.99 per album, the popularity of digital downloads began to grow exponentially. On February 24, 2010, total music downloads from the iTunes Store reached ten billion tracks. Today, the iTunes Store accounts for roughly two-thirds of all Music Downloads. The iTunes store generated $1.4 billion in revenue for Apple in the second quarter of 2011, up from $1.1 billion in the second quarter of 2010.

30. Beside the iTunes Store, many Music Download Providers have signed licensing deals with UMG and other record labels to offer Music Downloads to consumers. These providers include, but are not limited to, Amazon.com, Buy.com, Liquid Digital Media (walmart.com), Napster, Rhapsody, Microsoft's Zune Marketplace, and eMusic. In fact, the International Federation of the Phonographic Industry ("IFPI"), a worldwide representative of the record

industry, estimates that record labels had "licensed" roughly thirteen million tracks of music to over four hundred Music Download Providers by 2010.

31. Licensing of master recordings to Music Download Providers has become highly lucrative for record labels like UMG. It is estimated that the licensing of master recordings generated $4.6 billion in worldwide revenue for record labels in 2010 alone, or roughly 29% of their total revenue. In the United States, Music Downloads account for roughly half of record labels' revenues; revenue from Music Downloads is expected to surpass revenue from physical album sales by 2012.

32. UMG is part of the "Big 4" group of record labels (UMG, EMI, Warner Music Group, and Sony BMG Music Entertainment). These labels license 80% of the Music Downloads sold by Music Download Providers to end users in the United States. Neilson Soundscan estimates that UMG controls roughly 32% of all digital downloads in the United States.

33. Music Download Providers have obtained licenses from UMG that authorize these providers to sell or otherwise distribute, via digital download, UMG's catalog of master recordings, including Plaintiff's recordings as described herein.

34. On information and belief, under its licensing agreements with Music Download Providers, UMG does not manufacture or warehouse any physical product or packaging, nor does it ship or sell any product to stores or other distribution points, and faces no risk of breakage or the return of unsold product. Rather, as the Ninth Circuit held in *F.B.T. Productions*, UMG is "licensing" its catalog of recordings to Music Download Providers for sale or distribution via digital download by consumers.

35. The prevalence of Music Download sales by Music Download Providers means that UMG's continued and improper accounting of royalties owed to Plaintiff and Class members has deprived Plaintiff and Class members of hundreds of millions of dollars in royalties.

B. Master Ringtones

36. Ringtones that are a portion/clip of an artist's actual sound recording (rather than an electronic reproduction, e.g., MIDI) that are played on a mobile phone when someone is calling, texting, or otherwise trying to contact the mobile phone operator are known as "Mastertones."

37. Mastertones are sold to consumers by "Ringtone Providers." Mastertones range in price between $1.00 and $3.00 per ringtone. Ringtone Providers include, but are not limited to, mobile phone companies (including, but not limited to, AT&T Wireless, Verizon Wireless, Sprint, and T-Mobile), content owners (including, but not limited to MTV and VH1), and third-party aggregators (including, but not limited to, Zed, Hudson Soft, Jamster and iTunes). In general, consumers purchase and download Mastertones directly from their mobile phones.

38. On information and belief, in order to sell Mastertones to consumers, Ringtone Providers have entered into license agreements with UMG and other record labels that authorize Ringtone Providers to use those labels' master recordings to produce Mastertones for sale to consumers. In return, the Ringtone Providers pay the record labels approximately fifty percent (50%) of the retail sales price of the Mastertone.

39. Record labels have made billions of dollars from their licensing agreements with Ringtone Providers. Globally, Mastertone sales reach roughly $4 billion in 2004. In the United States, Mastertone sales reached $714 million in 2007 and $541 million in 2008.

40. Ringtone Providers continue to sell Mastertones and to enter into license agreements with record labels. Apple entered into a license agreement with record labels that enabled them to sell Mastertones in around September 2009. Currently, Mastertones are available on the iTunes Store for between 0.99¢ and $1.29 per download.

41. Mastertones continue to play an important role in record label's revenue stream as well. The Recording Industry Association of America ("RIAA") has added its Gold and Platinum recognition program to Mastertone sales. In 2006, the RIAA awarded Gold Status (500,000 downloads) to 84 Mastertones, Platinum Status (1,000,000 downloads) to 40 Mastertones, and

Multi-Platinum Status (increments of 1,000,000 downloads over 1,000,000 downloads) to 4 Mastertones.

42. On information and belief, under its licensing agreements with Ringtone Providers, UMG does not manufacture or warehouse any physical product or packaging, nor does it ship or sell any product to stores or other distribution points, and faces no risk of breakage or the return of unsold product. Rather, UMG is licensing its catalog of master recordings to Ringtone Providers for sale or distribution by them via digital download to consumers.

43. The lucrative sales of Mastertones by Ringtone Providers means that UMG's continued, improper accounting of royalties owed to Plaintiff and Class members has deprived Plaintiff and the Class of hundreds of millions of dollars in royalties.

44. The agreements between Digital Content Providers and UMG that allow these providers to distribute UMG's master recordings for sale through digital downloads are "licenses" or "leases" and subject to the royalty provisions for such clauses.

C. UMG's Standard Recording Agreements

45. UMG and its predecessors in interest have entered into Standard Recording Agreements with musical artists and producers whose musical performances UMG intended to commercially exploit. Under these Standard Recording Agreements, the artists and producers promised to make certain master recordings for UMG and to transfer title to these master recordings so that UMG could engage in commercial exploitation of these recordings. In return, UMG promised to pay the recording artists and producers certain royalties.

46. Specifically, under UMG's Standard Recording Agreements, the artists and producers are entitled to the payment of royalties as either (a) actual payments, or (b) credits against advances paid by UMG to the artist and/or producer until such advances are recouped, after which time, UMG is required to pay royalties to the artist and/or producer.

47. UMG's Standard Recording Agreements set forth and govern the calculation, distribution, and payment of royalties by UMG to each Class member. On information and belief, these royalties are computed electronically through various software programs that UMG controls

and maintains. Thus, the ability to calculate the amount owed to Plaintiff and Class members is a matter of simple calculations through adjustment of these software programs.

48. In accordance with industry practice, UMG's Standard Recording Agreements set forth the same, or substantially the same, two equations for all Class members. The royalties owed to these artists and performers equals the sum of two equations:

a. Royalties for phonorecords **sold** by UMG and its affiliates in the United States and abroad ("sold equation"); and

b. Royalties for master recordings **licensed** by UMG to third parties ("licensed equation").

49. These equations were invariably drafted by UMG and its predecessors in interest and were non-negotiable terms of its Standard Recording Agreements. While UMG's recording agreements may have varied slightly in non-material ways, every recording agreement that is part of this Class has these standard equations.

50. UMG's Standard Recording Agreements provided a significantly higher percentage of royalties under the licensed equation than under the sold equation. In general, the sold equation provides for royalties of between ten and thirty percent (depending on the popularity of the artist; i.e., the more popular, the higher the royalty rate) while the licensed equation generally provides for royalties of fifty percent of net receipts. Under both equations, the royalties owed are computed after certain deductions are taken by UMG. Again, these deductions are all calculated electronically and a matter of simple inputs into UMG's standardized software programs.

51. The sold equations in UMG's Standard Recording Agreements provide for substantially more deductions than those found in the licensed equation. For example, such deductions typically include:

(a) A "Net Sales Deduction;"

(b) A "Container Charge" deduction, depending on the type of phonorecord sold; and/or

(c) An "Audiophile Deduction."

52. As a result, a recording artist or producer is paid a significantly lower percentage of the total money received by UMG for its commercial exploitation of the artist or producer's master recordings under the sold equation than under the licensed equation given the additional costs to UMG for selling and marketing those recordings.

D. Public Enemy's Contracts

53. On or about September 15, 1986, Mr. Ridenhour and Mr. William J. Drayton (also known as "Flavor Flav"), together known and performing as "Public Enemy," entered into an agreement with Def Jam Recordings ("Def Jam"). This agreement is referred to herein as the "1986 Agreement."

54. Mr. James Boxley was added to Public Enemy, and the parties formed a New York corporation, "Bring the Noize, Inc." ("BTN") to represent the interests of Public Enemy in its subsequent dealings with Def Jam. BTN was later dissolved.

55. On or about April 15, 1992, the 1986 Agreement was amended by the parties. This agreement is referred to herein as the "1992 Agreement." The parties to this contract were Def Jam and BTN. In general, the 1992 Agreement increased the royalty percentages for record "sales" but kept intact the royalty provisions regarding the licensing of master recordings by Def Jam.

56. On or about November 30, 1998, Mr. Ridenhour, Mr. Drayton, and Mr. Boxley, as successors in interest to BTN, signed a Termination Amendment with Def Jam. In pertinent part, paragraph 3 of this Termination Amendment provided:

> Except as otherwise provided herein, nothing contained in this Termination Amendment shall affect your obligations regarding masters recorded and/or assigned to Company under the Recording Agreement which survive the expiration of the Term of the Recording Agreement (e.g., representations, warranties, re-recording restrictions, etc.), or Company's obligations which survive the expiration of the term of the Recording Agreement (e.g., Company's obligation to account and pay royalties to you with respect to such masters).

57. As such, the Royalty Provisions of the 1992 Agreement remained in full force even after the Termination Amendment was signed by Mr. Ridenhour and the other parties to the 1992

Agreement. Def Jam (and later UMG) continued to sell, license, and exploit Public Enemy's recordings under this provision.

58. In or around 1998, UMG acquired Def Jam. As a result, UMG acquired the rights to the master recordings for the following seven albums recorded by Mr. Ridenhour and Public Enemy:

(a) *Yo! Bum Rush the Show* (Def Jam - 1987)

(b) *It Takes a Nation of Millions to Hold Us Back* (Def Jam - 1988)

(c) *Fear of a Black Planet* (Def Jam - 1990)

(d) *Apocalypse 91 . . . The Enemy Strikes Back* (Def Jam - 1991)

(e) *Greatest Misses* (Def Jam - 1992)

(f) *Muse Sick-n-Hour Mess Age* (Polygram - 1994)

(g) *He Got Game* (Def Jam – 1998)

59. In addition, UMG assumed all of Def Jam's contractual obligations, including Def Jam's royalty obligations to Plaintiff under the 1986 and 1992 Agreements.

60. Subtitle 9 of the 1986 and 1992 Agreements governs the payment of royalties for the "sale" and the "leasing" (or licensing) of the sound recordings produced for Def Jam/UMG by Mr. Ridenhour while Subtitle 11 of the 1986 and 1992 Agreements requires Def Jam/UMG to render accurate and complete royalty accounting statements and to properly and accurately account for and credit Mr. Ridenhour for royalties generated by the sale and/or licensing of sound recordings.

61. With regard to royalties for "sales," clause 9.01 of the 1992 Agreement provides:

> DEF JAM will pay you a royalty computed at the applicable percentage, indicated below, of the applicable Royalty Base Price in respect of Net Sales of Phonographic Records (other than audiovisual records) consisting entirely of Master Recordings recorded under this agreement during the respective Contract Periods specified below and sold by DEF JAM or its Licensees Through Normal Retail Channels ('NRC Net Sales').

62. Clause 9.01 in the 1992 Agreement is further subdivided into the following categories of sales:

(a) "Albums Sold For Distribution In The United States"

(b) "Albums Sold For Distribution Outside The United States"

(c) "Singles Sold For Distribution In The United States"

(d) "Singles Sold For Distribution Outside The United States"

(e) "Twelve-Inch Singles Sold For Distribution In The United States"

(f) "Twelve-Inch Singles Sold For Distribution Outside The United States"

63. In comparison, clause 9.03 of the 1986 and 1992 Agreements provides for the royalties owed for "leases" of master recordings for distribution in the United States (hereinafter the "Master Lease/License provision"). This provision was not changed in any material way between the 1986 and the 1992 Agreements (e.g., "DEF JAM" was substituted for "Company" in the 1992 Agreement). The Master Lease/License provision of the 1992 Agreement provides:

> In respect of any Master Recording leased by DEF JAM to others for their distribution of Phonograph Records in the United States, DEF JAM will pay you fifty percent (50%) of DEF JAM's net receipts from its Licensee.

64. Although the Master Lease/License provision use the term "leases," it is clear from the plain language of the contract that the parties intended this clause to govern the licensing of master recordings by Def Jam (and its predecessor in interest, UMG) to third parties for at least the forgoing reasons:

(a) Rather than referring to the third party distributor as a "Lessee," the Master Lease/License provision refers to the third party receiving the right to distribute the master recording as a "Licensee."

(b) Clause 9.05 of the 1992 Agreement and its parallel in the 1986 Agreement, Clause 9.06, applies to "Phonographic Records derived from Master Recordings leased or otherwise furnished." If the parties had intended "lease" to have a meaning different and apart from "license," they would have omitted the "otherwise furnished" language in these clauses.

(c) On information and belief, Def Jam and UMG have treated the term "lease" as synonymous with the term "license."

65. Moreover, if this provision was not meant to apply to licenses, then Def Jam and UMG would never have had the right to license Public Enemy's music to any Digital Content Providers.

E. UMG Has Licensed its Master Recordings to Digital Download Services and Should Pay License Royalty Rates to Artists

66. UMG's Standard Recording Agreement provides that where UMG leases/licenses master recordings to third parties for the third party's distribution of phonographic records, UMG will pay the recording artist or producer whose master was licensed fifty percent of its net receipts from the third party.

67. On information and belief, UMG has entered into contracts with Digital Content Providers that allow these providers to digitally distribute all or some of UMG's catalog of master recordings to end-users. In exchange, these Providers generally pay UMG a flat rate or fixed percentage per digital download (typically $.70 on a $.99 download).

68. These Digital Content Providers include, but are not limited to, the following entities:

(a) Apple (iTunes Store);

(b) Amazon.com;

(c) Buy.com;

(d) Liquid Digital Media (walmart.com);

(e) Napster;

(f) Rhapsody;

(g) Microsoft (Zune Marketplace);

(h) eMusic;

(i) Verizon Wireless;

(j) AT&T Wireless;

(k) Sprint;

(l) T-Mobile;

(m) MTV;

(n) VH1;

(o) Zed;

(p) Hudson Soft; and

(q) Jamster.

69. As discussed herein, UMG's agreements with these Digital Content Providers constitute licenses and not sales. As such, under UMG's Standard Recording Agreement, UMG is required to pay Plaintiff and Class members 50% of its net receipts from these Digital Content Providers.

70. In breach of its contractual obligations under its Standard Recording Agreement, however, UMG has treated its transactions with Digital Content Providers as "sales" rather than "licenses." In so doing, UMG has applied the incorrect formula for calculating royalties owed to Plaintiff and Class, taking unjustifiable deductions (including, but not limited to, the Net Sales Deduction, the Container Charge deduction, and the Audiophile Deduction), and applied a royalty percentage that is, in general, less than half of what it should be applying in its computation.

71. Plaintiff is informed and believes that, before violating its obligations to its royalty participants, UMG vetted the policies and practices at issue in this case at its highest corporate levels; that it commissioned, either on their own initiative or with the support of the U.S. music industry's principal trade organization, so-called "white papers" on the issue; that it analyzed internally the financial consequences of their misconduct and cast it in terms of the additional profit to be made by them by avoiding their contractual obligations; and that it repeatedly made public statements characterizing its agreements with digital music providers in the interest of its recording artists.

72. Plaintiff is also informed and believes that numerous artists have raised this issue to UMG in internal account audits and elsewhere and have made individual settlements involving digital download claims. UMG has never, however, offered to correct these royalty

miscalculations with its remaining artists. Thus, UMG knows that transactions through Digital Content Providers should be counted as licenses under its Standard Recording Agreements.

73. In general, the subdivisions in UMG's Standard Recording Agreement related to the computation of royalties for record/singles "sales," rely on "Net Sales" to determine the royalty amount owed to the artist. For example, Clause 14.08 of the 1986 and 1992 Public Enemy Agreements defines "Net Sales" as "eighty-five percent (85%) of gross sales, less returns, credits, and reserves against anticipated returns and credits." In comparison, Clause 9.03 of these agreements relies on "Net Receipts" to determine the royalties owed to the artist. The Master Lease/License provision defines "Net Receipts" as "receipts as computed after deductions of all copyright, AFM and other applicable third party payments actually made or incurred." Because digital downloads are incapable of being returned and the only costs associated with the digital distribution of master recordings by a third-party would be those contemplated by the "Net Receipts" definition, the agreements between UMG and Digital Content Providers are the type of transaction contemplated by UMG's Master Lease/License provisions.

74. The Master Lease/License provision in UMG's Standard Recording Agreement provides a higher royalty rate than retail sales because in cases where the record label "leases" or "licenses" the master recordings, the label is essentially acting as a conduit between the artist and a third party, and the label incurs none of the normal costs of goods sold, such as physical materials, distribution, advertising and promotion. Because the label incurs none of the traditional costs associated with physical distribution of records when it gives Digital Content Providers the right to sell digital copies of master recordings, these agreements fall within the types of situations contemplated by the parties when they agreed to the Master Lease/License provision.

75. Similarly, the "Royalty Base Price" in UMG's Standard Recoding Agreement is generally computed, in part, by deducting a "Container Charge." However, Container Charges are meant to compensate the record label for the physical packaging of a record, and as such, are inappropriate for digital downloads that neither have, nor require, physical packaging. Consequently, the Royalty Base Price is unascertainable for digital downloads and cannot apply.

76. The ordinary meaning of a license is the "permission to act," WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 1304 (2002), while a sale is (a) an actual transfer of title in a copy of the work or (b) the passing of all exclusive, intellectual property rights in a work. *See* 17 U.S.C. § 109 (describing (a)); *Quality King Distribs. V. L'anza Research Int'l*, 523 U.S. 135, 145 (1998) (describing (b)).

77. Based on the ordinary meanings of "license" and "sale," the Ninth Circuit found in *F.B.T. Productions* that the record labels "did not 'sell' anything to the download distributors. The download distributors did not obtain title to the digital files. The ownership of those files remained with [the label, which] reserved the right to regain possession of the files at anytime, and [the label] obtained recurring benefits in the form of payments based on the volume of downloads." The facts in this case are analogous, and as such, the ordinary meaning of these words supports a finding that these agreements were "leases" or "licenses" under the Master Lease/License provision and not "sales."

78. Under the first sale doctrine, after the first sale of a legally copyrighted work, the copyright holder no longer has a right to restrict or prevent subsequent sale of their work. Thus, purchasers are free to resell CDs and other physical music products that were lawfully purchased without obtaining the copyright holder's approval. The U.S. Copyright Office, however, has declined to extend this doctrine to digital media further arguing against these types of transactions as "sales" as opposed to "licenses."

79. Former Apple CEO, Steve Jobs, published a piece entitled "Thoughts on Music" on February 6, 2007 in which he stated, "Since Apple does not own or control any music itself, it must ***license*** the rights to distribute music from others, primarily the 'big four' music companies: Universal, Sony BMG, Warner, and EMI." (emphasis addded). Thus, the CEO of the largest Digital Download Provider in the world has characterized its agreement with UMG as a "license" and not a sale.

80. In its terms of service of the iTunes Store, Apple states that "Apple and its ***licensors*** reserve the right to change, suspend, remove, or disable access to any iTunes products,

content, or other materials." (emphasis added). Thus, Apple has explicitly acknowledged that it licenses content from third parties.

81. In a publicly available contract entered into by UMG and mp3.com on or around November 14, 2000, the parties stated, "This letter, when and if fully executed, will set forth the terms of the ***license agreement*** between UMG Recordings, Inc. and MP3.com, Inc., with respect to ***Universal licensing certain rights to MP3*** on the following terms." (emphasis added). Thus, UMG has explicitly acknowledged that it characterizes these types of contracts as licensing agreements and not sales.

82. Upon information and belief, the Public Enemy Master Lease/License provision found in its 1986 and 1992 Agreements are, as relevant to the claims herein, the same or substantially similar to those found in other production and recording agreements across all or substantially all of UMG's owned and distributed record labels entered into by UMG and/or its predecessors in interest. Those agreements call for accountings and payments to recording artists and producers for licensing of masters as a percentage (usually 50%) of the net receipts of the label, rather than a lesser percentage as a royalty paid to the artist or producer based on the suggested retail list price of each unit sold.

F. UMG'S Failure to Provide a Proper Calculation of its Royalty Obligations Has Caused Substantial Damages to Plaintiff and Class

83. UMG's accounting practices, as shown below, have allowed UMG to illegally withhold a substantial amount of money it receives from Digital Content Providers at the expense of Plaintiff and the Class. In particular, many legacy artists living on fixed incomes are reliant on such royalty payments, which UMG has improperly calculated for over a decade.

84. For example, on information and belief, UMG is paying Plaintiff and other Class members roughly twenty-five percent of the royalties that it should be paying them for moneys received from Music Download Providers. A comparison of UMG's current, illegal methodology of accounting royalties owed for its licensing agreements with Music Download Providers and the methodology it should be employing follows:

UMG'S CURRENT METHOD OF CALCULATING MUSIC DOWNLOAD ROYALTIES	
1000 Singles Downloaded @ $.99/each	1000 units
Less Net Sales Deduction (15%)	(150 units)
Units Credited to Artist/Producer	850 units
Standard Amount Paid to UMG by Music Download Providers for $.99 Download	$.70/unit
UMG's Alleged Gross Revenues (850 units x $.70/unit)	$595.00
Less Container Charge for Audiophile Records (25%)	(148.75)
Royalty Base Price	$446.25
Royalty Base Percentage for Singles Sold in the United States[2]	24%
Royalty Base Percentage Adjusted for Audiophile Deduction (25%)	18%
Royalty Owed to Artist/Producer	**$80.33**

CORRECT METHOD OF CALCULATING MUSIC DOWNLOAD ROYALTIES	
1000 Singles Downloaded @ $.99/each	1000 units
Standard Amount Paid to UMG by Music Download Providers	$.70/unit
UMG's Net Receipts for 1000 Units Downloaded @ $.99/each	$700.00
Less Mechanical Royalty Payments to Publishers Per Unit (Assuming 6.83¢/unit)[3]	($68.30)
UMG's Adjusted Net Receipts for 1000 Units Downloaded @ $1.00/each	$631.70
Royalty Base Percentage for Masters Licensed	50%
Royalty Owed to Artist/Producer	**$315.85**

85. In sum, UMG's inappropriate treatment of its agreements with Music Download Providers, in violation of its Standard Recording Agreements, has resulted in Plaintiff and Class members receiving approximately **$80.33** per one thousand downloads rather than the proper amount of **$315.85** per one thousand downloads.

86. Similarly, on information and belief, UMG has only paid Plaintiff and other Class members roughly seven and a half percent of the royalties actually owed from its licensing agreements with Ringtone Providers. A comparison of UMG's current, illegal methodology of accounting royalties owed for its licensing agreements with Ringtone Providers and the methodology it should be employing follows:

[2] This base percentage will vary by recording artist/producer. However, the equation, as discussed *supra*, remains constant.

[3] The Mechanical Royalty Rate for used in this chart is ¾ of the statutory mechanical royalty rate of 9.1¢/unit for permanent physical downloads, as this ¾ rate is generally used by UMG in its Standard Recording Agreements.

UMG'S CURRENT METHOD OF CALCULATING RINGTONE DOWNLOAD ROYALTIES	
1000 Ringtones Downloaded @ $3.00/each	1000 units
Less Net Sales Deduction for Club Operation (10%)	(100)
Units Credited to Artist/Producer	900
Alleged Amount Received by UMG by Ringtone Providers (50% of $3.00)	$1.50/unit
Less Mechanical Royalty Payments to Publishers Per Unit (Assuming $.18/unit)[4]	$1.32
UMG's Alleged Gross Revenues (850 units @ $1.32/unit)	$1,112.00
Less Container Charge for Audiophile Records (25%)	($280.50)
Royalty Base Price	$831.50
Royalty Percentage for Records Sold Through Club Operation	8%
Royalty Base Percentage Adjusted for Audiophile Deduction (25%)	6%
Royalty Owed to Artist/Producer	**$49.89**

CORRECT METHOD OF CALCULATING RINGTONE DOWNLOAD ROYALTIES	
1000 Ringtones Downloaded @ $3.00/each	1000
Standard Amount Received by UMG by Music Download Providers (50% of $3.00)	$1.50/unit
UMG's Net Receipts for 1000 Units Downloaded @ $1.50/each	$1,500.00
Less Mechanical Royalty Payments to Publishers Per Unit (Assuming $.18/unit)	($180.00)
UMG's Adjusted Net Receipts for 1000 Ringtones Downloaded @ $3.00/each	$1,320.00
Royalty Base Percentage for Masters Licensed/Leased	50%
Royalty Owed to Artist/Producer	**$660.00**

87. In sum, UMG's inappropriate treatment of its agreements with Ringtone Providers, in violation of its Standard Recording Agreements, has resulted in Plaintiff and other Class members receiving approximately **$49.89** per one thousand downloads rather than the proper amount of **$660.00** per one thousand downloads.

88. Thus, as a result of UMG's systematic violation of its contractual obligations to Plaintiff and other Class members to make proper royalty payments and to properly credit royalty accounts pursuant to its Standard Recording Agreement, UMG has caused substantial damages to Plaintiff and Class members, the exact amount of which will be determined at trial, but which likely equates to hundreds of millions of dollars if not more.

[4] The Mechanical Royalty Rate used in this chart is ¾ of the statutory mechanical royalty rate of 24¢/unit for ringtones, as this ¾ rate is generally used by UMG in its Standard Recording Agreements.

89. At all relevant times, UMG has had a duty and obligation under its recording agreements with Plaintiff and other Class members to properly and accurately account for moneys received by UMG from Digital Content Providers, to which UMG had licensed the master recordings of Plaintiff and Class. Rather than fulfilling its contractual obligations, however, UMG has systematically, knowingly, and intentionally miscalculated the royalties due to Plaintiff and the other Class members. As a result, UMG has under credited and/or underpaid each and every Class member, while also deriving substantial financial benefits from its leasing/licensing of these master recordings.

V. CLASS ACTION ALLEGATIONS

90. Plaintiff brings this class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b) on their own behalf and on behalf of:

> All persons and entities, their agents, successors in interest, assigns, heirs executors and administrators who are or were parties to UMG recording agreements containing "Master Lease/License" provisions or their equivalent, through which such persons, either directly or indirectly, received royalties on, or financial credits or adjustments for, income received by UMG for the commercial exploitation of master recordings through UMG's leasing and/or licensing of said master recordings to Digital Content Providers, at a rate less than the rate provided for in their contract with UMG.

91. The following Persons shall be excluded from the Class: (1) UMG and its subsidiaries, affiliates, officers and employees; (2) all persons who make a timely election to be excluded from the proposed Class; (3) governmental entities; and (4) the judge(s) to whom this case is assigned and any immediate family members thereof.

92. Plaintiff reserves the right to re-define the Class prior to certification.

93. This action is properly maintainable as a class action.

94. The Class for whose benefit this action is brought is so numerous that joinder of all Class members is impracticable. While Plaintiff does not presently know the exact number of Class members, Plaintiff is informed and believes that there are tens of thousands of Class members, and that those Class members can only be determined and identified through Defendant's files and, if necessary, other appropriate discovery.

95. There are questions of law and fact which are common to Class members and which predominate over any questions affecting only individual members of the Class. These common questions include:

(a) Whether UMG violated its recording agreements by, *inter alia*, mischaracterizing the money it received from Digital Content Providers as "sales" income rather than "license" income in violation of the recording agreements;

(b) Whether UMG benefited financially from its wrongful acts;

(c) Whether UMG acted in a manner calculated to conceal the illegality of its actions from recording artists and music producers;

(d) Whether UMG will continue collecting licensing income from Digital Content Providers and misrepresent the royalties due for such licensing income to their recording artists and music producers despite knowing that such misrepresentation constitutes a breach of its artists' recording contract;

(e) Whether UMG, by way of the conduct alleged herein, must comply with California Code of Civil Procedure §§ 337, 337a and provide a proper accounting of the amounts owed to Plaintiff and other Class members;

(f) Whether UMG, by way of the conduct alleged herein, engaged in deceptive or unfair acts or practices in violation of California unfair trade practices laws including, but not limited to, California Business & Professions Code §§ 17200, *et seq.* for which Plaintiff and the other Class members are entitled to recover;

(g) Whether UMG, by way of the conduct alleged herein, engaged in deceptive acts or practices in violation of New York's unfair trade practices law including, but not limited to, New York General Business Law § 349, *et seq.*, for which Plaintiff and the other Class members are entitled to recover;

(h) Whether, assuming UMG intends to continue breaching its contractual obligations to Plaintiff and the other Class members, and/or to violate California and/or New York state statutory law, declaratory and injunctive relief is appropriate to curtail its conduct as alleged herein;

(i) Whether Plaintiff and the other Class members have been damaged by Defendant's actions or conduct; and

(j) The proper measure of damages.

96. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other Class members and Plaintiff has the same interests as the other Class members. Plaintiff has no interests that are antagonistic to, or in conflict with, the interests of the other members of the Class. Plaintiff is an adequate representative of the class and will fairly and adequately protect the interests of the Class.

97. The prosecution of separate actions by individual members of the Class could create a risk of inconsistent or varying adjudications with respect to individual members of the Class which could establish incompatible standards of conduct for Defendant or adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the members of the Class not parties to the adjudications.

98. Furthermore, as the damages suffered by some of the individual Class members may be relatively small, the expense and burden of individual litigation make it impracticable for the individual members of the Class to redress the wrongs done to them individually.

99. Plaintiff anticipates no unusual difficulties in the management of this litigation as a class action. Class members may be identified from UMG's records and such Class members may be notified of the pendency of this action by mail or by electronic means (like email), using techniques and a form of notice customarily used in class actions.

100. For the above reasons, a class action is superior to other available methods for the fair and efficient adjudication of this action.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Breach of Contract)

101. Plaintiff repeats and realleges each and every allegation as though fully set forth herein.

102. Plaintiff and Class members entered into a Standard Recording Agreement with UMG or one of its affiliates.

103. These Standard Recording Agreements contained the same or substantially similar terms relating to the treatment of licensing income for royalty accounting. By definition, such licensing income includes income derived from the licensing of recordings to Digital Content Providers.

104. Plaintiff and the other Class members have performed their obligations under these contracts by providing master recordings to UMG to exploit.

105. By reason of the foregoing, and other acts not presently known to Plaintiff and Class members, UMG has materially breached its contractual obligations under its pertinent Standard Recording Agreements between itself and Class members by failing to properly account and provide adequately royalty compensation to Plaintiff and Class members with regard to licensing of master recordings to Digital Content Providers. Further, UMG has disregarded the rights of Plaintiff and other Class members by breaching its contractual obligations.

106. On September 22, 2011, a representative for Plaintiff notified UMG that its improper calculation of royalties for digital downloads licensed to Music Download Providers and Ringtone Providers was in violation of the Plaintiff's recording agreements and its Standard Recording Contracts.

107. UMG has failed and refused to cure these breaches and continue to incorrectly calculate these royalties in violation of Plaintiff's and Class members' Standard Recording Agreements. Further, UMG has continued to disregard the rights of Plaintiff and the other Class members.

108. By reason of the foregoing, Plaintiff and the other Class members have been damaged in an amount to be determined at trial.

SECOND CAUSE OF ACTION

(Declaratory Judgment)

109. Plaintiff repeats and realleges each and every allegation as though fully set forth herein.

110. Pursuant to its Standard Recording Agreements, UMG is obligated to pay and/or credit Plaintiff and the other Class members a certain percentage of the income UMG derives from its licensing of master recordings, produced for UMG by Plaintiff and other Class members, to Digital Content Providers, but that UMG has failed to provide sufficient payment/credit to Plaintiff and other Class members by illegally mischaracterizing these licenses as sales.

111. Plaintiff and the other Class members have no adequate remedy at law.

112. By reason of the foregoing, there is a present controversy between Plaintiff and the other Class members, on the one hand, and UMG, on the other hand, with respect to which this Court should enter a declaratory judgment determining that the pertinent agreements obligate UMG to pay and/or credit Plaintiff and other Class members the percentage specified for licensing, rather than for sales, when UMG licenses such master recordings to Digital Content Providers.

THIRD CAUSE OF ACTION

(Common Counts - Open Book Account: California Code Civ. Proc. § 337a)

113. Plaintiff repeats and realleges each and every allegation as though fully set forth herein.

114. Pursuant to UMG's agreements with Plaintiff and the other Class members, UMG keeps, and at all relevant times has kept, open book accounts reflecting the debits and credits made to each Class member's account with UMG from inception. Plaintiff is informed and believes that

said open book accounts include entries reflecting income UMG has received, and continues to receive, from its license agreements with Digital Content Providers.

115. These book accounts constitute the principal records of the transactions between UMG and all Class members, including Plaintiff.

116. Plaintiff is informed and believes that said book accounts are, and at all relevant times were, created in the regular course of UMG's business and kept in a reasonably permanent form and manner.

117. UMG has become indebted to Plaintiff and the other Class members on said open book accounts in an amount equal to UMG's underpayment on the income UMG has received, and continue to receive, from its licensees for digital downloads.

118. As such, the outstanding balance owed by UMG to Plaintiff and the other Class members on said open book including a calculation of the amount of underpayment with respect to digital downloads, and can be determined by examining all of the debits and credits recorded for each account.

FOURTH CAUSE OF ACTION

(Violations of California's Unfair Competition Law:

California Business & Professions Code § 17200, *et seq.*)

119. Plaintiff repeats and realleges each and every allegation as though fully set forth herein.

120. California Business and Professions Code § 17200 prohibits any unlawful, unfair or fraudulent business acts or practices.

121. As detailed in this Complaint, UMG has violated the foregoing law, by engaging in unlawful and unfair business practices. UMG knowingly breached its contracts with Plaintiff and the other Class members. UMG either knew, should have known, or recklessly disregarded that the income it collected from Digital Content Providers was in connection with a license agreement, and as such, that the royalties payable to Plaintiff and the other Class members should have been accounted and paid for on this basis. Furthermore, failing to disclose the unlawful

nature of its conduct, and by employing such devices as are alleged above, as well as affirmatively representing their authority to collect and account for this income on such basis, had a tendency to mislead recording artists and producers.

122. The harm to Plaintiff and the other Class members resulting from UMG's deceptive and unlawful practices outweighs the utility, if any, of those practices. There is no possible economic justification for such conduct, and consequently, the gravity of the misconduct outweighs any possible economic justification offered by UMG.

123. UMG's illegal conduct, as described herein, is ongoing, continues to this date, and constitutes unfair and acts and practices within the meaning of Business & Professions Code § 17200, *et seq.*, as interpreted by the California State Courts.

124. Pursuant to California Business & Professions Code § 17203, Plaintiff and the other Class members are therefore entitled to

(a) An Order requiring UMG to cease the acts of unfair competition alleged herein;

(b) An Order enjoining UMG from continuing to account for royalties payable to Plaintiff and Class member in the manner it does for income derived from such licenses;

(c) Full restitution of all monies paid to and retained by UMG otherwise payable to Plaintiff and Class members, including, but not limited to, disgorgement pursuant to California Code of Civil Procedure § 384;

(d) Interest at the highest rate allowable by law; and

(e) The payment of Plaintiff's attorneys' fees and costs under, among other provisions of law, Cal. Code Civ. Proc. § 1021.5, or otherwise to the extent permitted by law.

<u>FIFTH CAUSE OF ACTION</u>

(Violations of New York's Unfair Competition Law:

New York General Business Law § 349)

125. Plaintiff repeats and realleges each and every allegation as though fully set forth herein.

126. UMG's acts and practices alleged herein constitute acts, uses, or employment by UMG and its agents of deceptive practices, fraud, false promises, misrepresentations, or the knowing concealment, suppression, or omission of material facts with the intent that others rely upon such concealment, suppression, or omission, in connection with the sale of merchandise, and with the subsequent performance, in violation of § 349 of New York's General Business Law, making deceptive and unfair acts and practices illegal.

127. An individual "injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful acts or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions." N.Y. Gen. Bus. Law § 349(a).

128. In breach of its recording contracts, as alleged herein, UMG has failed to properly account to Plaintiff and other Class members the actual amount of royalties due from UMG's licensing contracts with Digital Content Providers. The royalties actually paid to Plaintiff and others similarly situated are a small fraction of the amounts actually owed by UMG.

129. UMG's unfair and deceptive trade acts and practices have directly, foreseeably, and proximately caused damages and injury to Plaintiff and the other Class members and, unless enjoined, will cause further irreparable injury.

130. As a direct and proximate result of these violations of Section 349 of the General Business Law, Plaintiff and members of the Class have suffered compensable harm and are entitled to preliminary and permanent injunctive relief, and to recover actual damages, in an amount to be determined at trial, and costs and attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the other putative Class members, pray for judgment against UMG as follows:

(a) An order certifying the proposed Class, designating Plaintiff as the named representative of the Class, and designating the undersigned as Class Counsel;

(b) A declaration that UMG is financially responsible for notifying all Class members that the pertinent recording agreements obligate UMG to pay and/or credit Plaintiff and other Class members the percentage specified in their contracts for licensing, rather than for sales, and that UMG has been improperly accounting for such transactions;

(c) An injunction requiring UMG to abide by the express terms of its Standard Recording Agreements with regard to licensing/leasing of master recordings to Digital Content Providers;

(d) An award to Plaintiff and the Class of compensatory, exemplary, and/or statutory damages in an amount to be proven at trial;

(e) An award of attorneys' fees and costs, as allowed by law;

(f) An award of pre-judgment and post-judgment interest, as provided by law;

(g) For leave to amend the Complaint to conform to the evidence produced at trial; and

(h) Such other or further relief as may be appropriate under the law and the circumstances.

JURY TRIAL DEMANDED

Plaintiff, for himself and the class, hereby demands a trial by jury.

Dated: November 2, 2011

Respectfully Submitted,

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