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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GREGORY INGALLS and TONY HONG,
individually and on behalf of all others
similarly situated,

No. C 16-03533 WHA

Plaintiffs,

v.

SPOTIFY USA, INC., a Delaware
corporation, and DOES 1–10, inclusive,

**ORDER RE DECLARATION OF
GREGORY INGALLS**

Defendants.

On Monday, July 24, plaintiff Gregory Ingalls submitted a sworn declaration regarding his use of Spotify. Ingalls’ declaration states that although he cannot recall the specific songs he streamed in 2013 while he was signed up for Spotify Premium’s paid service, the list Spotify provided him “appear[s] to be consistent with what [he] can recall listening to back in 2013 on Spotify and in general.” He concludes that “while it is possible that he streamed those artists from July 8 to October 7 in 2013” — i.e. during the time he had a paid Spotify Premium subscription — “[he] either streamed them [1] during the free trial period, [2] on Spotify’s free service or [3] with the understanding that [he] was streaming them on Spotify’s free service” (Dkt. No. 98 ¶ 8).

Ingalls’ assertion that he may have streamed songs between July 8 and October 7 of 2013 “during the free trial period” is puzzling, as he elsewhere admits that his free trial period ended on July 7, 2013, and he began to pay for Spotify Premium on July 8, 2013 (*see, e.g.*, Dkt. No. 17


1 ¶ 39, amended complaint). Therefore, any songs streamed between July 8 and October 7 of 2013
2 could not have been streamed during his free trial.

3 Setting aside this particular contention, he offers two other explanations for his streaming
4 activity between July 8 and October 7 2013 — that he may have streamed songs on Spotify’s
5 free service or that if he did not stream these songs on the free service, he did so “with the
6 [mistaken] understanding that [he] was streaming them on Spotify’s free service.”

7 By **JULY 27 AT NOON**, Spotify shall submit a response to Ingalls’ declaration no longer
8 than **FIVE PAGES**. Spotify shall specifically address the likelihood that Ingalls could have
9 continued using Spotify Premium’s paid service under the mistaken impression that he was using
10 Spotify’s free service. In support of its response, Spotify may submit exhibits supported by a
11 declaration illustrating the differences between the appearance and functions of Spotify
12 Premium’s paid service, and Spotify’s free service.

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15 **IT IS SO ORDERED.**

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18 Dated: July 24, 2017.

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20 _____
21 WILLIAM ALSUP
22 UNITED STATES DISTRICT JUDGE
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