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8 CAN'T STOP PRODUCTIONS AND
9 SCORPIO MUSIC (BLACK SCORPIO) S.A.

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 SCORPIO MUSIC (BLACK SCORPIO)
13 S. A. and CAN'T STOP PRODUCTIONS,
14 INC.

Case No. '11CV1557 BTM RBB

15 Plaintiff,

COMPLAINT FOR DECLARATORY
RELIEF

16 vs.

17 VICTOR WILLIS

18 Defendant.
19 _____/

20 By this action, Plaintiffs Scorpio Music, S.A. and Can't Stop Productions, Inc., seek
21 a declaration of this Court that Defendant Victor Willis' attempt to exercise rights of
22 recapture pursuant to Section 203(a) of the United States Copyright Act (17 U. S. C. §
23 203(a)) is void and of no force or effect and in support thereof allege as follows:

24 The Parties

25 1. Plaintiff Scorpio Music (Black Scorpio), S.A. ("Scorpio Music") is a corporation
26 duly organized and existing under the laws of the nation of France and having as its
27 principal place of business at 92, Avenue Kleber, 75116 Paris, France. At all relevant

times Scorpio Music was, and continues to be a company engaged in the business of publishing and otherwise commercially exploiting musical compositions.

2. Plaintiff Can't Stop Productions, Inc. ("Can't Stop") is a corporation duly organized and existing under the laws of the State of New York and having its principal place of business at 1995 Broadway, 16th Floor, New York, New York 10023. At all relevant times Can't Stop, through its division, Can't Stop Music, was and continues to be a company engaged in the business of publishing and otherwise commercially exploiting musical compositions.

3. Defendant Victor Willis, upon information and belief, is a citizen of the State of California residing at 9115 Judicial Drive, No. 4521, San Diego, California

4. Plaintiff Can't Stop, at all relevant times was and continues to be the exclusive sub-publisher and administrator in the United States of musical compositions published and owned by Scorpio Music. In that capacity Can't Stop represents Scorpio Music in the commercial exploitation of Scorpio Music's musical compositions, including enforcing Scorpio Music's rights in those compositions.

Jurisdiction and Venue

5. The jurisdiction of this Court is based upon 28 U.S.C. Sections 1331 and 1338(a) in that the controversy arises under an Act of Congress relating to copyright; to wit, the copyright laws of the United States (17 U.S.C. Section 101 *et seq.*). This action, to the extent that it seeks declaratory relief, is also brought under 28 U.S.C. Section 2201 and Rule 57 of the Federal Rules of Civil Procedure.

6. Venue is proper under 28 U.S.C. Section 1391(b) in that defendant Willis resides in the City of San Diego, State of California.

The Facts

7. Between 1977 and 1979 defendant Willis entered into a series of agreements with Can't Stop which were denoted as "Adaptation Agreements" (the "Agreements")

8. Pursuant to the terms of the Agreements Can't Stop, acting on behalf of Scorpio Music, hired defendant to translate the lyrics of and/or create new lyrics for certain musical compositions which were owned and published in France by Scorpio Music.

9. Can't Stop instructed defendant Willis concerning what English lyrics it desired him to provide, and supervised defendant Willis' work in this regard by, among other things, providing him with, and paying for, the facilities in which he rendered his services.

10. Defendant Willis, in accordance with the terms of the Agreements, wrote and/or translated some, but not all of the English lyrics of these compositions.

11. Can't Stop thereupon assigned to Scorpio Music its rights in the lyrics provided by defendant Willis, and filed, on behalf of Scorpio Music, copyright registrations in the United States Library of Congress, Copyright Office, for the songs containing these lyrics.

12. The registrations credited defendant Willis as being one of several writers on each of the compositions.

13. Defendant Willis has received for more than thirty years, as compensation for his services and in accordance with the terms of the Agreements, a percentage of Can't Stop's receipts from the commercial exploitation of these compositions, which percentages range from 12% to 20% depending upon the composition.

1 Defendant Willis Wrongly Seeks to Terminate Copyright Ownership

2
3 14. In January 2011 defendant Willis served upon Can't Stop a "Notice of
4 Termination of Post 1977 Grants of Copyright on Certain Works of Victor Willis" (the
5 "Notice"). A true and exact copy of the Notice is attached hereto as Exhibit "A" and
6 incorporated herein by this reference.

7 15. The Notice purports to terminate the rights of, among others, Scorpio Music
8 and its agent, Can't Stop, in certain of the compositions (the "Compositions") which are
9 enumerated in Schedule A of the Notice.

10 16. The Notice incorrectly states that Defendant Willis is "the author of the
11 Works and the sole grantor of the rights under the Agreements," and wrongfully
12 suggests that the entire copyright in all the Compositions should be reassigned to him
13 at the expiration of the thirty- five year period set forth in the Copyright Law for songs in
14 which the grant of a transfer of copyright was allegedly executed by defendant Willis on
15 or after January 1, 1978.

16
17 Defendant Willis Refuses to Withdraw Notice Despite Can't Stop's
18 Response Setting Forth the Errors in His Position

19
20 17. Can't Stop responded to the Notice by writing to Defendant Willis' attorney
21 explaining that Defendant Willis had no legitimate right to seek the termination of Scorpio
22 Music's copyright ownership, and demanding that the Notice be withdrawn.

23 18. Defendant Willis, through his attorney, has refused to withdraw the Notice.

24 19. That refusal is contrary to the facts and the governing law.

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27. In addition to the Agreements establishing defendant Willis' "writer for hire" status, the circumstances pursuant to which defendant Willis rendered his services confirm that he functioned as an employee of Can't Stop.

28. Can't Stop, as part of its regular business of representing Scorpio Music in the United States, supervised and controlled the manner and means by which defendant Willis worked, including its location and duration, as well as the substance and meaning of the lyrics to be provided.

29. The Compositions, with some of the English lyrics provided by defendant Willis, appeared as parts of record albums (i.e., collective works), further qualifying defendant Willis' contribution to the Compositions as being works made for hire pursuant to the provisions of 17 U.S.C. Section 101(2).

30. Section 203(a) of the U. S. Copyright Act, under which Willis purports to exercise his rights, specifically excludes works made for hire.

Defendant Willis' Claim is Time-Barred

31. Defendant Willis entered into the Agreements more than thirty years ago.

32. During this period Can't Stop, pursuant to the terms of the Agreements, has paid him hundreds of thousands of dollars.

33. Equitable concepts such as laches and estoppel, as well as the relevant statute of limitations, preclude any attempt by defendant Willis to contest the validity of his status as a writer for hire.

1 Even If Defendant Willis Has Recapture Rights He Cannot Obtain a Greater
2 Proportion of the Copyright in the Compositions Than His Percentage Set Forth in the
3 Agreements

4 34. Upon information and belief, defendant Willis claims the right to recapture at
5 least half (i.e., fifty percent) of the copyrights in each of the Compositions.

6 35. Upon information and belief, defendant Willis ignores the existence of other
7 people listed as writers of the Compositions to claim that he, alone, wrote all of their lyrics.

8 36. Although, as noted above, defendant Willis has no right to any portion of the
9 copyrights, and the statute of limitations and equitable doctrines preclude him from
10 disputing authorship attribution, in the event it is found otherwise, defendant Willis'
11 maximum reversionary share of the copyright should be governed by, and be equal to, the
12 percentage of royalties set forth in the Agreements which defendant Willis received as his
13 compensation for services rendered.

14 37. The percentage referred to in paragraph 36, above, ranges from 12 to 20%.

15 Defendant Willis Cannot Terminate Existing Licenses and Derivative Works
16

17 38. Even if Willis is found to have the right to terminate his alleged copyright
18 transfer relating to the Compositions, he is precluded from terminating any licenses issued,
19 or derivative works authorized, by Plaintiffs, which existed prior to the termination of the
20 copyright assignment.

21
22 Claim

23 39. Plaintiff Can't Stop repeats and realleges each and every allegation set forth
24 in paragraphs 1 through 39 hereof with the same force and effect as if more fully set forth
25 herein.

40. In order to resolve this controversy, plaintiff Can't Stop requests, pursuant to 28 U.S.C. Section 2201 and, Rule 57 of the Federal Rules of Civil Procedure, that this Court declare the respective rights and duties of the parties in this matter and, in particular, that the Court (a) declare that the Notice is invalid, (b) that the Notice should be voided *ab initio*, and (c) that it be held that defendant Willis cannot recover any portion of the copyrights in the Compositions.

Declaration

41. An actual case and controversy exists sufficient for this Court to declare the rights and remedies of the parties in that there is a dispute between the parties concerning whether defendant Willis can terminate the rights of Can't Stop and Scorpio Music in the Compositions.

42. Plaintiffs Can't Stop and Scorpio Music have the requisite standing to request this declaration since they are the United States sub-publisher and worldwide publisher, respectively, of the Compositions, and Scorpio Music will lose a portion of its copyright ownership in the United States in the Compositions in the event that defendant Willis prevails.

43. This controversy is ripe for determination at this time because, according to the Copyright Law, ownership rights vested on the date the Notice was served and the termination of copyrights, absent a declaration by the Court to the contrary, will become effective beginning at the end of thirty-five years from the date of the Agreements. In the case of specific Compositions, the effective dates, depending on the particular Composition, begin in 2013.

44. The threat of the termination of a portion of the United States copyright in the Compositions casts a pall on the assets of the Compositions, diminishes their value, and complicates the ability of Can't Stop to commercially exploit them.

45. A decision on this issue is therefore needed as soon as possible.

46. Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs Can't Stop Productions, Inc. and Scorpio Music (Black Scorpio) S.A. pray that this Court:

a. Render a declaratory judgment providing that defendant Victor Willis has no right, title or interest in the copyrights to the Compositions;

b. Enter an order requiring defendant Willis to withdraw the Notice of Termination and submit to the United States Copyright Office whatever written document(s) it requires to effectuate such withdrawal, with copies to Plaintiffs;

c. Enter an order enjoining defendant Victor Willis, or any of his agents, licensees, representatives or assignees, from making any claims to the copyrights in the Compositions or in any other manner encumbering or restricting Can't Stop Productions, Inc.'s and Scorpio Music (Black Scorpio) S.A's rights in the Compositions.

d. In the alternative, and in the event defendant Willis is found to have a right to terminate the rights of Can't Stop Productions, Inc. and Scorpio Music (Black Scorpio) S.A. in the Compositions, that such reversion of rights to defendant Willis (i) be limited to the same percentage ownership as he receives as compensation relating to the Compositions and as set forth in the Agreements; and (ii) that defendant Willis be enjoined from terminating any licenses issued, or derivative works authorized, by Plaintiffs, which existed prior to the termination of the copyright assignment.

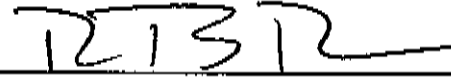
e. Award plaintiff Can't Stop Productions, Inc. and Scorpio Music (Black Scorpio) S.A. their costs and disbursements incurred in this suit, together with a reasonable allowance for counsel fees as provided by Section 505 of the Copyright Act, 17 U.S.C. Section 505.

1 f. Grant such other and further relief as the Court may deem just and proper.

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3 Dated: July 14, 2011

4 LAW OFFICES OF ROBERT S. BESSER

5
6 By



7 ROBERT S. BESSER

8 Attorneys for Plaintiffs, CAN'T STOP
9 PRODUCTIONS AND SCORPIO MUSIC
10 (BLACK SCORPIO) S.A.
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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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

SCORPIO MUSIC (BLACK SCORPIO) S.A. and CAN'T STOP PRODUCTIONS, INC.

(b) County of Residence of First Listed Plaintiff Paris, France
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

LAW OFFICES OF ROBERT S. BESSER (310) 394-6611
1221 Second Street, Third Floor, Santa Monica, CA 90401

DEFENDANTS

VICTOR WILLIS

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

'11CV1557 BTM RBB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 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)

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| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input 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 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. NATURE OF SUIT (Place an "X" in One Box Only)

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<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"/> 151 Medicare Act
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits
<input type="checkbox"/> 160 Stockholders' Suits
<input type="checkbox"/> 190 Other Contract
<input type="checkbox"/> 195 Contract Product Liability
<input type="checkbox"/> 196 Franchise | PERSONAL INJURY
<input type="checkbox"/> 310 Airplane
<input type="checkbox"/> 315 Airplane Product Liability
<input type="checkbox"/> 320 Assault, Libel & Slander
<input type="checkbox"/> 330 Federal Employers' Liability
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<input type="checkbox"/> 355 Motor Vehicle Product Liability
<input type="checkbox"/> 360 Other Personal Injury | PERSONAL INJURY
<input type="checkbox"/> 362 Personal Injury - Med. Malpractice
<input type="checkbox"/> 365 Personal Injury - Product Liability
<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY
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<input type="checkbox"/> 630 Liquor Laws
<input type="checkbox"/> 640 R.R. & Truck
<input type="checkbox"/> 650 Airline Regs.
<input type="checkbox"/> 660 Occupational Safety/Health
<input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158
<input type="checkbox"/> 423 Withdrawal 28 USC 157
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<input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 410 Antitrust
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<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 890 Other Statutory Actions
<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"/> 895 Freedom of Information Act
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 950 Constitutionality of State Statutes |
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V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
17 U.S.C. Sections 101 et seq.

Brief description of cause:
Declaratory relief re attempt by Defendant to recapture copyrights

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

07/14/2011

SIGNATURE OF ATTORNEY OF RECORD

12 TS 12

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____