

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION**

MICHAEL HENDERSON, an)
individual resident of the state of)
Georgia,)
))
Plaintiff,)
))
v.)
))
SONY MUSIC ENTERTAINMENT,)
a wholly owned subsidiary of Sony)
Corporation of America, a New York)
corporation,)
))
Defendant.)

Case No.:

COMPLAINT FOR DAMAGES AND JURY DEMAND

Plaintiff, Michael Henderson (“Plaintiff”), states the following for Plaintiff’s Complaint against Sony Music Entertainment, a wholly owned subsidiary of Sony Corporation of America, a New York corporation (“Defendant”).

NATURE OF THE ACTION

1. Plaintiff seeks damages, injunctive relief, and other relief for the violation of Plaintiff’s right of publicity under the common law of the state of Georgia and for violation of 17 U.S.C. § 1101 for unauthorized duplicating,

distributing, and trafficking in unauthorized recordings of live concert performances featuring Plaintiff.

JURISDICTION AND VENUE

2. This action arises out of the common law of the state of Georgia and the copyright laws of the United States, 17 U.S.C. § 1101.

3. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1400. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1400(a) because Defendant has committed acts within this judicial district and is a company subject to personal jurisdiction in this judicial district.

5. The events, transactions, and occurrences giving rise to this action occurred within this judicial circuit in the state of Georgia. Defendant is subject to the personal jurisdiction of this Court because, among other things, it purposefully avails itself of the benefits of doing business in this judicial circuit by providing services to the residents of this judicial circuit and by selling products and services to businesses and individuals located in this judicial circuit.

PARTIES

6. Plaintiff, Michael Henderson is an individual citizen of the United States residing in this judicial district. Henderson is a musician who has earned a reputation as a successful and renowned bass player.

7. Upon information and belief, Defendant, Sony Music Entertainment, a wholly owned subsidiary of Sony Corporation of America, is a corporation existing and organized under the laws of the state of New York.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

8. Plaintiff is known throughout the entertainment industry as a professional bass player and musician, as well as a recording artist, who performs individually as well as with other musicians, groups, and ensembles.

9. Plaintiff has performed and recorded with Marvin Gaye, Aretha Franklin, Stevie Wonder, and The Jackson 5, among many other renowned artists, and is also a successful solo recording artist and songwriter.

10. Plaintiff was considered a top session musician who was compensated handsomely for recording sessions and live performances in the 1960s and 70s.

11. For a period of approximately seven years in the 1970s, Plaintiff engaged in live performances with the famous jazz musician Miles Davis.

12. Among those live performances with Miles Davis in the 1970s were performances on November 1, 1973 at the Newport Jazz Festival in Europe in Berlin, Germany; on July 1, 1975 at the Newport Jazz Festival in New York, New York; on October 22, 1971 at the Newport Jazz Festival in Europe in Dietikon, Switzerland (collectively, the “Plaintiff Live Performances”).

13. The Plaintiff Live Performances were recorded without the knowledge, consent, or authorization of Plaintiff.

14. Upon information and belief, the unauthorized recordings of the Plaintiff Live Performances were subsequently acquired by Defendant, and on July 17, 2016, were released by Defendant on its Columbia Records/Legacy Recordings imprint as part of a four-compact disc live album titled *Miles Davis at Newport 1955-1975: The Bootleg Series Vol. 4* (the “Newport Release”).

15. Of the 40 tracks on the Newport Release, Plaintiff performs on 14 tracks. Of the Newport Release’s total runtime of 298 minutes, Plaintiff performs on 131 minutes, which is approximately 43.96% of the total runtime.

16. Plaintiff does not, and has not, ever endorsed or consented to the use of the Plaintiff Live Performances in the Newport Release or otherwise.

17. The Newport Release also includes at least two photographs of Plaintiff. Plaintiff does not, and has not, ever endorsed or consented to the use of

Plaintiff's image and/or likeness by Defendant in the Newport Release or otherwise. The two such uses of Plaintiff's image and/or likeness as described in this paragraph 17 are attached hereto as **Exhibits A and B**.

18. Defendant has made, or caused to be made, the Newport Release widely available for purchase, download, and streaming throughout the United States, including, without limitation, within this judicial circuit.

19. Upon information and belief, in approximately late summer 2013, a representative for Defendant named Jeffery Schulberg ("Schulberg"), whose title with Defendant is VP, Business & Legal Affairs, contacted Plaintiff to secure permission to release another, different unauthorized live recording of Plaintiff performing with Miles Davis. However, when Plaintiff demanded reasonable compensation for the use of those live performances, Schulberg reportedly said to Plaintiff's counsel at the time, "We've been having the same problem with other band members, so we will just cancel the project."

20. The following language appears in the Newport Release booklet, a photograph of which is attached hereto as **Exhibit C**: "Legacy/Sony Music Business Affairs and Clearances: Jeffrey Schulberg."

21. Defendant and Schulberg were therefore very much aware of Plaintiff and furthermore knew or should have known that a license or release was required

to include the unauthorized recordings of the Plaintiff Live Performances on the Newport Release, and yet neither Defendant nor Schulberg contacted Plaintiff in an attempt to secure Plaintiff's consent to the release of the Newport Release.

COUNT 1
Common Law Right of Publicity/Privacy

22. Plaintiff incorporates the prior paragraphs by reference.

23. By virtue of Plaintiff's widespread public recognition and number of performances and recordings given to the public for compensation in venues throughout the United States and abroad, including within this judicial circuit, Plaintiff has developed a valuable "right of publicity" which is expressly recognized under the common law of the state of Georgia.

24. Plaintiff enjoys such "right of publicity" in his performance rights as a musician as well as in his image, likeness, and/or performance.

25. Defendant has appropriated Plaintiff's name, likeness, and/or performance without Plaintiff's consent and for Defendant's financial gain.

26. Upon information and belief, the exploitation and misappropriation of Plaintiff's name, likeness, and/or performance by Defendant was malicious, willful, and intentional and will continue unless enjoined by this Court.

27. Under Georgia law, Plaintiff may recover the value of the use of the appropriated publicity and for punitive damages when, as here, there is evidence of wrongdoing, fault, wrongful motive, or state of mind on a defendant's part.

COUNT 2
Unauthorized Trafficking in Sound Recordings and Music Videos Pursuant to
17 U.S.C. § 1101

28. Plaintiff incorporates the prior paragraphs by reference.

29. Without the knowledge, consent, or authorization of Plaintiff, the sounds and images of Plaintiff's musical performance during the Plaintiff Live Performances were fixed in an unauthorized copy or phonorecord.

30. Defendant has transmitted, communicated, distributed, sold, and trafficked to the public the unauthorized fixations of the Plaintiff Live Performances in the Newport Release.

31. Defendant engaged in the foregoing acts without even attempting to secure the appropriate permissions or releases from Plaintiff, and despite the fact that Defendant and Schulberg, by virtue of their positions and titles, knew or should have known that such permissions or releases were required.

32. The foregoing acts by Defendant constitute willful trafficking in unauthorized sound recordings of live musical performances.

33. Pursuant to 17 U.S.C. § 1101(a)(3), Plaintiff is entitled to the remedies provided in 17 U.S.C. §§ 502 through 505.

34. Pursuant to 17 U.S.C. § 504(c), Plaintiff may recover statutory damages of up to \$150,000 for each act in violation of the anti-bootlegging statute.

35. Alternatively and at Plaintiff's election pursuant to 17 U.S.C. § 504(b), Plaintiff may recover from Defendant the actual damages Plaintiff has and will sustain as a result of Defendant's conduct.

36. Plaintiff is further entitled to Plaintiff's attorneys' fees and full costs pursuant to 17 U.S.C. § 505 and prejudgment interest according to law.

REQUESTED REMEDIES

WHEREFORE Plaintiff respectfully prays that this Court grant relief against Defendant as follows:

a. For temporary, preliminary, and permanent injunctive relief, prohibiting Defendant, its agents, or anyone working for, in concert with or on behalf of Defendant, from further trafficking in the Newport Release.

b. For an order to recall any such versions of the Newport Release as may currently be in the marketplace or available for sale or other exploitation.

c. For an award of statutory damages in the amount of \$150,000 for willful infringement for each of the 14 unauthorized recordings of the Plaintiff

Live Performances included in the Newport Release or, at Plaintiff's election, actual damages and profits in an amount to be determined at trial.

d. For an order awarding Plaintiff attorneys' fees, together with the full costs and disbursements of this action.

e. For an amount equal to the value of the use of the appropriated publicity in an amount to be determined at trial.

f. For punitive damages for Defendant's wrongdoing, fault, wrongful motive, or state of mind with respect to the foregoing claims.

g. For prejudgment interest according to law.

h. For such other relief as this Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands trial by jury on all issues triable to a jury.

This 14th day of December 2016.

Respectfully submitted,

/s/ John E. Seay

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Rule 7.1(D) Certification

This is to hereby certify that the Complaint was prepared in 14-point Times New Roman font.

/s/ John E. Seay

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