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14 **UNITED STATES DISTRICT COURT FOR THE**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16
17 GLOBAL MUSIC RIGHTS, LLC,

18 Plaintiff,

19 v.

20 RADIO MUSIC LICENSE
21 COMMITTEE, INC., and DOES 1
22 through 3,000,

23 Defendants.

Civil Action No.:

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

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1 Plaintiff, GLOBAL MUSIC RIGHTS, LLC, with its principal place of
2 business located at 1100 Glendon Avenue, Suite 2000, Los Angeles, California
3 90024, by its attorneys, brings this action for damages and permanent injunctive
4 relief against Defendant, RADIO MUSIC LICENSE COMMITTEE, INC. Plaintiff
5 alleges as follows:

6 **NATURE OF THE ACTION**

7 1. The Radio Music License Committee (“RMLC” or “Defendant”) operates an illegal cartel. Its members, including powerful radio broadcasters like
8 CBS Radio and Cumulus Media, as well as Los Angeles-based companies like Mt.
9 Wilson Broadcasting and Point Broadcasting, have agreed with one another and
10 with the RMLC to artificially depress the license fees member stations pay to
11 perform musical compositions on the radio. The RMLC minces no words. Its
12 “overwhelming objective is to keep license fees for the commercial radio industry
13 as low as [it] can possibly keep them.”

14 2. The RMLC accomplishes its objective, and has for decades, by
15 exercising market dominance and brazenly violating competition laws. RMLC
16 stations represent more than 90% of the country’s terrestrial radio revenue. No
17 songwriter can afford to be silenced on a platform that reaches 245 million listeners
18 weekly. Unable to negotiate freely and fairly, and under threat of a group blockade
19 from radio, the songwriters and the companies that represent them are forced to
20 capitulate to the artificially depressed license fees the RMLC cartel demands.

21 3. The irony is that, until recently, the RMLC exploited its market power
22 primarily against two performance rights organizations—ASCAP and BMI—that
23 began as monopolists themselves, were sued for antitrust violations decades ago,
24 and are subject to consent decrees. These consent decrees effectively require
25 ASCAP and BMI to grant performance licenses to RMLC member stations (and
26 others) and to submit any disputes over the proper fee to a rate court.

27 4. Plaintiff Global Music Rights (“GMR” or “Plaintiff”) is a new and
28

1 innovative performance rights organization—the first entrant into the market in
2 over 70 years. It offers an elite roster of just over 70 songwriters something fresh.
3 In exchange, GMR has been granted the right to license to others the public
4 performances of the songwriters’ compositions, including to members of terrestrial
5 radio. Unlike ASCAP and BMI, however, GMR is not subject to a consent decree,
6 compulsory license, or rate court. It operates in the free market—or so it should.

7 5. But the RMLC and its members reject the free market. A “free market
8 approach to music licensing” without required licenses and rate court, the RMLC
9 has testified, would “wreak havoc” on their artificially low cost structure. Radio
10 station owners do not want to pay the license fees that a free market would demand
11 for GMR songwriters’ premium content. Rather than embracing the market and
12 competing with one another, the RMLC’s members took the opposite tack by
13 colluding. Representing over 90% of the terrestrial radio industry, the RMLC
14 flexed their collective muscle to attempt to force GMR to submit to a mandatory
15 licensing scheme and artificially depressed license fees. Unless GMR succumbs to
16 these monopsonistic demands, GMR songwriters will not have access to the vast
17 majority of terrestrial radio stations, a media outlet that remains crucial for
18 songwriters’ financial and reputational success.

19 6. Everyone is harmed by the RMLC’s illegal conduct: if songwriters are
20 not compensated fairly for their works, they will have less incentive to compose the
21 great music that enriches *all* our lives. If RMLC’s scheme succeeds, new
22 songwriters will have less incentive to become this generation’s Ira Gershwin; or to
23 pen the 21st century *Imagine* (John Lennon), *Lyin’ Eyes* (Henley and Frey), or
24 *Master of Puppets* (Hetfield and Ulrich); or to give the flair and creativity of
25 Pharrell William’s feel-good smash *Happy* or One Republic’s anthem *Counting*
26 *Stars* (to name a few of the premium works in GMR’s repertory). Incentivizing
27 creativity and harnessing talent is the copyright law’s fundamental purpose.

28 7. Unfortunately, the RMLC cartel has been a smashing success—if one

1 fairly can describe violating the law and paying songwriters below-market rates to
2 perform compositions a “success.” In a multi-billion dollar industry that relies on
3 music for its lifeblood, terrestrial music radio stations pay less than 4% of their
4 revenues—an infinitesimal percentage—to the songwriters who create that music.
5 (News, talk, and other stations that rely less on music pay even less.) Other media
6 distributors such as streaming music services, who do not benefit from a cartel
7 cutback, pay substantially more of their revenue share to perform these same works.
8 The RMLC’s conspiracy is perverting the market and retarding prices.

9 8. Antitrust and competition laws forbid this. An alliance of buyers
10 exercising market dominance to *reduce* prices is just as pernicious and dangerous
11 as an association of sellers exercising market dominance to *increase* prices. A
12 monopsony is just as illegal as a monopoly. Radio stations are horizontal
13 competitors and the antitrust laws do not permit them to join together as a cartel.
14 They compete with each other to attract listeners and advertisers. They make
15 money selling commercial spots to those advertisers. The more listeners they
16 attract, the more they can charge advertisers for those spots. They attract listeners
17 with content. The better their content, the more listeners they attract; the more
18 listeners they attract, the more they can charge advertisers. This creates what is
19 known as a virtuous circle.

20 9. Of course, there is nothing virtuous about the way the RMLC cartel
21 members have conspired for the express purpose of reducing what they pay
22 songwriters for the music they use to attract listeners. In a normally functioning
23 market, radio stations would compete for the music they play by paying songwriters
24 based on the quality and popularity of their work. Songwriters would be rewarded
25 fairly for their creative efforts and encouraged to continue these creative efforts.
26 But radio stations do not compete for the right to perform musical compositions.
27 Songwriters—and GMR—suffer the financial consequences.

28 10. GMR was created to give a select group of highly-skilled songwriters

1 the opportunity to negotiate a reasonable market rate for songs they write. GMR
2 simply sought “fair pay for fair play.” In response to that, the RMLC cartel
3 threatened “low pay or no play.”

4 11. For these reasons, and as outlined in greater detail below, GMR files
5 this action for damages and injunctive relief against the RMLC for violations of
6 Section 1 of the Sherman Act, 15 U.S.C. § 1; the California Cartwright Act, Cal.
7 Bus. & Prof. Code § 16720; and the California Unfair Competition Law, Cal. Bus.
8 & Prof. Code §§ 17200 *et seq.*

9 **THE PARTIES**

10 12. Plaintiff GMR represents music rights holders in the licensing of their
11 public performances. GMR offers licensing, distribution, and collection services
12 for the exclusive rights granted to music creators and owners by copyright law.
13 GMR is a Delaware limited liability company with its principal place of business at
14 1100 Glendon Avenue, Suite 2000, Los Angeles, California 90024.

15 13. Defendant RMLC serves as the negotiating arm for the entire
16 commercial radio industry. It purports to be a 501(c)(6) corporation organized and
17 existing under the laws of Tennessee, with its principal place of business at 1616
18 Westgate Circle, Brentwood, Tennessee 37027. On information and belief, the
19 RMLC has agreed with, and negotiates on behalf of, hundreds of commercial radio
20 stations located throughout California, including many stations located in this
21 District, such as KRTH, KAMP, KKGO, and KLOS.

22 14. The true names and capacities of Defendants named herein as Does 1
23 through 3,000 are unknown to Plaintiff. Plaintiff will seek leave from this Court to
24 amend this Complaint to identify these Defendants’ true names and capacities, once
25 such information has been ascertained. Plaintiff alleges that Does 1 through 3,000
26 participated in Defendants’ misconduct, as herein alleged, and are therefore liable
27 to Plaintiff for the same.
28

JURISDICTION AND VENUE

1
2 15. GMR brings this lawsuit pursuant to Sections 4 and 16 of the Clayton
3 Act, 15 U.S.C. §§ 15 and 26, to recover damages and the costs of suit, including
4 reasonable attorneys' fees; to enjoin the RMLC's anticompetitive conduct; and for
5 such other relief as is afforded under the antitrust laws of the United States for the
6 RMLC's violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. GMR also
7 brings suit for violations of the California Cartwright Act, Cal. Bus. & Prof. Code §
8 16720; and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§
9 17200 *et seq.*

10 16. This Court has federal question jurisdiction over this matter pursuant
11 to 28 U.S.C. § 1331, in that the Sherman Act cause of action asserted in this
12 Complaint arises under the laws of the United States. This Court has supplemental
13 jurisdiction over the related claims for violations of California statutory law alleged
14 herein, because those claims are so related to the federal claims that they form part
15 of the same case or controversy under Article III of the United States Constitution.
16 28 U.S.C. § 1367(a).

17 17. Venue is proper in this District pursuant to 28 U.S.C. § 1391 (b)-(d)
18 and 15 U.S.C. § 22 because a substantial part of the events giving rise to Plaintiff's
19 claims occurred in this District, a substantial portion of the affected interstate trade
20 and commerce described below has been carried out in this District, and one or
21 more of Defendant's co-conspirators reside, are licensed to do business in, are
22 doing business in, have and had agents in, and/or are found to transact business in
23 this District.

24 18. The Court has personal jurisdiction over Defendant RMLC because it
25 does continuous and systematic business within the State of California, and has
26 purposefully availed itself of the protection of California law. Additionally,
27 Defendant RMLC is a corporation with minimum contacts to the United States.
28 *Action Embroidery Corp. v. Atl. Embroidery, Inc.*, 368 F.3d 1174, 1180 (9th Cir.

1 2004).

2 FACTUAL BACKGROUND

3 **A. The Music Rights Business**

4 19. GMR was created in 2013 as a boutique performing rights
5 organization to represent a select group of writers who believed they were being
6 underserved by the existing performing rights organizations. GMR created a new
7 and alternative model that recognizes individual musical works are not like widgets;
8 they are unique, and do not all have the same value in the marketplace. GMR
9 intends to represent a small number of highly talented copyright owners and,
10 through increased license fees and decreased infrastructure, bring their
11 compensation in line with the value these songwriters' works represent. And GMR
12 offers a distinct value proposition to radio stations and other media service
13 providers, due to the quality of its songwriters and catalog, and the increased
14 advertising revenue that catalog can generate.

15 20. Musical compositions are considered intellectual property, and like
16 other forms of property, they belong to their creators. United States copyright law
17 grants certain exclusive rights to these owners, including the right to authorize
18 others to publicly perform their music. *See* 17 U.S.C. § 106. If a business plays
19 music without obtaining the necessary advanced permission from copyright owners,
20 it acts in violation of federal copyright laws.

21 21. Under the Copyright Act, the copyright owner of a musical
22 composition has the exclusive right to authorize the public performance of their
23 copyrighted work. 17 U.S.C. § 106(4). This is known as the "Performing Right."
24 No one can publicly perform copyrighted music without the permission of the
25 copyright owner. The burden is on the entity seeking such a performing right to
26 obtain it from the copyright owner. Copyright owners have a right to be paid for
27 the use of their intellectual property, including the Performing Right.

28 22. The Copyright Act defines a public performance as one in "a place

1 open to the public or at any place where a substantial number of persons outside of
2 a normal circle of a family and its social acquaintances is gathered.” 17 U.S.C. §
3 101. A public performance is also one that is transmitted or otherwise
4 communicated to the public by means of a device or process, such as by radio or
5 television broadcasts, music-on-hold, cable television, and over the internet. *See id.*

6 23. In the United States, terrestrial broadcasters (*i.e.*, AM or FM radio
7 stations) do not pay performers or sound recording copyright owners. In contrast to
8 satellite broadcasters and digital services, terrestrial broadcasters only pay the
9 songwriters who own the copyright on the song for the public performance of a
10 song.

11 24. The vast majority of copyright owners are represented by one of two
12 performing rights organizations (“PROs”): the American Society of Composers,
13 Authors and Publishers (“ASCAP”), or Broadcast Music Inc. (“BMI”). PROs pool
14 the percentage share of the copyrights held by their composer, songwriter, and
15 publisher members into a “repertory,” and collectively license those rights to music
16 users, including terrestrial radio broadcasters.

17 25. In the United States, ASCAP and BMI are by far the largest PROs and
18 are responsible for licensing an overwhelming majority of works. ASCAP has a
19 membership of over 600,000 composers, songwriters, lyricists, and music
20 publishers, and lists over 10 million licensed works in its repertory. Likewise, BMI
21 boasts a repertory of 8.5 million musical works, created and owned by more than
22 750,000 songwriters, composers, and music publishers. A third PRO, the Society
23 of European Stage Authors and Composers (“SESAC”), represents approximately
24 35,000 music authors and publishers. SESAC’s repertory includes as many as
25 400,000 or more musical works.

26 26. Because ASCAP and BMI have so many compositions in their
27 repertories, they were believed by the United States Department of Justice (“DOJ”)
28 to have market power in setting license fees. Decades ago, ASCAP’s repertory held

1 over 90% of all copyrighted musical works. When ASCAP raised rates by over
2 400%, the DOJ brought a civil antitrust lawsuit against ASCAP. In 1941, the DOJ
3 resolved that lawsuit by way of a civil consent decree, which has been significantly
4 amended on two occasions since then, most recently in 2001.

5 27. In an effort to establish an alternative to ASCAP, broadcasters,
6 including many RMLC members, created BMI. In 1941, BMI and the United
7 States entered into a consent decree to resolve concerns similar to the DOJ's
8 concerns with ASCAP. The parties amended that decree most recently in 1994.

9 28. The DOJ consent decrees were designed to limit ASCAP's and BMI's
10 exercise of the power they achieved by accumulating copyrights to millions of
11 musical works—at the time, virtually all the works played on the radio. Today,
12 ASCAP and BMI collectively account for more than 95% of the songwriters whose
13 interests are represented by United States PROs, and in excess of 95% of the total
14 musical works in all United States PROs' repertoires.

15 29. ASCAP and BMI, as well as smaller PROs, license music typically—
16 though not always—through “blanket licenses.” The PRO licenses provide access
17 to each organization's percentage shares of their entire repertory without regard for
18 what specific songs are used or how often the songs are played. The market
19 demands this kind of offering due to the enormous administrative costs that would
20 occur in a world where each performance of each composition is individually
21 negotiated and documented.

22 30. In *Broadcast Music, Inc. v. CBS, Inc.*, 441 U.S. 1 (1979), the Supreme
23 Court recognized that ASCAP's and BMI's blanket licenses provide valuable
24 benefits that no individual rights holder could match, including the “immediate use
25 of covered compositions, without the delay of prior individual negotiations.” *Id.* at
26 21-22. In light of these benefits, and recognizing the value of the consent decrees,
27 the Court concluded that the PROs' blanket licensing practices did not constitute
28 *per se* illegal price fixing. *Id.* at 16-24.

1 31. There is broad consensus that PROs provide a valuable service to both
2 music users and PRO members. The PROs allow music users to obtain access
3 through licenses that protect them from infringing on copyrights to millions of
4 works controlled by the hundreds of thousands of songwriters, composers, and
5 publishers that have contributed their interests in songs to the PROs.

6 32. Music creators also benefit from the PROs' licensing practices. For
7 many songwriters and composers, affiliating with a PRO and contributing their
8 shares of works to the PRO's repertory provides the only practical way of licensing
9 their shares of works. While direct licensing to individual music users remains
10 available as an alternative for music creators, it would be highly impractical for
11 individual music creators to themselves enter into licenses with each of the
12 thousands of radio stations and other music users to which ASCAP and BMI
13 license their repertories. Even where direct negotiations are possible, users and
14 creators alike often find PRO licenses more efficient. Furthermore, PROs are able
15 to police and enforce infringement in a way individual songwriters could not. It
16 would be far more difficult and costly for the individual songwriters, composers,
17 and publishers to police the broadcast industry on their own. For these reasons, it is
18 no surprise that no single songwriter individually negotiates with a significant
19 percentage of radio stations in the United States for the purpose of performing
20 compositions.

21 33. The consent decrees require ASCAP and BMI to provide a license to
22 anyone who requests it. Disputes over license fees are resolved by courts specially
23 appointed to regulate ASCAP and BMI. Individual radio stations have schemed
24 together under the RMLC and negotiate as a single unit rather than competing for
25 licenses. Consequently, royalties are kept artificially low, and radio stations devote
26 only a small fraction of their revenues—roughly 4%—to paying copyright owners,
27 even though the quality and variety of music they broadcast to consumers is a major
28 factor that drives the stations' advertising revenues. Other media distributors, such

1 as streaming music services, who do not benefit from a cartel cutback, pay
2 substantially more of their revenue share to perform the same works.

3 34. For years, songwriters' performance rights have been undervalued
4 because the organizations that represented the vast majority of them—ASCAP and
5 BMI—were so large and powerful that they were required to submit to rate-setting
6 controls. The only other United States PRO is a company named SESAC.

7 **B. Global Music Rights**

8 35. GMR set out to create a better product and service for the songwriter.
9 GMR has not accumulated and has no intention to amass the market power that
10 other PROs have wielded. Just the opposite, GMR's entire business model is
11 predicated on being a boutique PRO to a small group of extremely talented
12 songwriters. Key to this model is remaining highly selective in choosing the
13 songwriters it represents and running a lean, cost-efficient operation. By
14 representing only a handful of the extraordinary songwriters and publishers that
15 drive advertising revenues, GMR is able to provide individualized service and
16 achieve outcomes—such as royalties measured by the value those songwriters
17 generate—that songwriters cannot get with behemoths like ASCAP and BMI or
18 even from SESAC. GMR has the advantage of creating a modern royalty system
19 that responds to today's marketplace, in which data regarding performances is more
20 readily available. This provides GMR with agility and the ability to provide
21 increased clarity to its clients.

22 36. GMR's fundamental premise is "fair pay for fair play." Its philosophy
23 is founded on the following principles, which distinguish GMR from other PROs:

- 24 a. GMR set out to pay the songwriters more money for the
25 performances of their copyrighted compositions through a
26 combination of reduced overhead and obtaining license fees
27 reflecting the overall high quality and value of the compositions
28 in the GMR repertory.

- 1 b. Other PROs have an arbitrary and unpredictable formula to
2 determine how much money each “spin” of a given song merits.
3 GMR provides increased clarity on exactly how its songwriters
4 are paid.
- 5 c. Most GMR writers receive guarantees, either in the form of an
6 annual minimum or in the form of a guaranteed premium over
7 what the writer would have made with another PRO. For
8 songwriters with an established body of work (so-called
9 “catalog writers”), GMR guarantees a minimum revenue stream
10 for each year they are under contract. If for some reason the
11 songwriter’s spins drop, GMR still pays the guarantee. GMR
12 assumes the risk of a reduction occurring. Naturally, this
13 provides GMR with an incentive to ensure not only that its
14 clients’ works are being properly licensed, but also that royalties
15 are commensurate with the value of the songwriters’ works.
- 16 d. ASCAP and BMI each represent hundreds of thousands of
17 writers. Even the much smaller SESAC has tens of thousands.
18 There is simply no way to provide high-quality customer service
19 to that many people. GMR, in contrast, deliberately represents
20 only a small number of talented songwriters. This allows GMR
21 to function as a “concierge PRO,” providing prompter and more
22 personalized service.

23 37. GMR cannot offer its songwriters these benefits unless it remains
24 small. GMR is infinitesimally small compared to ASCAP and BMI.

(estimates)	ASCAP	BMI	SESAC	GMR
# of composers (est)	600,000+	750,000+	30,000+	70+
# of compositions (est)	10,000,000+	12,000,000	400,000+	26,000+

25 In other words, GMR’s client base comes to about 0.006% of the total
26 population of songwriters, composers, and publishers collectively represented by
27 the four U.S. PROs and an even smaller percentage of the total number of
28 compositions in their repertoires. This is by design. By keeping its catalog small
and high-quality across the board, GMR is able to provide personalized customer

1 service to its songwriters and keep the cost of those services low.

2 38. GMR may be small but its songwriters are accomplished. GMR's
3 repertory includes songs performed by everyone from John Lennon to Justin
4 Bieber, from Smokey Robinson to Steve Miller, from Shakira to Drake, and from
5 Randy Travis to Kenny Chesney—again, to name just a few. The quality of
6 GMR's repertory—in particular the fact that every one of the GMR songwriters is
7 an established composer with a track record of success—translates directly into
8 more advertising revenue for the radio stations who license and broadcast it and is
9 what justifies the royalties GMR seeks for its clients.

10 39. GMR's repertory is unique in that it focuses *solely* on premium
11 content, allowing GMR to tailor its business model to best serve the songwriters
12 that generate it. This includes operating in a more cost-efficient, client-focused
13 manner, and seeking compensation for its songwriters based on the value their
14 works generate without the burden of the infrastructure necessary to service the
15 needs of hundreds of thousands of writers. In this way, GMR's business model
16 corrects an inefficiency in how some songwriters creating premium content are
17 compensated, assuring that these songwriters are incentivized to continue their
18 creative and musical innovation as contemplated by the Copyright Act.

19 40. GMR is also not subject to the judicial rate regulation mandated by the
20 ASCAP and BMI consent decrees, which resulted from ASCAP's and BMI's
21 anticompetitive conduct. For example, some 80 years ago, ASCAP was alleged to
22 have possessed a dominant share of all compositions available for public
23 performance and, exercising that control, increased the rates it charged to license
24 the works by **446%** over a period of eight years. GMR does not have a dominant
25 share (or anything approaching a dominant share) of compositions and, as a
26 start-up, there is no history of exercising some dominance to arbitrarily raise prices.
27 Nor is GMR subject to the voluntary agreement entered into recently between the
28 RMLC and SESAC, which concerns the licensing of compositions in SESAC's

1 repertory.

2 41. GMR offered songwriters a new option for their PRO. Starting in
3 2014, GMR began competing with ASCAP, BMI, and SESAC to sign writers.
4 While GMR has convinced some songwriters to come on board, others have chosen
5 ASCAP, BMI, or SESAC. This is what the free market is all about.

6 42. Of course, GMR songwriters' works do not represent all high-value
7 songs played on the radio, a substantial portion of them, or even a majority of them.
8 Despite the entrance of GMR, ASCAP, BMI, and SESAC maintain thousands upon
9 thousands of premium compositions in their respective repertories. GMR cannot
10 and does not affect radio's access to high-value, premium content as a general
11 matter. But because BMI and ASCAP are large organizations with tens or
12 hundreds of thousands of affiliates, they cannot and do not provide the
13 client-centric approach GMR offers.

14 **C. The RMLC**

15 43. The RMLC is funded by the radio broadcasting industry and represents
16 the collective interests of the vast majority of commercial radio stations in the
17 United States—some 10,000 stations—in connection with music licensing matters.
18 The RMLC's constituents comprise approximately 90% of the U.S. terrestrial radio
19 industry.

20 44. The RMLC's avowed "mission" is to "negotiate public-performance-
21 right license fees with performance rights organizations for the benefit of its
22 members and the commercial radio industry (some 10,000 radio stations)."¹ In
23 other words, the RMLC's *raison d'être* is to facilitate massive group negotiation by
24 and among the thousands of commercial radio stations that make up almost the
25 entirety of the domestic terrestrial radio industry.

26 45. The RMLC has been negotiating license terms with ASCAP and BMI

27
28 ¹ Compl. ¶ 11, *Radio Music License Comm., Inc. v. SESAC, Inc., et al.*, No. 2:12-cv-05807-CDJ (E.D. Pa. Oct. 11, 2012) (ECF No. 1).

1 for decades, including license fees for the public performance of copyrighted
2 musical works.

3 46. Periodically, when such negotiations have reached impasse, the RMLC
4 has coordinated and funded “rate court” litigation under the auspices of the ASCAP
5 and BMI consent decrees. According to its mission statement, the RMLC “raises
6 funds from the industry in the amounts required to conduct effective negotiations
7 and/or court litigations.”

8 47. As this makes clear, the RMLC is not a typical industry trade
9 association. The RMLC’s *sole* purpose is to retard license pricing, and, failing that,
10 to litigate with the PROs to achieve their illegal objective. Other organizations,
11 such as the National Association of Broadcasters, serve as traditional trade
12 associations and lobby groups representing the interests of commercial and
13 non-commercial over-the-air radio broadcasters in the United States. Unlike the
14 RMLC, they do not conduct group-price negotiations with PROs or copyright
15 holders.

16 **D. The RMLC’s Member Stations Are Horizontal Competitors**

17 48. The RMLC’s “direct” members own and operate approximately 7,300
18 broadcast radio stations in locations throughout the United States. In addition, the
19 RMLC represents approximately 2,500 “bound” stations—stations that are not
20 formal members of the RMLC, but which are required by court order to pay fees to
21 support the RMLC’s operational expenses.

22 49. The RMLC’s Committee and Executive Committee are comprised of
23 executives from many of the largest terrestrial radio conglomerates in the country,
24 including CBS Radio, Cox Broadcasting, Cumulus Media, Entercom, and others.
25 These committee members’ companies directly compete with one another in the
26 terrestrial radio market.

27 50. The RMLC’s member stations compete head-to-head for the business
28 of local and national companies that seek to advertise on broadcast radio.

1 51. The RMLC's member stations compete for advertisers by
2 demonstrating they have a significant number of listeners that meet the advertiser's
3 target demographic.

4 52. The RMLC's member stations compete for listeners by providing
5 content to those listeners. Frequently that content is copyrighted music which must
6 be licensed from the various PROs.

7 53. In a normally functioning market, the RMLC's member stations would
8 be expected to compete for the content they broadcast, including copyrighted
9 music, in order to attract listeners. RMLC member stations compete in an open
10 market for on-air personalities, plus sports and syndicated programming; however,
11 because of the RMLC cartel, these stations do not have to compete to play popular
12 songs.

13 **E. The RMLC Is a Cartel of Radio Stations**

14 54. RMLC's member stations are competitors. Yet these "competitors"
15 created and actively participate in a "committee" whose very purpose is to negotiate
16 with PROs as a group and *destroy* competition among them in the acquisition of
17 performance license rates. As RMLC Executive Director, Bill Velez, previously
18 testified: "We serve as the negotiating arm for the commercial radio industry[.]" In
19 performing this function, Velez testified, "[t]he overwhelming objective is to keep
20 license fees for the commercial radio industry as low as we can possibly keep
21 them."

22 55. The RMLC's member stations are not passive participants in, nor
23 unknowing beneficiaries of, the RMLC's efforts. The 10,000 radio stations whose
24 interests the RMLC represents are well aware of its anticompetitive purpose and
25 effect. For example, the RMLC requires its members to affirmatively and expressly
26 authorize the RMLC to negotiate on behalf of all members with PROs. The
27 RMLC's standard "Authorizations" empower the RMLC to negotiate, on the
28 station's behalf, for a license permitting the station to broadcast copyrighted

1 musical works, and to take other actions in connection with the negotiations. As an
2 example, the following language is excerpted from an Authorization the RMLC
3 sent to radio stations, which sought their agreement for the RMLC to negotiate
4 licensing fees and other terms with ASCAP, BMI, and SESAC² on their behalf:

5
6 AUTHORIZATION

7 On behalf of the stations(s) named below ("stations"), I hereby authorize the Radio Music
8 License Committee (RMLC) to negotiate with the American Society of Composers, Authors and
9 Publishers (ASCAP), Broadcast Music Inc. (BMI), and SESAC for licenses for performance
10 rights necessary and/or appropriate for the stations' conduct of their businesses; to institute or
11 defend in the name of all authorizing stations proceedings to establish reasonable fees and terms
12 for such licenses; and to do all things reasonable and convenient in connection with such
13 negotiations and proceedings. I understand that, by giving this authorization, I agree to be bound
14 by the outcome of any licensing negotiation or proceedings commenced on behalf of authorizing
15 radio stations by the RMLC.

16
17 56. The RMLC touts the fact that it "has been negotiating licenses with
18 PROs on behalf of the radio industry since 1935," that "[a]pproximately 10,000
19 terrestrial radio stations in the United States are currently licensed in accordance
20 with RMLC-negotiated industry licenses," and that "some 7,300 radio stations are
21 represented by RMLC in pending binding rate arbitration with SESAC."

22 57. Participating radio stations are aware of and benefit from the
23 participation of other radio stations in the RMLC's group negotiation conduct. The
24 RMLC draws its negotiating power from the fact that it represents virtually all U.S.
25 radio stations and the stations know and agree with such other stations to negotiate
26 with PROs as a cartel. For example, as shown above, the RMLC's Authorizations
27 state that each participating radio station "agrees[s] to be bound by the outcome of
28 any licensing negotiation or proceedings commenced *on behalf of authorizing
radio stations* by the RMLC" (emphasis added). In addition to being distributed to
the RMLC's thousands of members, the Authorizations may even be posted

² At the time this Authorization was disseminated, SESAC was not yet subject to
judicial or arbitral rate oversight.

1 publicly (for example, on the RMLC’s website). This widespread dissemination
2 ensures that each member station is aware that all other participating member
3 stations will be bound by these same terms, and agrees to such common restrictions
4 when it executes its own Authorization.

5 58. No reasonable radio station would authorize the RMLC to negotiate
6 binding license terms on its behalf without assurances that thousands of other radio
7 stations would also authorize the RMLC to negotiate on their behalf. The principal
8 reason radio stations agree to have the RMLC negotiate is to harness their collective
9 market power. By applying that massive leverage, together they achieve better
10 negotiating outcomes than individual stations could by negotiating on their own.

11 59. GMR approached RMLC with the explicit purpose of negotiating
12 license fees for its members, and GMR understood in those negotiations that any
13 fee offer would be made available to all participating radio stations. During these
14 negotiations, the RMLC provided GMR with a “list of the universe of
15 RMLC-represented stations.” That list identified 10,216 individual stations
16 represented by the RMLC.

17 60. At all times in its negotiations, the RMLC representatives made clear
18 and GMR understood that any license fee offered to the RMLC would set a ceiling
19 for the rates GMR could obtain with individual radio stations. In other words, to
20 the extent individual stations have the right or opportunity to opt-out of the rate
21 negotiated by the RMLC, no economically rational radio station would offer to pay
22 more than the rate negotiated by the RMLC. To the contrary, the rational—but
23 illegal—course is for radio stations to join the cartel and reap the benefit of
24 below-market rates achieved with their collective monopsony power.

25 61. In communicating with the thousands of radio stations it represents,
26 the RMLC continually emphasizes its group negotiation efforts, which are known
27 to and authorized by its members. On November 22, 2016, for example, RMLC
28 Chairman Ed Christian—President and CEO of Saga Communications—informed

1 radio stations by email that the RMLC would “continue[] negotiations with GMR.”
2 The email noted that the RMLC had “negotiated its members’ ability to use . . .
3 GMR repertory information to attempt to avoid playing GMR compositions that are
4 not otherwise licensed.” (Of course, unlicensed and therefore infringing
5 performance of the songs in GMR’s repertory continues unabated.) Less than a
6 week later, Mr. Christian again emailed the radio stations, stating that “the RMLC
7 is continuing to explore negotiations with GMR while the litigation goes forward,
8 and we remain committed to achieving the best possible result for the industry.” In
9 these and countless other communications, the commercial radio industry’s
10 agreement to negotiate as a group with PROs, through the instrumentality of the
11 RMLC, rings loud and clear.

12 62. The RMLC routinely disseminates information to radio stations
13 regarding the status of its PRO negotiations through other means as well. For
14 example, the RMLC takes advantage of industry conferences (including the annual
15 MFM/BCCA conference, National Association of Broadcasters venues, and various
16 state association events), where its members congregate, to “provide[] information
17 concerning industry license negotiations.” And on at least one occasion, the
18 RMLC’s Bill Velez made presentations to several radio industry groups around the
19 country, in which he “listed a lot of these items as goals for the RMLC in our
20 negotiations or litigations with ASCAP and BMI,” and “g[a]ve the industry a report
21 card as to how we fared on those particular goals.” One of the goals listed in the
22 presentation was a “substantial fee decrease.” Mr. Velez reported to the radio
23 industry that the RMLC had achieved that objective in the negotiations.

24 63. These Authorizations, meetings, presentations, and other
25 communications between the RMLC and its member stations both reflect and
26 constitute direct evidence of the unlawful agreement between and among the
27 RMLC and its member radio stations. The reality of this horizontal agreement is
28 further evidenced by the fact that the RMLC is controlled and funded by member

1 stations: it is primarily comprised of an Executive Committee, the members of
2 which are horizontal competitors. Each of them owns or manages an RMLC
3 member station or conglomeration of member stations. These Executive
4 Committee members—whose companies directly compete with one another—
5 negotiate license fees directly with PROs on behalf of their own companies and the
6 RMLC’s thousands of members. According to the RMLC, it exists for the sole
7 purpose of “negotiat[ing] public performance license fees for the benefit of its
8 [radio station] members.”³ Thus, by their very participation in the RMLC, radio
9 stations are agreeing with the RMLC and each other to negotiate as a cartel.

10 64. The RMLC is funded by its members who pay for the privilege of
11 participating in RMLC’s efforts to negotiate as a cartel. Members pay dues based
12 on their size and are subject to assessments when the RMLC undertakes litigation
13 or other efforts on their behalf to lower license fees.

14 65. In practice, the RMLC negotiates one template agreement with each
15 PRO on behalf of, and thus binding, all member stations who are party to these tacit
16 and explicit agreements.

17 66. The RMLC implicitly and explicitly discourages stations from entering
18 direct agreements with PROs. In fact, in Mr. Christian’s November 22, 2016 email
19 to radio stations, the RMLC expressly recommended that its members *not* agree to
20 GMR’s proposed fees. In his follow-up email on November 28, 2016, Mr.
21 Christian paid lip service to the law, stating that “every broadcaster is free to
22 determine whether the best course for it is to negotiate a license with GMR
23 directly,” but then immediately requested that radio stations “keep us in the loop by
24 cc’ing Bill Velez, the RMLC’s Executive Director (bill@radiomlc.org), on any
25 communications you have with GMR.” There is no legitimate, pro-competitive
26 reason why a radio station or broadcasting company wishing to negotiate directly

27
28 ³ Compl. ¶ 11, *Radio Music License Comm., Inc. v. SESAC, Inc., et al.*, No. 2:12-cv-05807-CDJ (E.D. Pa. Oct. 11, 2012) (ECF No. 1).

1 with GMR should copy the head of the RMLC on “any communications” with
2 GMR, or keep the RMLC “in the loop” on licensing negotiations with GMR.

3 67. And, as a practical matter, more than 99% of the RMLC members
4 have participated in and are taking advantage of the RMLC’s group rate negotiation
5 conduct. Only two members have entered an agreement with GMR and just a
6 handful of others have even inquired. These figures prove the obvious—operating
7 as a cartel ensures the RMLC members they can obtain premium content from
8 copyright holders for exploitative, below-competitive license fees. By virtue of
9 RMLC member stations’ agreement to act as a cartel, negotiating with RMLC
10 Committee or Executive Committee members is equivalent to negotiating with the
11 thousands of radio stations that make up the overwhelming share of a
12 ten-billion-dollar-per-year industry. As one broadcast industry lawyer has written,
13 “Practically speaking, the RMLC is every broadcaster’s agent.” Thus, when a PRO
14 is negotiating with the RMLC, it fully understands it is negotiating with virtually all
15 of the terrestrial radio stations in the United States. This gives the RMLC
16 tremendous negotiating leverage over PROs.

17 **F. The RMLC’s Anticompetitive Negotiations with GMR**

18 68. Not long after GMR was launched in 2013, it contacted the RMLC to
19 introduce the organization to the RMLC. As discussed below, when the RMLC
20 made a rate proposal to GMR in the course of negotiations, it was a single fee
21 covering a blanket license for all RMLC radio stations for a year. GMR made
22 proposals likewise covering all RMLC stations. RMLC rejected all of GMR’s
23 proposals. GMR has sought to enter direct licenses with individual members of the
24 RMLC. As of the date of this Complaint, however, only 2 of 3,000 members have
25 agreed to a direct license and only a handful of others have inquired about the
26 possibility of entering a direct license—evidencing the stranglehold the RMLC and
27 its members have over the terrestrial radio airwaves.

28 69. At all times, the RMLC held itself out as representing and negotiating

1 on behalf of its member radio stations. For example, RMLC’s Executive Director
2 Bill Velez told GMR that the RMLC was seeking an “industry-wide licensing
3 arrangement[.]” and, as a condition of negotiations, RMLC insisted on a “safe
4 harbor” from infringement claims “to *the radio industry* in the interim.” The
5 RMLC specifically sought to negotiate a price those stations would collectively pay
6 to license GMR’s affiliates’ copyrighted works.

7 70. Another condition of RMLC’s was that GMR agree to license all the
8 works in its repertory to every RMLC member, and to submit to binding rate
9 arbitration. GMR refused this proposal which, again, seeks to dispossess GMR and
10 its songwriters of the ability to negotiate individually with RMLC members. The
11 RMLC thereby sought to eradicate potential competition among its radio stations
12 for the GMR songs, which might otherwise result in GMR obtaining a market rate
13 for its songwriters.

14 71. GMR was forced to attempt direct negotiations with individual RMLC
15 member stations. However, RMLC members resisted direct deals, and repeatedly
16 instructed GMR to deal with the spokesman of their cartel—the RMLC—instead.
17 To date, GMR has successfully executed direct licensing agreements with only two
18 of the 3,000 RMLC members, and both of these deals took over a year to negotiate.

19 72. In September 2016, at the request of individual RMLC members,
20 GMR engaged in discussions with the RMLC. Here again, the RMLC held itself
21 out as representing all of its members, except those with whom GMR had entered a
22 direct license. The parties negotiated and executed a Non-Disclosure Agreement
23 which applied to the RMLC members as a whole. The RMLC requested that GMR
24 make an *industry-wide* licensing fee offer. Throughout October and November
25 2016, representatives from the RMLC and GMR met in person, spoke on the phone,
26 and exchanged emails and written proposals. At all times, the RMLC was seeking
27 to negotiate a single license price on behalf of the vast majority of all U.S.
28 terrestrial radio stations.

1 77. The RMLC has transmitted Authorizations and contracts to member
2 radio stations across state lines and has communicated with member radio stations
3 by weblog, email, and telephone across state lines. RMLC employees have traveled
4 across state lines to negotiate with GMR. Moreover, the RMLC and GMR have
5 conducted negotiations in the State of California, including within this District.

6 78. The RMLC member radio stations that purchase services from PROs
7 remit substantial payments across state lines to the RMLC and to the PROs. In
8 connection with this business, monies, contracts, bills, and other forms of business
9 communication and transactions are transmitted in a continuous and uninterrupted
10 flow across state lines and throughout the State of California, including within this
11 District.

RELEVANT MARKET

A. Relevant Product Market

12
13
14 79. The relevant product market in this case is the market for licenses to
15 broadcast copyrighted music on terrestrial commercial radio stations in the United
16 States. Terrestrial radio stations operate in different markets than other media
17 service providers such as satellite radio and television, cable music channels, or
18 internet radio services. According to the U.S. Senate, over-the-air radio programs:
19 (1) are available without subscription; (2) do not rely upon interactive delivery; (3)
20 provide a mix of entertainment and non-entertainment programming and other
21 public interest activities to local communities; (4) promote, rather than replace,
22 record sales; and (5) do not constitute “multichannel offerings of various music
23 formats.” Radio stations have successfully argued they should be exempt from
24 paying statutory performance fees for sound recordings (as distinct from songs)
25 because record labels and performers profit from the free exposure provided by
26 radio airplay. By contrast, other music sources are regulated by the Copyright
27 Royalty Board and are obligated to pay significant fees for performing sound
28 recordings. For example, internet radio services pay a substantial percentage of

1 their revenue to perform sound recordings. Terrestrial radio, by comparison, is
2 unique in that it pays no such performance royalties for sound recordings.
3 Terrestrial radio's exemption from paying sound recording performance royalties is
4 evidence of the promotional sword that the industry collectively wields.

5 80. Terrestrial radio is also different because of the unique promotional
6 support it affords to songwriters, record labels, and artists. Radio stations choose a
7 relatively small selection of songs that they broadcast repeatedly. With consistent
8 rotation of a small number of songs, radio fuels "hit" songs and exposes new music.
9 This is in contrast with the on-demand nature of many other music services where
10 the listener selects what songs she will hear.

11 81. Commercial radio stations operate in two-sided markets. On one side,
12 they seek to attract as many listeners as possible. On the other, they sell advertising
13 to businesses that wish to reach local listeners. The more listeners radio stations
14 can attract, the more they can charge for the advertising they sell. Those
15 commercial radio stations that play music seek to attract listeners by playing music
16 that is popular within a particular genre.

17 82. For licensing purposes, radio stations have generally divided
18 themselves into two categories: (1) those that predominately play music; and
19 (2) those that broadcast other forms of content such as news, talk, or sports.
20 Because they rely on the music they play to attract listeners, music-intensive
21 stations traditionally pay higher license fees than news, talk, or sports radio
22 stations.

23 83. The broadcasting of copyrighted music by terrestrial radio is not
24 reasonably interchangeable with other forms of media distribution, such as satellite-
25 based or internet transmission. For one, terrestrial radio is freely available to
26 hundreds of millions of listeners and is their primary source of music and those
27 listeners are not likely to switch to another medium. By way of example, virtually
28 every car sold in America continues to come pre-installed with an AM/FM radio

1 and drive time continues to be a major source of radio consumption. Likewise, an
2 AM/FM clock radio is placed in virtually every hotel and motel room in America.
3 Given the sheer size of the market, from the vantage point of a PRO or copyright
4 holder, there is simply no substitute for broadcasting by terrestrial radio. For this
5 reason, a decision to forgo public performance licenses to terrestrial radio in the
6 face of a low price is not an economically viable one. Lost revenues from radio
7 stations cannot be sufficiently recaptured from increased sales to other media.

8 84. In some parts of the country, terrestrial radio is the *only* effective way
9 for PROs and copyright holders to reach meaningful numbers of consumers.
10 Moreover, terrestrial radio transmission holds certain advantages that potential
11 alternate forms of music distribution do not. As compared to terrestrial radio
12 antennas, satellite radio antennas are more prone to losing transmission when
13 obstructed by buildings or other structures. And while it is possible to receive local
14 AM/FM radio transmissions at virtually any location in the country, internet-based
15 media (whether live or pre-recorded) can only be accessed when the user is
16 connected to the internet, whether through Wi-Fi, ethernet, or a sufficiently fast
17 mobile phone network. And there are large pockets throughout the country in
18 which mobile connectivity is unavailable or severely limited. In addition, local
19 terrestrial radio stations offer unique value to songwriters seeking to promote their
20 live performances or boost sales of their music in a specific geographic area.
21 Although internet media claim to be able to offer localized distribution using
22 geolocation, these services are often unreliable and do not carry the same gravitas
23 as endorsement from a trusted terrestrial radio station, particularly in certain parts
24 of the country. Because of this, there is low cross-elasticity of demand between the
25 broadcast of copyrighted music by terrestrial radio and the transmission of similar
26 content through other means. If a hypothetical monopsonist in the terrestrial radio
27 broadcasting market were to impose a small but significant non-transitory decrease
28 in licensing fees, significant numbers of copyright holders would not turn to

1 alternate forms of media distribution as a substitute.

2 85. Through a statement by its Chairman, Ed Christian, during a
3 congressional hearing, the RLMC itself has recognized that terrestrial radio is
4 unique among musical content providers—unique in terms of its exposure and
5 unique in terms of its power:

6 It's important to distinguish here between pure webcasters (or
7 internet radio), satellite radio, and terrestrial radio. Internet radio
8 does not represent a "free" platform to consumers who need to
9 pay an internet service provider (or "ISP") for access, and who
10 often pay a subscription fee. Satellite radio generally requires the
11 consumer to pay an excess fee as well. Terrestrial radio, on the
12 other hand, is free to the consumer and prides itself on local
13 service to the community. It's critical that Congress judge the
14 local radio industry upon its particular merits alone and not as a
15 comparable to other transmission platforms. It's ironic that within
16 the context of the digital "perfect storm", local radio, which
17 utilizes primarily analog transmissions as the basis for its
18 platform, has been broadly tagged as the problem by stakeholders
19 in the music industry. To be clear -- the only crime that terrestrial
20 radio has committed is to continue to represent the most
21 important promotional tool for songwriters and the recording
22 industry. Otherwise, why would labels and songwriters continue
23 to place a premium on securing terrestrial radio airplay?

19 **B. Relevant Geographic Market**

20 86. The relevant geographic market in which to assess the anticompetitive
21 effects of the RMLC's conduct is the United States. The United States is the area
22 of effective competition in which terrestrial radio stations (which are often owned
23 by national or regional parent companies) compete with respect to the negotiation
24 of public performance licenses to copyrighted music, and for the patronage of
25 advertisers. It is also within the United States that copyright holders may
26 reasonably turn for alternate licensees. Thus, for example, if a PRO or other
27 copyright holder is unable to find acceptable licensees to broadcast their works in
28 Phoenix, they might reasonably turn to alternative potential licensees in Las Vegas,

1 Seattle, Houston, Atlanta, or Boston.

2 87. The copyright licenses the RMLC negotiates on behalf of its members
3 are not limited to a particular local geographic area. They are licenses to perform
4 the copyrighted works in the United States. When conglomerates with multiple
5 stations such as CBS Radio negotiate for a license, they seek a single license
6 applicable to all their stations across the U.S.

7 88. Increasingly, radio stations seek licenses that also give them the right
8 to make performances available in digital form over the internet. Thus, the radio
9 station's content, including the performance of copyrighted works, can be heard
10 over the internet throughout the United States.

11 89. That the relevant market is national in scope is, in part, a function of
12 radio regulation in the United States. Since 1910, terrestrial radio in the United
13 States has been regulated at the national level—first by the Federal Radio
14 Commission, and subsequent to the passage of the Communications Act in 1934, by
15 the Federal Communications Commission (“FCC”). The FCC is responsible for the
16 allocation of broadcast spectrum, and the associated licensing of radio broadcast
17 stations. The FCC has no jurisdiction to license radio stations outside of the United
18 States' boundaries, and nor do foreign authorities (such as the Canadian
19 Radio-Television and Telecommunications Commission) have authority to license
20 radio stations within the United States. In other words, the FCC oversees a national
21 (but not international) market for terrestrial radio broadcasting. Because other
22 countries employ different regulatory systems for terrestrial radio, and have enacted
23 different laws governing copyright protection, licensing, and public performances,
24 PROs and other copyright holders are unlikely to turn to potential alternative
25 licensees beyond U.S. borders if they are unable to find satisfactory licensees
26 within the United States.

27 90. Because of these factors, there is low cross-elasticity of demand
28 between the broadcast of copyrighted music by terrestrial radio within the United

1 States and the broadcast of similar content by terrestrial radio outside of the United
2 States. If a hypothetical monopsonist in the U.S. terrestrial radio broadcasting
3 market were to impose a small but significant non-transitory decrease in licensing
4 fees, significant numbers of copyright holders would not turn to terrestrial radio
5 broadcasters outside of the United States as a substitute.

6 **THE RMLC'S MARKET POWER**

7 91. The RMLC has market power in the relevant market.

8 92. By its own admission, the RMLC negotiates licenses on behalf of the
9 vast majority of commercial terrestrial radio stations in the United States. The
10 10,000 commercial radio stations the RMLC represents collectively account for
11 approximately 90% of revenues in the relevant market. On information and belief,
12 the vast majority of these 10,000 radio stations participate in, and benefit from, the
13 RMLC's group negotiation and price-fixing conduct. Thus, PROs or songwriters
14 that want to license their songs to be played on terrestrial radio in the United States
15 effectively have no choice but to deal with the RMLC. While some of the larger
16 radio station conglomerates may directly negotiate with PROs for licenses, the vast
17 majority of stations—particularly small, unaffiliated stations that may represent the
18 best media outlet for accessing certain parts of the country—participate in the
19 RMLC's group negotiation and price-fixing conduct.

20 93. Another indication of the RMLC's market power is its ability to obtain
21 lower prices on behalf of the radio stations it represents.

22 94. For example, in 2008, the RMLC negotiated licenses with fixed fees
23 with ASCAP and BMI. But when the U.S. economy sank into a recession and radio
24 stations' advertising revenues slumped, the RMLC complained radio stations were
25 paying too much for those licenses.

26 95. As the recession deepened, the RMLC's member stations became
27 unhappy with the deal they had struck. The lack of a relationship between fixed
28 license fees and gross revenues caused license fees to go from 1.7% to

1 approximately 3% of industry revenues for each of ASCAP and BMI in the post-
2 2008 environment. Although the radio stations were bound to a five-year contract,
3 the RMLC was able to use its market power to renegotiate the terms of the
4 agreements it had previously signed. The RMLC effectively rolled back the annual
5 industry fees that radio stations paid ASCAP by more than \$80 million for the year
6 2012 (relative to where the fees stood at the time the prior license terminated in
7 2009). The RMLC also obtained a return to a revenue-based fee structure at a level
8 of 1.7% of revenue. In addition, the new agreement RMLC obtained covers the
9 range of new media platforms in which the radio industry is increasingly engaged,
10 such as platforms related to internet websites, smart phones, and other wireless
11 devices. In other words, the RMLC was able to exploit its market position to obtain
12 a *broader* license in return for a *lower* share of radio stations' revenues.

13 96. The RMLC is in active negotiations with SESAC. In a recent
14 communication to its members about those negotiations, the RMLC encouraged the
15 radio stations—the cartel—to hold tight and stick together, because the RMLC
16 expected to reduce SESAC's rates with the industry by more than 50%. With this
17 letter, the RMLC discouraged its members from entering into direct deals with
18 SESAC, and made sure that any such direct deals would be at or below the price
19 fixed by the cartel.

20 **B. Barriers to Entry**

21 97. There are significant barriers to entry in the relevant market. These
22 entry barriers help the RMLC and its members to maintain its market power in the
23 relevant market.

24 98. In a monopsony market, “switching barriers” refers to the costs to a
25 seller of switching from a monopsony buyer to a new entrant buyer. Switching
26 barriers are the economic equivalent of barriers to entry in the monopoly context.

27 99. Here, a new entrant looking to enter the market for purchasing radio
28 station public performance licenses must achieve sufficient scale—that is, represent

1 sufficient radio stations—so that it can effectively compete. But radio stations will
2 have no incentive to aggregate their buying power with a new entrant if that entrant
3 does not have more bargaining power with PROs than does the RMLC or the radio
4 station itself, acting individually. Amassing that many radio stations will be very
5 difficult for a new entrant, since the costs of switching from the RMLC to a new
6 entrant include the court-mandated fee to fund the RMLC’s operations, which radio
7 stations pay regardless of whether or not they are members of the RMLC. A station
8 will thus be less inclined to switch to a competitor of the RMLC but keep funding
9 the RMLC’s operations.

10 100. Without such a court-ordered assessment, a new entrant will also need
11 to fund its own operations, putting it at a competitive disadvantage with the RMLC
12 in terms of costs.

13 101. The RMLC enters into licensing agreements with PROs that carry
14 five-year terms. These multi-year terms also contribute to switching costs, since
15 sunk licensing costs will often exceed the benefits of switching during the first few
16 years of the licensing term. This can make radio stations more reluctant to switch
17 to a different licensing agreement (for example, a direct licensing deal with a PRO)
18 before their existing licenses are nearing termination.

19 **C. Barriers to Short-Term Increases in Consumption**

20 102. Because this case involves price collusion by radio station *purchasers*
21 rather than by widget producers, the relevant “output” is *consumption* by terrestrial
22 radio stations of the product at issue—*i.e.*, licenses to copyrighted music—rather
23 than the production of it.⁵ The RMLC has market power because in the event the
24 RMLC stations do not buy licenses from GMR, non-RMLC member radio stations

25
26 ⁵ As the Tenth Circuit has explained, while collusive suppliers “utilize market
27 power to *restrict output* and thereby raise prices,” collusive purchasers with market
28 power “*decrease market demand* for a product and thereby lower prices.”
Campfield v. State Farm Mut. Auto. Ins. Co., 532 F.3d 1111, 1118 (10th Cir. 2008)
(emphasis added).

1 will not increase their license purchases permitting GMR to shift its output to those
2 stations. A single license allows the radio station to play a particular song as many
3 times as it wishes during the license period. So when a radio station obtains from
4 GMR the right to perform *Imagine*, it does not need to—and would have no
5 incentive to—purchase another license to perform publicly the same song. No
6 radio station would purchase multiple blanket licenses from the same PRO, even if
7 licensing fees are severely depressed.

8 103. Therefore, if a monopsonist or group buying cartel suppresses prices
9 and demand for performance licenses to copyrighted music, other existing radio
10 stations would have absolutely no reason to—and, in fact, will not—increase their
11 consumption of those licenses in the short run (or indeed in the long run). This
12 dynamic supports and helps to perpetuate the RMLC’s power in the relevant
13 market.

14 **THE RMLC’S ANTICOMPETITIVE CONDUCT**

15 **A. The Antitrust Laws Apply to Agreements Among Buyers**

16 104. Buyers as well as sellers may violate the antitrust laws.
17 “Conceptually, monopsony power is the mirror image of monopoly power.” U.S.
18 Dep’t of Justice Antitrust Div. & Fed. Trade Comm’n, *Improving Health Care: A*
19 *Dose of Competition* 13 (2004). As Judge Posner has explained, “[j]ust as a sellers’
20 cartel enables the charging of monopoly prices, a buyers’ cartel enables the
21 charging of monopsony prices; and monopoly and monopsony are symmetrical
22 distortions of competition from an economic standpoint.” *Vogel v. Am. Soc’y of*
23 *Appraisers*, 744 F.2d 598, 601 (7th Cir. 1984). And as the Supreme Court has
24 recently recognized, similar legal standards apply to these same basic economic
25 principles. *See Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.*, 549
26 U.S. 312, 321-22 (2007) (noting the “close theoretical connection between
27 monopoly and monopsony” and that “[t]he kinship between monopoly and
28 monopsony suggests that similar legal standards should apply to claims of

1 monopolization and to claims of monopsonization”).

2 105. The RMLC’s sole mission is to negotiate license fees. According to
3 guidelines jointly promulgated by the Department of Justice and Federal Trade
4 Commission that mission is not legitimate, but is a *per se* antitrust violation. The
5 antitrust agencies explained: “An agreement among purchasers that simply fixes the
6 price that each purchaser will pay or offer to pay for a product or service is not a
7 legitimate joint purchasing arrangement and is a *per se* antitrust violation.
8 Legitimate joint purchasing arrangements provide some integration of purchasing
9 functions to achieve efficiencies.” See U.S. Dep’t of Justice & Fed. Trade
10 Comm’n, *Statements of Antitrust Enforcement Policy in Healthcare* 54 n.17 (Aug.
11 1996) [hereinafter “*Healthcare Statements*”].

12 106. A buyers’ cartel forces sellers to accept prices below what those sellers
13 would receive in a competitive market, or that are otherwise not explained by
14 sellers’ efficiencies, because the cartel members collectively exercise market
15 power. See, e.g., *Telecor Commc’ns, Inc. v. Sw. Bell Tel. Co.*, 305 F.3d 1124,
16 1134-36 (10th Cir. 2002). Just as the collective exercise of seller-side market
17 power absent sufficient countervailing efficiencies will violate Section 1 of the
18 Sherman Act, the Act prohibits the collective exercise of buyer-side monopsony
19 power.

20 **B. RMLC Member Stations Have Engaged in Additional Anticompetitive**
21 **Conduct in Furtherance of Their Conspiracy**

22 107. The antitrust agencies have observed that “the likelihood of
23 anticompetitive communications is lessened where communications between the
24 purchasing group and each individual participant are kept confidential, and not
25 discussed with, or disseminated to, other participants.” See *Healthcare Statements*
26 at 57.

27 108. The RMLC defies that directive frequently. As just one example, the
28 RMLC issued an open letter to its members on October 28, 2015 regarding an

1 ongoing rate arbitration with SESAC. In this letter, the RMLC informed its
2 member stations that “reasonable fees bargaining [with SESAC] should be set at
3 half or less than current levels,” and that it anticipated achieving this specific rate
4 amount. The RMLC further noted that an individual member’s decision to pay
5 SESAC higher rates would “undercut the RMLC’s ability to vigorously represent
6 our industry.” This letter and directive is a smoking gun. It clearly signaled to the
7 RMLC’s co-conspirator stations the level at which the price for a SESAC license
8 had been fixed. In this way, the RMLC and its affiliates could be sure that even
9 stations that opted to deal directly with SESAC would not undermine the cartel’s
10 objective of suppressing the license fees paid to SESAC to a fixed level.

11 **C. RMLC Member Stations’ Conduct Has Had Anticompetitive Effects in**
12 **the Market that Are Not Outweighed by or Necessary to Achieve a**
13 **Procompetitive Purpose**

14 109. Though lower prices may not appear to cause harm to competition,
15 when they are the result of an agreement among competitors with market power,
16 they are *per se* illegal and clearly harm competition and consumer welfare. RMLC
17 member stations have agreed to reduce competition among themselves and thereby
18 increase their own profits, all at the expense of overall economic efficiency and
19 consumer welfare. The lower prices their collusion yielded have not been passed
20 on to consumers in any form. Radio is not made better because the conspiring radio
21 stations pay less to the people who create music. Instead, consumers will be
22 harmed by the reduced incentives for innovation resulting from suppressing the
23 amount a songwriter can command for use of their copyrighted work. Absent the
24 agreement among the RMLC and the radio stations, greater innovation could be
25 rewarded by allowing songwriters and PROs to negotiate for license fees
26 determined by the market value of the fruits of that innovation. The RMLC
27 member stations’ conspiracy stifles this and prevents the market from determining
28 the most efficient, consumer-welfare-maximizing result.

110. A group purchasing organization that, like the RMLC, is designed to

1 support a price fixing conspiracy is a *per se* antitrust violation. But even if the
2 RMLC member stations' price-fixing conduct were not *per se* illegal, it would still
3 violate Section 1 of the Sherman Act and the California Cartwright Act under the
4 antitrust "rule of reason" because the anticompetitive effects of that conduct far
5 outweigh any procompetitive benefits.

6 111. The antitrust agencies' *Healthcare Statements* set forth a market-share
7 focused framework for group buying organizations, under which anticompetitive
8 effects are more likely where "the arrangement accounts for so large a portion of
9 the purchases of a product or service that it can effectively exercise market power
10 in the purchase of the product or service." *Healthcare Statements* at 53. The
11 statement provides a "safe harbor" for joint purchasing organizations with a 35%
12 market share. *Id.* at 54-55.

13 112. The RMLC, which negotiates on behalf of radio stations accounting
14 for more than 90% of the industry's revenues, significantly exceeds this "safe
15 harbor" threshold.

16 113. In addition, the RMLC has unique access to the vast majority of
17 terrestrial radio stations. These stations are a business element necessary for the
18 songwriters GMR represents because, as discussed above, while other media
19 avenues exist through which GMR songwriters make their music available to the
20 public, terrestrial radio remains the most important promotional medium for GMR
21 songwriters.

22 114. Under the *Healthcare Statements*, the RMLC is more likely to have
23 anticompetitive effects because the RMLC Executive Committee members who
24 negotiate on behalf of the RMLC are not independent, but employees of RMLC
25 member radio stations. *See Healthcare Statements* at 57 ("where negotiations are
26 conducted on behalf of the joint purchasing arrangement by an independent
27 employee or agent who is not also an employee of a participant, antitrust risk is
28 lowered").

1 115. The RMLC's open information exchanges with its members also
2 increase the risk of anticompetitive effects. *See id.* (antitrust risk lowered "where
3 communications between the purchasing group and each individual participant are
4 kept confidential, and not discussed with, or disseminated to, other participants.").

5 116. While the RMLC raises serious anticompetitive concerns, there is no
6 countervailing consumer benefit.

7 **ANTICOMPETITIVE EFFECTS AND ANTITRUST INJURY**

8 117. As a direct and proximate cause of the RMLC's and its
9 co-conspirators' unlawful actions, competition has been substantially foreclosed in
10 the market for licenses to the broadcast of copyrighted music by terrestrial
11 commercial radio stations in the United States. The RMLC eliminates the
12 competition that would otherwise exist—and which should exist—between 10,000
13 commercial radio stations that constitute the vast majority of purchasers in the
14 relevant market. By operating as a group buying cartel with an extraordinarily high
15 degree of monopsony power, the RMLC and its constituent stations artificially
16 suppress demand for licenses, and the music licensing fees paid to PROs and
17 copyright holders, below competitive levels.

18 118. This elimination of competition, and the resulting decrease in demand
19 and pricing for performance licenses, in turn reduces the output of high-quality
20 music that benefits consumers. As the Supreme Court has stated, copyright law is
21 founded on the principle that "encouragement of individual effort by personal gain
22 is the best way to advance public welfare through the talents of authors and
23 inventors in 'Science and useful Arts.'" *Mazer v. Stein*, 347 U.S. 201, 219 (1954).
24 It is the copyright holder's right to that "reward"—a reasonable and competitive
25 royalty—that "serves to induce release to the public of the products of his creative
26 genius." *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 429
27 (1984) (quoting *United States v. Paramount Pictures*, 334 U.S. 131, 158 (1948)).
28 The copyright system therefore "promotes consumer welfare in the long term by

1 encouraging investment in the creation of desirable artistic and functional works of
2 expression.” *In re Indep. Serv. Orgs. Antitrust Litig.*, 203 F.3d 1322, 1328-29 (Fed.
3 Cir. 2000) (quoting *Data Gen. Corp. v. Grumman Sys. Support Corp.*, 36 F.3d
4 1147, 1186-87 (1st Cir. 1994)). By artificially suppressing demand and prices for
5 licenses to perform songwriters’ musical works, the RMLC cartel eviscerates the
6 economic incentive these songwriters have to create and publish new creative
7 works for the consuming public’s benefit. The RMLC’s collusive conduct has
8 therefore reduced, and will continue to reduce, the output of high-quality musical
9 compositions.

10 119. Moreover, the RMLC’s artificial suppression of demand and prices for
11 licenses to copyrighted music results in pricing that is below the actual value of the
12 compositions—and, in some instances, could be below the marginal cost of
13 producing high-quality musical compositions in the first place. Not only does this
14 diminish songwriters’ incentives to create more musical works in the future, it
15 results in unnecessary waste of existing resources, leading to allocative
16 inefficiencies. As the Ninth Circuit states, “[c]onsumer welfare is maximized when
17 economic resources are allocated to their best use.” *Rebel Oil Co. v. Atl. Richfield*
18 *Co.*, 51 F.3d 1421, 1433 (9th Cir. 1995).

19 120. GMR has been injured in its business and property as a direct and
20 proximate result of the competition-reducing aspects or effects of the RMLC’s and
21 its co-conspirators’ unlawful conduct. In particular, by operating as a cartel, the
22 RMLC and its members substantially eliminate competition among terrestrial radio
23 stations in the negotiation of licensing terms and royalty rates. The RMLC’s group
24 price-setting and negotiation artificially suppress licensing fees to the songs in
25 GMR’s repertory below competitive levels, such that the price-fixed licensing fees
26 the RMLC insists upon do not correspond to the actual value of the works in
27 GMR’s repertory. The anticompetitive suppression of prices is widely recognized
28 to constitute actionable antitrust injury. *See W. Penn Allegheny Health Sys., Inc. v.*

1 *UPMC*, 627 F.3d 85, 103-05 (3d Cir. 2010) (healthcare system adequately alleged
2 “antitrust injury in the form of artificially depressed reimbursement rates”); *Telecor*
3 *Comm’ns, Inc. v. Sw. Bell Tel. Co.*, 305 F.3d 1124, 1134 (10th Cir. 2002) (holding
4 that injury to sellers as a result of monopsonistic behavior constitutes antitrust
5 injury); *Knevelbaard Dairies v. Kraft Foods, Inc.*, 232 F.3d 979, 987-88 (9th Cir.
6 2000) (plaintiff milk suppliers adequately alleged antitrust injury due to “artificially
7 depressed milk prices”). Moreover, by refusing to deal with GMR except upon the
8 anticompetitive terms the RMLC cartelists agree to, the RMLC forces GMR to
9 either accept below-competitive rates or forgo licensing revenue altogether. *See In*
10 *re Beef Indus. Antitrust Litig.*, 600 F.2d 1148, 1158 (5th Cir. 1979) (“In the
11 monopsony or oligopsony price-fixing case, however, the seller faces a Hobson’s
12 choice: he can sell into the rigged market and take the depressed price, or he can
13 refuse to sell at all.”); *see also Blue Shield of Va. v McCreedy*, 457 U.S. 465, 483
14 (1982) (forcing health plan subscriber to choose between two injurious options—
15 “visiting a psychologist and forfeiting reimbursement, or receiving reimbursement
16 by forgoing treatment by the practitioner of their choice”—constituted antitrust
17 injury). The licensing revenue GMR has lost as a direct result of the RMLC’s
18 anticompetitive price-fixing and refusals to deal constitutes antitrust injury.

19 **COUNT I**

20 **(CONSPIRACY IN RESTRAINT OF TRADE – SHERMAN ACT**

21 **SECTION 1)**

22 121. GMR incorporates its allegations in paragraphs 1-120 as if fully stated
23 herein.

24 122. Beginning no later than 2013, and continuing to date, Defendant and
25 its co-conspirators have engaged in a conspiracy and agreement in unreasonable
26 restraint of interstate trade and commerce, constituting a violation of Section 1 of
27 the Sherman Act, 15 U.S.C. § 1. This offense is likely to continue and recur unless
28 the relief requested is granted.

1 123. The conspiracy and agreement consist of an understanding and concert
2 of action among the RMLC and its co-conspirators to lower, fix, and control
3 copyright license fees, to avoid price competition among radio stations, and to limit
4 price competition among the RMLC's radio station members, ultimately effectuated
5 by collectively adopting and adhering to functionally identical license agreements
6 and fee schedules.

7 124. For the purpose of forming and effectuating this agreement and
8 conspiracy, some or all of the RMLC and its co-conspirators did the following
9 things, among others:

- 10 a. shared their business information, plans, and strategies in order
11 to formulate ways to lower copyright license fees;
- 12 b. assured each other of support in attempting to lower copyright
13 license fees, and the specific rates to which they would lower
14 them;
- 15 c. employed ostensible trade association meetings to further
16 support their attempts to lower copyright license fees;
- 17 d. fixed the method of and formulas for setting copyright license
18 fees; and
- 19 e. fixed prices for copyright license fees.

20 125. Defendant RMLC and its co-conspirators entered into this conspiracy
21 and agreement with the intent to harm or restrain interstate trade or commerce in
22 the relevant market.

23 126. Defendants' conspiracy and agreement, in which the RMLC and its
24 member stations agreed to lower, fix, and control copyright license fees, and
25 thereby prevent price competition among radio stations, constitutes a *per se*
26 violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

27 127. Moreover, Defendants' conspiracy and agreement has resulted in
28 obvious and demonstrable anticompetitive effects on composers and publishers in
the copyright-protected music market by depriving them of the benefits of

1 competition among radio stations as to both copyright license fees and other
2 innovations, such that it constitutes an unreasonable restraint on trade in violation
3 of Section 1 of the Sherman Act, 15 U.S.C. § 1.

4 128. Where, as here, Defendants have engaged in a *per se* violation of
5 Section 1 of the Sherman Act, no allegations with respect to the relevant product
6 market, geographic market, or market power are required. To the extent such
7 allegations may otherwise be necessary, the relevant product market for the
8 purposes of this complaint is copyright licenses purchased by terrestrial radio
9 stations. The anticompetitive acts at issue in this case directly affect the purchase
10 of copyright licenses by terrestrial radio stations. No reasonable substitute exists
11 for copyright licenses purchased by terrestrial radio stations. For composers and
12 publishers, there is no substitute for terrestrial radio stations as a means of reaching
13 a sizeable population of potential new listeners. Without terrestrial radio stations,
14 songwriters and publishers of copyrighted songs would be unable to reach many
15 potential new listeners. Terrestrial radio stations are viewed as separate from other
16 ways of distributing and performing copyrighted music, and copyright licenses sold
17 to terrestrial radio stations constitute a separate market segment from all other
18 copyright license purchasers. The RMLC and its co-conspirators were able to
19 impose and sustain significant license fee decreases for the copyright licenses they
20 purchase.

21 129. The relevant geographic market is the United States. The rights to
22 license copyrights are granted on territorial bases, with the United States typically
23 forming its own territory. Radio stations typically present a unique medium to U.S.
24 consumers and foreign terrestrial radio stations' signals cannot typically be heard in
25 the United States.

26 130. Collectively, the RMLC's members possess market power in the
27 market for copyright license fees paid by terrestrial radio stations. The RMLC
28 successfully imposed and sustained a significant fee reduction in the license fees

1 paid to the two largest PROs, ASCAP and BMI. Collectively, the RMLC's
2 members represent virtually all the terrestrial radio stations in the United States.
3 The RMLC's negotiated license fee agreements are adopted by the vast majority of
4 U.S. commercial radio stations. Music composers and publishers cannot profitably
5 forgo the sale of copyright licenses to the RMLC's member stations.

6 131. Defendants' agreement and conspiracy has had and will continue to
7 have anticompetitive effects, including:

- 8 a. lowering the copyright license fees paid by terrestrial radio
9 stations;
- 10 b. eliminating competition on copyright license fees among
11 terrestrial radio stations;
- 12 c. restraining competition on copyright license fees paid by the
13 RMLC's members;
- 14 d. making more likely express or tacit collusion among radio
15 stations;
- 16 e. reducing competitive pressure on copyright licenses; and
- 17 f. discouraging creative and musical innovation by failing to
18 provide appropriate financial incentives for such innovation.

19 132. Defendants' agreement and conspiracy is not reasonably necessary to
20 accomplish any procompetitive objective, or, alternatively, its scope is broader than
21 necessary to accomplish any such objective.

22 133. Defendants' agreement already has caused significant financial
23 damage and will continue to cause substantial financial damage to GMR because
24 GMR has made money guarantees to its songwriters that were to be funded, in part,
25 by license fees paid by RMLC members after a negotiation in the free market. The
26 RMLC's agreement and exercise of monopsony power has reduced and/or
27 eliminated the license fees paid by RMLC members.
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COUNT II

(VIOLATION OF THE CALIFORNIA CARTWRIGHT ACT)

134. GMR incorporates its allegations in paragraphs 1-133 as if fully stated herein.

135. The RMLC's and its co-conspirators' contract, combination, trust, and conspiracy has been substantially carried out and effectuated within the State of California. Many commercial radio stations in California entered into agreements with the RMLC and one another to negotiate with PROs as a cartel, suppress and eliminate competition in the relevant market, and reduce demand and depress prices for licenses to broadcast copyrighted music by terrestrial radio in California. The RMLC held direct discussions and negotiations with GMR, which is based in Los Angeles. At the single in-person meeting to discuss substantive counterproposals, representatives of the RMLC met with representatives of GMR at GMR's office in Los Angeles.

136. The purpose of the RMLC's and its co-conspirators' contract, combination, trust, and conspiracy is to unreasonably restrain trade in the market for licenses to broadcast copyrighted music on terrestrial radio in the United States, including within California. In particular, the RMLC and its co-conspirators agreed and intend to lower, fix, and control copyright license fees; avoid price competition among radio stations; and limit price competition among the RMLC's member stations. The RMLC's member stations have effectuated these ends by collectively adopting and adhering to functionally identical license agreements and fee schedules.

137. For the purpose of forming and effectuating this contract, combination, trust, and conspiracy, some or all of the RMLC and its co-conspirators did the following things, among others:

- a. shared their business information, plans, and strategies in order to formulate ways to lower copyright license fees;

- 1 b. assured each other of support in attempting to lower copyright
- 2 license fees, and the specific rates to which they would lower
- 3 them;
- 4 c. employed ostensible trade association meetings to further
- 5 support their attempts to lower copyright license fees;
- 6 d. fixed the method of and formulas for setting copyright license
- 7 fees; and
- 8 e. fixed prices for copyright license fees.

9 138. Defendant RMLC and its co-conspirators entered into this contract,
10 combination, trust, and conspiracy with the intent to harm or restrain interstate trade
11 or commerce in the relevant market, including within the State of California.

12 139. Defendants' contract, combination, trust, and conspiracy, in which the
13 RMLC and its member stations agreed to lower, fix, and control copyright license
14 fees, to prevent price competition among radio stations by fixing copyright license
15 fees, constitutes a *per se* violation of the Cartwright Act, Cal. Bus. & Prof. Code §
16 16720.

17 140. Moreover, Defendants' contract, combination, trust, and conspiracy
18 has resulted in obvious and demonstrable anticompetitive effects on composers and
19 publishers in the copyright-protected music market by depriving them of the
20 benefits of competition among radio stations as to both copyright license fees and
21 other innovations, such that it constitutes an unreasonable restraint on trade in
22 violation of the Cartwright Act, Cal. Bus. & Prof. Code § 16720.

23 141. Where, as here, Defendants have engaged in a *per se* violation of the
24 Cartwright Act, no allegations with respect to the relevant product market,
25 geographic market, or market power are required. To the extent such allegations
26 may otherwise be necessary, the relevant product market for the purposes of this
27 complaint is copyright licenses purchased by terrestrial radio stations. The
28 anticompetitive acts at issue in this case directly affect the purchase of copyright

1 licenses by terrestrial radio stations. No reasonable substitute exists for copyright
2 licenses purchased by terrestrial radio stations. For composers and publishers, there
3 is no substitute for terrestrial radio stations for reaching a sizeable population of
4 potential new listeners and without terrestrial radio stations, songwriters and
5 publishers of copyrighted songs would be unable to reach many potential new
6 listeners. Terrestrial radio stations are viewed as separate from other ways of
7 distributing and performing copyrighted music, and copyright licenses sold to
8 terrestrial radio stations is a separate market segment from all other copyright
9 license purchasers. The RMLC and its co-conspirators were able to impose and
10 sustain significant license fee decreases for the copyright licenses they purchase.

11 142. The relevant geographic market is the United States, which includes
12 the State of California. The rights to license copyrights are granted on territorial
13 bases, with the United States typically forming its own territory. Radio stations
14 typically present a unique medium to U.S. consumers and foreign terrestrial radio
15 stations signals cannot typically be heard in the United States.

16 143. Collectively, the RMLC's members possess market power in the
17 market for copyright license fees paid by terrestrial radio stations. The RMLC
18 successfully imposed and sustained a significant fee reduction in the license fees
19 paid to the two largest PROs, ASCAP and BMI. Collectively, the RMLC's
20 members represent virtually all the terrestrial radio stations in the United States.
21 The RMLC's negotiated license fee agreements are adopted by the vast majority of
22 U.S. commercial radio stations. Music composers and publishers cannot profitably
23 forgo the sale of copyright licenses to the RMLC's member stations.

24 144. Defendants' agreement and conspiracy has had and will continue to
25 have anticompetitive effects, including:

- 26 a. lowering the copyright license fees paid by terrestrial radio
27 stations;
- 28 b. eliminating competition on copyright license fees among

- 1 terrestrial radio stations;
- 2 c. restraining competition on copyright license fees paid by the
- 3 RMLC's members;
- 4 d. making more likely express or tacit collusion among radio
- 5 stations;
- 6 e. reducing competitive pressure on copyright licenses; and
- 7 f. discouraging creative and musical innovation by failing to
- 8 provide appropriate financial incentives for such innovation.

9 145. Defendant's contract, combination, trust, and conspiracy is not
10 reasonably necessary to accomplish any procompetitive objective, or, alternatively,
11 its scope is broader than necessary to accomplish any such objective.

12 146. On information and belief, the RMLC represents hundreds of
13 California radio stations in negotiating licensing terms and fees with PROs,
14 including GMR.

15 147. The RMLC's and its co-conspirators' illegal and anticompetitive
16 conduct has caused significant adverse effects on trade and commerce in the State
17 of California, including within this District. In particular, the RMLC's cartel
18 behavior has substantially foreclosed competition among commercial radio stations
19 for licenses to broadcast copyrighted music on terrestrial radio in the State of
20 California; suppressed demand for licenses to broadcast copyrighted music on
21 terrestrial radio in the State of California; and depressed below competitive levels
22 fees for licenses to broadcast copyrighted music on terrestrial radio in the State of
23 California. Moreover, as a direct and proximate result of the RMLC's and its co-
24 conspirators' conduct, songwriters, composers, and music publishers in California
25 have been unfairly and inadequately compensated for the use of their copyrighted
26 works. By undermining the incentives for songwriters, composers, and music
27 publishers to create and publish new creative works, the RMLC has deprived
28 California consumers of additional creative works.

1 representatives of GMR, in person, at GMR's office in Los Angeles.

2 153. On information and belief, the RMLC represents hundreds of
3 California radio stations in negotiating licensing terms and fees with PROs,
4 including GMR.

5 154. The RMLC's and its co-conspirators' illegal and anticompetitive
6 conduct has caused significant adverse effects on commerce in the State of
7 California, including within this District. In particular, the RMLC's cartel behavior
8 has substantially foreclosed competition among commercial radio stations for
9 licenses to broadcast copyrighted music on terrestrial radio in the State of
10 California; suppressed demand for licenses to broadcast copyrighted music on
11 terrestrial radio in the State of California; and depressed fees for licenses to
12 broadcast copyrighted music on terrestrial radio in the State of California below
13 competitive levels. Moreover, as a direct and proximate result of the RMLC's and
14 its co-conspirators' conduct, songwriters, composers, and music publishers in
15 California have been unfairly and inadequately compensated for the use of their
16 copyrighted works. By undermining the incentives for songwriters, composers, and
17 music publishers to create and publish new creative works, the RMLC has deprived
18 California consumers of additional creative works.

19 155. As a direct and proximate result of the RMLC's and its
20 co-conspirators' illegal and anticompetitive conduct, GMR has sustained economic
21 injury, *i.e.*, lost money or property, within California. GMR is headquartered in
22 Los Angeles, California, and substantially all of its employees and property are
23 based in Los Angeles. The RMLC's cartel behavior has suppressed demand for
24 licenses to the high-value, premium content in GMR's repertory, and depressed fees
25 for licenses to that content below competitive levels.

26 156. As a direct and proximate result of the RMLC's and its co-
27 conspirators' illegal and anticompetitive conduct, the thousands of radio stations
28 the RMLC represents—including the hundreds of stations that, on information and

1 belief, reside in California—have been unjustly enriched in an amount to be
2 determined at trial.

3 157. Unless enjoined, the RMLC’s unlawful conduct will continue and
4 cause further injury to GMR. GMR will continue to suffer injury for which there is
5 no adequate remedy at law.

6 158. GMR therefore seeks equitable and injunctive relief pursuant to Cal.
7 Bus. & Prof. Code § 17203, to correct for the injurious and anticompetitive effects
8 caused by the RMLC’s unlawful conduct, and other relief so as to assure that such
9 conduct does not continue or reoccur in the future.

10 **JURY DEMAND**

11 159. Plaintiff demands trial by jury on all issues so triable.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, GMR requests that the Court enter judgment in its favor and
14 against Defendant for:

- 15 a. adjudge and decree that Defendant and its co-conspirators’ agreements
16 not to compete constitute illegal restraints of interstate trade and
17 commerce in violation of Section 1 of the Sherman Act;
- 18 b. adjudge and decree that Defendant and its co-conspirators’ agreements
19 not to compete constitute illegal trusts and combinations in violation of
20 the California Cartwright Act;
- 21 c. adjudge and decree that Defendant and its co-conspirators’ agreements
22 not to compete constitute unfair business practices in violation of the
23 California Unfair Competition Law;
- 24 d. enjoin and restrain Defendant and its co-conspirators from enforcing or
25 adhering to existing agreements that unreasonably restrict competition
26 for copyright licenses;
- 27 e. permanently enjoin and restrain Defendant and its co-conspirators
28 from establishing any similar agreement unreasonably restricting

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- competition for copyright licenses except as prescribed by the Court;
- f. award the GMR such other relief as the Court may deem just and proper to redress and prevent recurrence of the alleged violations and to dissipate the anticompetitive effects of the illegal agreements entered into by the RMLC and its co-conspirators;
- g. actual damages in an amount to be determined at trial;
- h. treble damages;
- i. reasonable attorneys' fees and costs;
- j. punitive damages; and
- k. such other relief as the Court deems just and proper.

Dated: December 6, 2016

Respectfully submitted,

/s/ Daniel M. Petrocelli
