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7
8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10
11 KEVIN CADOGAN, an individual.)
12)
13 Plaintiffs,)
14 vs.)
15)
16 STEPHAN JENKINS, an individual; THIRD)
EYE BLIND, INC., a California corporation; 3EB)
17 PUBLISHING, an unknown entity; and DOES)
1-20, Defendants.)
18)
19 Defendants.)
20)

Case No. _____

COMPLAINT:

- 1) Declaratory Relief (Re-Release);
- 2) Accounting (Re-Release);
- 3) Unjust Enrichment (Re-Release);
- 4) Declaratory Relief (SoundExchange);
- 5) Accounting (SoundExchange);
- 6) Unjust Enrichment (SoundExchange).

Demand for Jury Trial

21 Plaintiff, KEVIN CADOGAN hereby alleges against Defendants, STEPHAN JENKINS, an
22 individual; THIRD EYE BLIND, INC., a California corporation; 3EB PUBLISHING, an unknown entity;
23 and DOES 1-20 (collectively referred to herein as Defendants”), as follows:

24 **NATURE OF THE ACTION**

25 1. This case is an action for declaratory relief, accounting and unjust enrichment arising out
26 of defendants’ surreptitious exploitation of sound recordings authored by Plaintiff without any
27 accounting to Plaintiff. Defendants dispute Plaintiff’s authorship of, and entitlement to revenue
28 generated by, the sound recordings. Additionally Defendants claim ownership to digital performance

1 royalties generated by Plaintiff's musical performances which are collected and distributed by
2 SoundExchange.

3 **PARTIES**

4 2. Plaintiff, KEVIN CADOGAN ("Cadogan") is a California resident and a founding
5 member of the rock band Third Eye Blind.

6 3. Defendant STEPHAN JENKINS ("Jenkins") is a California resident and founding
7 member of Third Eye Blind the band's current lead vocalist who resides in this judicial district in San
8 Francisco, California. Jenkins, upon information and belief, is the sole shareholder and an officer and
9 director of 3EB, Inc.

10 4. Defendant THIRD EYE BLIND, INC. ("3eb") is a California corporation. On
11 information and belief, Defendant Jenkins is the sole shareholder of Third Eye Blind, Inc.

12 5. Defendant 3EB PUBLISHING ("3eb Publishing") is an unknown entity. On information
13 and belief, Defendant Jenkins is the sole owner of 3eb Publishing.

14 6. The true names, identities, or capacities, whether individual, corporate, associate, or
15 otherwise, of Does 1 through 20 inclusive, are unknown to Cadogan, who therefore sues said Defendants
16 by such fictitiously named defendants as they are in some way responsible for the acts and wrongs
17 alleged herein. When the true names, identities or capacities of such fictitiously designated Defendants
18 are ascertained, Plaintiff will ask leave of this Court to amend this Complaint and to insert said true
19 names, identities, and capacities, together with the proper charging allegations.

20 7. Cadogan is informed and believes, and on that basis alleges, that each defendant sued
21 under such fictitious names is in some manner responsible for the wrongs and damages as alleged below;
22 and in so acting, each was functioning as the agent, servant, partner, alter ego, supervisor and/or
23 employee of the other Defendants. In committing the actions mentioned below, each defendant was
24 acting within the course and scope of her or his authority as such agent, servant, partner, supervisor
25 and/or employee, with the permission and consent of the other Defendants.

26 **JURISDICTION AND VENUE**

27 8. This Court has subject matter jurisdiction over this action because the claim for relief
28 arises under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq., and because it involves a

1 declaration of rights arising under federal law, namely the Copyright Act, 17 U.S.C. § 501 et seq. This
2 Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the
3 claim for relief presents a federal question and pursuant to 28 U.S.C. § 1338(a) because the claim for
4 relief relates to copyright rights over which the federal courts have original jurisdiction. Cadogan seeks a
5 declaration that he is an author sound recordings under the federal Copyright Act, Title 15 U.S.C. This
6 action presents an actual case or controversy under Article III of the United States Constitution and
7 serves the essential purpose of clarifying and settling the legal rights at issue.

8 9. This Court has supplemental subject matter jurisdiction over the remaining claims in this
9 action pursuant to 28 U.S.C. § 1367(a) because those claims are so related to claims in the action over
10 which the Court has original jurisdiction that they form part of the same case or controversy.

11 10. This Court has personal jurisdiction over Defendant Stephan Jenkins because Jenkins is a
12 resident of the state of California and has continuous and systematic contacts with the state of California
13 and within this judicial district.

14 11. This Court has personal jurisdiction over Defendant Third Eye Blind, Inc. because Third
15 Eye Blind, Inc. is a California corporation with its principal place of business in California and has
16 continuous and systematic contacts with the state of California.

17 12. Venue for this action is proper under 28 U.S.C. § 1391(b) in the United States District
18 Court for the Northern District of California because this is a judicial district in which a substantial part
19 of the events or omissions giving rise to the claims alleged herein occurred and because at least one
20 defendant, Jenkins, resides in this judicial district.

21 STANDING

22 13. Cadogan has standing to seek declaratory relief, as there is an actual case or controversy
23 between the parties.

24 FACTS AND ALLEGATIONS

25 14. Third Eye Blind is an American pop rock band formed in the early 1990s and experienced
26 commercial success in the mid to late 1990s selling millions of albums and touring the world.

27 15. Cadogan is a founding member of Third Eye Blind and a co-signatory to the recording
28

1 contracts for the band's first two albums. Cadogan performed lead guitar and composed the music to 10
2 of the 14 songs on Third Eye Blind's 1997 Self Titled debut album ("3eb Debut Album") which was
3 certified six times platinum selling over six (6) million copies. Cadogan also composed the music to 6
4 songs on Third Eye Blind's twice platinum selling sophomore album 'Blue' including the fan favorite
5 "Wounded." Cadogan was a full member of the band from late 1993 to early 2000 performing his co-
6 authored radio hits "How's It Going To Be," "Graduate," and "Losing A Whole Year."
7

8 **Re-release of the 3eb Debut Album**

9
10 16. In or around July, 2017 the 3eb Debut Album was re-released to coincide with the 20th
11 Anniversary of its original release. The re-released version of the 3eb Debut Album ("Re-released
12 Album") contained several previously unreleased sound recordings. Specifically, the Re-released Album
13 featured, previously unreleased sound recordings entitled, Kiss Goodnight, Scattered, Heroin and Semi
14 Charmed Life ("4 Sound Recordings".)

15
16 17. The 4 Sound Recordings were recorded by Cadogan, Salazar and Jenkins at TML Studios
17 in Hayward California in 1994. The 4 Sound Recordings were collectively created and co-authored by
18 Cadogan, Salazar and Jenkins, thereby, giving rise to exclusive ownership of the copyright in the 4
19 Sound recordings by Cadogan, Salazar and Jenkins.

20
21 18. The Sound Recordings featured performances by Cadogan on guitar, Salazar on bass, and
22 Jenkins on lead vocals. Cadogan, Salazar and Jenkins intended that their individual performances would
23 combine to create the 4 Sound Recordings. Cadogan, Salazar and Jenkins were all equal members of the
24 band Third Eye Blind at the time the 4 Sound Recordings were created, Cadogan, Salazar and Jenkins
25 collectively intended that they be co-authors of the 4 Sound Recordings and collectively exercised
26 control over the creation of the 4 Sound Recordings. Further, Cadogan's performances embodied in the
27 4 Sound Recordings constitute independently copyrightable contributions.
28

1 19. Cadogan filed copyright registrations with United States Copyright Office for the 4 Sound
2 Recordings on or about August 27, 2018. The aforementioned registrations denote Cadogan, Salazar
3 and Jenkins as the joint authors and owners of the copyright in the 4 Sound Recordings.
4

5 20. Cadogan is informed, believes and thereon alleges that Jenkins/3eb entered into an
6 exclusive distribution agreement with Warner Brothers Records, Inc.¹ (“WB Records”) and Rhino
7 Entertainment Company² (“Rhino”) that granted WB Records and Rhino the exclusive right to copy and
8 distribute the 4 Sound Recordings.

9
10 21. No claim to exclusive ownership to the 4 Sound Recordings was ever made by
11 Jenkins/3eb.

12 22. Jenkins/3eb never consulted with or sought consent from Cadogan with regards to
13 exploiting the 4 Sound Recordings or with regards to entering into any agreement with WB Records and
14 Rhino to exploit the 4 Sound Recordings.

15
16 23. The 4 Sound Recordings have made Defendants considerable earnings. However,
17 Defendants have completely failed to account for such considerable sums to Cadogan relating to the 4
18 Sound Recordings.

19 24. Defendants have failed to provide crucial information to Cadogan regarding royalties and
20 advances from the 4 Sound Recordings.

21
22 25. Cadogan seeks to examine Defendant's books and records with respect to the 4 Sound
23 Recordings exploited by Defendants. In addition, Cadogan seeks to recover the money that, on
24 information and belief, is owed to Cadogan for the 4 Sound Recordings exploited by Defendants.
25

26 ¹WB Records is an American record company engaged in the business of manufacturing, selling,
27 and distributing musical recordings. WB Records is owned by its parent company, Warner Music Group
28 (“WMG”).

²Rhino is an American record company also owned by WMG.

1 26. Cadogan alleges on information and belief that he is owed compensation for the 4 Sound
2 Recordings exploited by Defendants, in an amount unknown at this time and to be proven at trial.

3 27. Defendants intentionally and deliberately exploited the 4 Sound Recordings in a manner
4 to deny Cadogan a proper and fair accounting and to deny Cadogan fair compensation.
5

6 **SoundExchange**

7 28. SoundExchange collects digital royalties for digital performances of sound recordings on
8 behalf of the featured artists (typically band members), the non-featured artists (typically studio
9 musicians), and the rights owners (typically record companies). Digital performance royalties are fees
10 that service providers such as Pandora, SiriusXM and webcasters are required by law to pay artists and
11 rights holders via SoundExchange for streaming musical sound recordings.
12

13 29. SoundExchange then pays the digital royalties to the artists and rights owners. Pursuant
14 to statute, 45 percent of the royalties are paid directly to the featured artists on a recording, 5 percent are
15 paid to a fund for non-featured artists and the other 50 percent of the performance royalties are paid to
16 the rights owners of the sound recordings.
17

18 30. Currently, SoundExchange has collected an unknown amount of digital performance
19 royalties for digital performances of numerous Third Eye Blind sound recordings where Cadogan is a
20 featured artist on those sound recordings.
21

22 31. The non-exclusive list of Third Eye Blind sound recordings that Cadogan is a featured
23 artist on include the following sound recordings:

24 **3eb Debut Album**

25 "Losing a Whole Year"

26 "Narcolepsy"

"Semi-Charmed Life"

27 "Jumper"

"Graduate"

28 "How's It Going to Be"

"Thanks a Lot"

1 "Burning Man"
2 "Good for You"
3 "London"
4 "The Background"
5 "Motorcycle Drive By"
6 "God of Wine"

7 **Blue**

8 "Anything"
9 "Wounded"
10 "10 Days Late"
11 "Never Let You Go"
12 "Deep Inside of You"
13 "1000 Julys"
14 "An Ode to Maybe"
15 "The Red Summer Sun"
16 "Camouflage"
17 "Farther"
18 "Darkness"
19 "Darwin"
20 "The Red Summer Sun [Extended Coda]"

21 **Demos on Re-release of 3eb Debut Album**

22 "Semi Charmed Life"
23 "How's It Going To Be"
24 "A Kiss Good Night"
25 "Good for You"

26 **B-sides and Sountrack**

27 "New Girl"
28 "Horror Show"
"Tatoo of The Sun"

("Sound Recordings")

32. Cadogan is entitled to 25% of the featured artist royalties collected by SoundExchange for the Sound Recordings ("Cadogan's SE Royalties".) Cadogan submitted documentation to SoundExchange claiming his entitlement to 25% of the featured artist royalties collected by SoundExchange for the Sound Recordings.

33. Defendants Jenkins and Third Eye Blind Inc. filed objections with SoundExchange complaining that Cadogan was not entitled to any of the featured artist royalties due him. As a result, SoundExchange has frozen these royalties an refuses to pay them out until the parties agree to a

1 resolution or a court of competent jurisdiction issues an order or renders judgment.

2 34. Cadogan is informed, believes and thereon alleges that SoundExchange has paid an
3 unknown sum of digital performance royalties to Defendants based upon misrepresentations by
4 Defendants to SoundExchange that Defendants were entitled to Cadogan's SoundExchange Royalties.
5

6 **FIRST CAUSE OF ACTION - DECLARATORY RELIEF - RE-RELEASE**

7 **(Against All Defendants)**

8 35. Plaintiff incorporates the allegations set forth in paragraphs 1 through 27 as though fully
9 set forth herein.
10

11 36. An actual controversy has arisen and now exists between Cadogan and Defendants
12 regarding their respective rights and duties in and to authorship and copyright ownership of the 4 sound
13 recordings as alleged in this Complaint in that Cadogan contends that he is entitled to at least a 33%
14 ownership in the copyrights to the 4 Sound Recordings, an accounting of any monies earned by
15 Defendants in exploiting the 4 Sound Recordings, and payment of to Cadogan of 33% of any monies
16 earned by Defendants in exploiting the 4 Sound Recordings.
17

18 37. Cadogan desires a judicial determination of his rights and duties, Defendants rights and
19 duties and a declaration as to whether Cadogan is entitled to at least a 33% ownership in the copyrights
20 to the 4 Sound Recordings, an accounting of any monies earned by Defendants in exploiting the 4 Sound
21 Recordings, and payment to Cadogan of 33% of any monies earned by Defendants in exploiting the 4
22 Sound Recordings as a result of the matters alleged in this Complaint.
23

24 38. A judicial declaration is necessary and appropriate at this time under all the circumstances
25 so that Cadogan may ascertain his rights and duties with respect to the 4 Sound Recordings authored,
26 created and owned by Cadogan as alleged in this complaint.
27

28 39. Cadogan has been damaged as a result of Defendants' exploitation of the 4 Sound

1 Recordings, in contravention to Cadogan's ownership, performance and authorship rights in the 4 Sound
2 Recordings. Cadogan has been damaged by Defendants' failure to account to Cadogan for the monies
3 earned by Defendants from exploiting the 4 Sound Recordings and Defendants' failure to pay Cadogan
4 his fair share of said earnings.
5

6 **SECOND CAUSE OF ACTION - ACCOUNTING - RE-RELEASE**

7 **(Against All Defendants)**

8 40. Plaintiff incorporates the allegations set forth in paragraphs 1 through 27 as though fully
9 set forth herein.
10

11 41. As a co-owner in the 4 Sound Recording Copyrights, Plaintiff is entitled to an equitable
12 accounting of all profits, revenues and other consideration obtained by Defendants in connection with
13 the 4 Sound Recording Copyrights and to payment of all amounts due Plaintiff with interest.
14

15 **THIRD CAUSE OF ACTION - UNJUST ENRICHMENT - RE-RELEASE**

16 **(Against All Defendants)**

17 42. Plaintiff incorporates the allegations set forth in paragraphs 1 through 27 as though fully
18 set forth herein.
19

20 43. As a proximate result of the foregoing, by fraud or mistake, Defendants have unjustly
21 received and retained benefits from exploiting the 4 Sound Recordings at the expense of Plaintiff.
22 Consequently, Plaintiff is entitled to restitution from Defendants of, and imposition of a constructive
23 trust on, Cadogan's 33% share of any monies earned by Defendants in exploiting the 4 Sound
24 Recordings.

25 **FOURTH CAUSE OF ACTION - DECLARATORY RELIEF - SOUND EXCHANGE**

26 **(Against All Defendants)**

27 44. Plaintiff incorporates the allegations set forth in paragraphs 1 through 15 and 28 through
28

1 33 as though fully set forth herein.

2 45. An actual controversy has arisen and now exists between Cadogan and Defendants
3 regarding their respective rights to revenue collected by SoundExchange for the digital exploitation of
4 Sound Recordings on which Cadogan is a featured performer as alleged in this Complaint in that
5 Cadogan contends that he is entitled to at least a 25% of the featured artist royalties collected by
6 SoundExchange for the digital exploitation of Sound Recordings. The scope of the controversy concerns
7 monies currently being held by SoundExchange and monies previously paid by SoundExchange to
8 Defendants.
9

10
11 46. Cadogan desires a judicial determination of his rights to 25% of the featured artist
12 royalties collected by SoundExchange for the digital exploitation of Sound Recordings.

13 47. A judicial declaration is necessary and appropriate at this time under all the circumstances
14 so that Cadogan may ascertain his rights to 25% of the featured artist royalties collected by
15 SoundExchange for the digital exploitation of Sound Recordings as alleged in this complaint.
16

17 48. Cadogan has been damaged as a result of Defendants' claim of solitary rights to the
18 featured artist royalties collected by SoundExchange for the digital exploitation of sound recordings by
19 causing SoundExchange to not remit payment of the royalties to Cadogan and by wrongfully accepting
20 and keeping money paid by SoundExchange to Defendants that rightfully belongs to Cadogan.
21

22 **FIFTH CAUSE OF ACTION - ACCOUNTING - SOUND EXCHANGE**

23 **(Against All Defendants)**

24 49. Plaintiff incorporates the allegations set forth in paragraphs 1 through 15 and 28 through
25 33 as though fully set forth herein.

26 50. Plaintiff is entitled to an equitable accounting of all featured artist royalties paid by
27 SoundExchange to Defendants for the digital exploitation of Sound Recordings as alleged in this
28

1 complaint and to payment of all amounts due Plaintiff with interest.

2 **SIXTH CAUSE OF ACTION - UNJUST ENRICHMENT - SOUND EXCHANGE**

3 **(Against All Defendants)**

4
5 51. Plaintiff incorporates the allegations set forth in paragraphs 1 through 15 and 28 through
6 33 as though fully set forth herein.

7 52. As a proximate result of the foregoing, Defendants have unjustly received and retained
8 benefits at the expense of Plaintiff. Consequently, Plaintiff is entitled to restitution from Defendants of,
9 and imposition of a constructive trust on, Cadogan's 25% share of the featured artist royalties paid by
10 SoundExchange to Defendants for the digital exploitation of Sound Recordings on which Cadogan is a
11 featured performer. Plaintiff did not discover Defendants' unjust enrichment, as alleged herein, until
12 SoundExchange informed him of the current dispute.

13
14 53. Cadogan is entitled to 25% of all featured artist royalties paid by SoundExchange to
15 Defendants for the digital exploitation of Sound Recordings as alleged in this Complaint with interest.

16
17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Cadogan prays for judgment against the Defendants, and each of them, as follows:

- 19 1. For a Declaration that Cadogan is an author and owner of the 4 Sound Recordings;
20 2. For an accounting from Defendants of all revenue earned from exploitation of the 4 Sound
21 Recordings;
22 3. For disgorgement of Cadogan's share of all revenue earned from exploitation of the 4 Sound
23 Recordings wrongfully withheld by Defendants;
24 4. For the Court to impose a constructive trust on Cadogan's share of all revenue earned from
25 exploitation of the 4 Sound Recordings wrongfully withheld by Defendants;
26 5. For a Declaration that Cadogan is entitled to his 25% of featured artist royalties collected by
27
28

- 1 SoundExchange for digital exploitation of Sound Recordings as alleged in this complaint;
- 2 6. For an accounting from Defendants of all revenue received from SoundExchange for digital
- 3 exploitation of Sound Recordings as alleged in this complaint;
- 4
- 5 7. For disgorgement of Cadogan's 25% share of featured artist royalties collected by SoundExchange
- 6 and paid to defendants for digital exploitation of Sound Recordings as alleged in this complaint;
- 7 8. For the Court to impose a constructive trust on 25% share of featured artist royalties collected by
- 8 SoundExchange for digital exploitation of Sound Recordings as alleged in this complaint wrongfully
- 9 received and withheld by Defendants;
- 10
- 11 9. For damages in an amount to be proven at trial;
- 12 10. For pre-judgment interest;
- 13 11. For costs of suit;
- 14 12. For restitution;
- 15 13. For injunctive relief; and
- 16
- 17 14. For such other, further, and different relief as the Court deems proper under the circumstances.

18 JURY DEMAND

19 Plaintiff Kevin Cadogan hereby demands a jury trial for all issues triable by a jury.

20 DATED: October 16, 2018

LAW OFFICES OF JOSEPH W. SINGLETON

21

22 By: /s/ Joseph Singleton

23 JOSEPH W. SINGLETON

24 Attorneys for Plaintiff, Kevin Cadogan

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