

1 L. LEE PHILLIPS (SBN: 35694)
 2 lphillips@manatt.com
 3 JOHN M. GATTI (SBN: 138492)
 4 jgatti@manatt.com
 5 ERIC CUSTER (SBN: 166533)
 6 ecuster@manatt.com
 7 Manatt, Phelps & Phillips, LLP
 8 11355 West Olympic Boulevard
 9 Los Angeles, California 90064-1614
 10 Telephone: (310) 312-4000
 11 Facsimile: (310) 312-4224

12 MARK S. LEE (SBN: 94103)
 13 mark.lee@rimonlaw.com
 14 RIMON, P.C.
 15 2029 Century Park East, Suite 400N
 16 Los Angeles, CA 90067
 17 Telephone/Facsimile: (310) 361-5776
 18 Attorneys for Plaintiff STEPHEN PERRY

19 UNITED STATES DISTRICT COURT
 20 CENTRAL DISTRICT OF CALIFORNIA

21 STEPHEN PERRY, an individual,
 22 Plaintiff,

23 vs.

24 PHIL BROWN, an individual; and
 25 DOES 1 through 10, inclusive
 26 Defendant.

Case No.: 2:18-cv-9543

COMPLAINT FOR:

- (1) FALSE DESIGNATION OF ORIGIN UNDER THE LANHAM ACT (15 U.S.C. § 1125(a), et seq.);
- (2) DECLARATORY RELIEF RE COPYRIGHT OWNERSHIP;
- (3) VIOLATION OF THE COMMON LAW RIGHT OF PUBLICITY; AND;
- (4) VIOLATION OF STATUTORY RIGHT OF PUBLICITY (CALIFORNIA CIVIL-CODE § 3344)

1 Plaintiff Stephen Perry (“Plaintiff” or “Perry”), by his undersigned counsel,
2 alleges as follows:

3 **SUMMARY OF ACTION**

4 1. Plaintiff Stephen Perry, professionally known as “Steve Perry,” is a
5 well-known singer, songwriter and musician who has just released a successful
6 album. After that album’s release, Defendant Phil Brown (“Brown”) began
7 deceptively associating Perry with Brown and his band, falsely implying that
8 Plaintiff is a member of Brown’s band, and threatening to release certain old vocal
9 performances of Perry as part of Brown’s band’s release, even though Perry owns
10 all intellectual property rights in said vocal performances, Brown abandoned any
11 claim to those performances in 2002, and Perry has repeatedly demanded that
12 Brown not release those works. Brown threatens to do this now to free-ride off the
13 public goodwill associated with Plaintiff, and to unfairly capitalize on the success of
14 Perry’s recent album.

15 2. Plaintiff seeks injunctive relief to stop Defendants from engaging in
16 this misconduct, and compensatory and punitive damages to compensate him for the
17 harm he has suffered and to punish Defendant for his misconduct.

18 **JURISDICTION AND VENUE**

19 3. This Court has subject matter jurisdiction over the claims in this action
20 pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338, and 2201, as well as
21 supplemental jurisdiction over the state law claims asserted herein pursuant to 28
22 U.S.C. § 1367. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and
23 1400(a) in that, *inter alia*, may be found in this district and a substantial portion of
24 the events described in this Complaint occurred in this district.

25 **PARTIES**

26 4. Plaintiff is an individual who resides in and does business in this
27 district.

28 5. On information and belief, Defendant Phil Brown (“Brown”) is an

1 individual who resides in Tennessee and does business in this district.

2 **GENERAL BACKGROUND**

3 6. Plaintiff is an American singer and songwriter. Best known as the
4 former lead singer of the rock band “Journey” during that group’s most
5 commercially successful periods from 1977 to 1987, and again from 1995 to 1998,
6 Perry co-wrote a number of the band’s greatest hits, including “Don’t Stop
7 Believin,” “Who’s Crying Now,” “Open Arms,” “Separate Ways,” “Any Way You
8 Want It,” and many more. Perry recorded seven albums with Journey, which has
9 sold about 54 million albums and singles in the U.S. and is estimated to have sold 75
10 million worldwide. On April 7, 2017, Perry was inducted into the Rock and Roll
11 Hall of Fame as a member of “Journey.”

12 7. Perry also has had a successful solo career. In 1984 he released his first
13 solo album, “Street Talk,” on CBS Records. Featuring the hit singles “Oh Sherrie”
14 and “Foolish Heart,” that album has been certified “Platinum” by the Recording
15 Industry Association of America (“RIAA”). In 1994 Perry released a second solo
16 album, “For the Love of Strange Medicine,” that featured the hit “You Better Wait”
17 and was certified “Gold” by the RIAA. Most recently, following an extended
18 hiatus, Perry on October 5, 2018 released a third solo album, “Traces,” that has
19 already reached Number 6 on the “Billboard 200” chart for the week of October 20,
20 2018, signifying that it was the sixth most popular music album in the U.S. during
21 that week. Because of the quality of the music and the more than 20 years since
22 Perry released a solo album, there has been substantial publicity surrounding Perry
23 and his “Traces” album before and since its release.

24 8. Throughout his career, Perry's singing voice and unique vocal style
25 have been instantly recognizable by the public, and have garnered acclaim from
26 prominent musical peers and publications. Among other accolades, he was dubbed
27 "The Voice" by fellow rock musician Jon Bon Jovi, and was ranked No. 76 on
28 “Rolling Stone” magazine's "100 Greatest Singers of All Time.” A Steve Perry

1 vocal performance is instantly recognizable as coming from Perry to a substantial
2 portion of the consuming public for this reason, and a subpar vocal performance
3 could adversely impact the public's perception of Perry as a vocalist, musician and
4 performer. Perry is highly particular about the recordings he chooses to release in
5 these circumstances, and he does not release music unless he believes that the
6 recording, music, and his own recorded vocal performance of the music, meet his
7 standards.

8 DEFENDANTS' WRONGFUL CONDUCT

9 9. Phil Brown is a musician. In about 1991, Perry was introduced to
10 Brown by his then manager Bob Cavallo, and agreed to work with Brown to see if
11 together they could write songs that met Perry's standards.

12 10. Perry met Brown at Brown's home. They wrote two songs together,
13 and Brown showed Perry two other songs that Brown had previously written . Perry
14 recorded vocal performances of those songs on an eight track tape recorder Brown
15 had in his garage for "demo" purposes, to see if Perry could do something with the
16 songs. Perry loaned Brown \$1,500 to record those performances pursuant to an
17 administration agreement they entered into regarding the two songs they wrote
18 together.

19 11. Those recordings did not have the sonic quality that a studio recording
20 would have, and although Perry performed the songs well enough to evaluate their
21 potential, he did not perform them as he would if the recordings were intended for
22 public release. Perry never intended those vocal performances to form a part of a
23 larger sound recording in which anyone else would have a copyright interest, and he
24 at all times intended to have sole copyright ownership of the vocal performances he
25 recorded at Brown's home. Perry at that time was contractually required to render
26 vocal performances exclusively for CBS Records, which was subsequently acquired
27 by Sony, and for whom Perry created the "For the Love of Strange Medicine"
28 album. Although the terms of Perry's recording agreement are confidential, a

1 redacted version which shows the provisions that barred Perry from releasing his
2 recording vocal performances for anyone else is attached as Exhibit “A.” Perry at
3 all times intended to comply with his contractual obligations by retaining control of
4 the copyright in his vocal performances, specifically so that he could control and
5 prevent the unauthorized release of those recordings.

6 12. To further extend Perry’s control over the two musical compositions
7 they created together, in August 1991 Perry and Brown signed an exclusive
8 administration agreement pursuant to which Perry would control exploitation of
9 their two musical compositions, “Somebody Somewhere” and “Don’t Push The
10 River,” as set forth in that administration agreement. See Exhibit “B.”

11 13. Perry never intended the vocal performances he recorded at Brown’s
12 home to be released publicly, and he ultimately decided that the songs he recorded
13 were not appropriate for his 1994 solo album. None of the musical compositions he
14 created with Brown, and none of the vocal performances he rendered in Brown’s
15 home in about 1991, appeared on the “For the Love of Strange Medicine” album or
16 on any other sound recording by Perry. Perry did no additional work with Brown.

17 14. However, in 2002 Brown through his then attorney claimed for the first
18 time that Brown had a copyright interest in Perry’s 1991 recorded vocal
19 performances, and threatened to release them. See Exhibit “C.” Perry through his
20 counsel expressly repudiated Brown’s claim to a copyright interest in Perry’s
21 recorded vocal performances in a letter dated February 7, 2002, and reasserted
22 Perry’s sole ownership of those recorded vocal performances. See Exhibit “D.”
23 Brown subsequently never took legal action to dispute Perry’s sole copyright
24 ownership of his recorded vocal performances, and never purported to dispute
25 Perry’s copyright ownership of those recorded vocal performances in any way for
26 fourteen years.

27 15. After Perry released his “Traces” album to wide acclaim on or about
28 October 5, 2018, Brown through his representatives again began claiming an

1 ownership interest in Perry's 1991 recorded vocal performances, and again
2 threatened to release those performances to the public. Further, Brown's manager,
3 one Brenda Bann, began circulating Twitter messages promoting the imminent
4 release of Brown's and his band's new CD in a way that misleadingly makes it
5 appear that Perry is in Brown's band. For example, on October 23, 2018, Ms. Bann
6 tweeted that "BROWN'S NEW CD's almost completed! The NEW band
7 APACHES FROM PARIS is coming together with OUTSTANDING musicians
8 who are well known in the music world! There is an extra little treat in the works
9 for those of you who like Steve Perry!" Her next tweet on October 31 featured an
10 image of Perry next to an image of Brown with the Text "PHIL BROWN OF
11 LITTLE FEAT! STEVE PERRY OF JOURNEY! FIRST SONG RELEASE
12 COMING SOON!!" See Exhibit "E." Most recently, on November 1, 2018, Brown
13 posted on a Facebook page that promotes Brown and his band "Apaches from Paris"
14 a clip from one of Perry's vocal performances. See Exhibit "F." Perry through his
15 counsel sent takedown notice to Facebook as permitted by the Digital Millennium
16 Copyright Act, 17 U.S.C. §512, and Facebook has taken down that clip but absent
17 legal action, Brown can dispute Perry's notice that may force Facebook to repost
18 that vocal performance pursuant to 17 U.S.C. §512(g)(2)(B).

19 16. By intentionally using Perry's image and misleadingly implying that
20 Perry has authorized or approved Brown's conduct, and that Perry is a member of
21 Brown's band just as Perry's solo "Traces" album is in wide release and garnering
22 significant publicity, Brown is seeking to confuse and mislead Perry's fans and the
23 consuming public into believing that Brown is associated with Perry when he is not,
24 to induce them to purchase Brown's music rather than Perry's. Brown also seeks to
25 mislead fans into believing that Perry's 1991 recorded vocal performances, of which
26 Perry is the sole copyright owner, and which Perry decided not to release because
27 they do not meet his standards, are somehow associated with "Traces" and are being
28 released with Perry's permission, when they are not.

1 17. Defendant's conduct as described above is completely unauthorized.
2 At no point has Perry ever approved, authorized, or acquiesced in Defendants' use
3 of his name to promote Brown, Brown's musical services or album, or in any other
4 context. To the contrary, Plaintiff has repeatedly and consistently demanded that
5 Brown immediately cease and desist from all uses of his name, image, and
6 performance, and has repeatedly asserted Perry's sole ownership of his 1991
7 recorded vocal performances and or confusingly similar renditions of his name.
8 Brown has ignored Plaintiff's demands and repeatedly threatened to release Perry's
9 1991 recorded vocal performances in violation of Perry's copyright in those
10 performances.

11 18. Defendants' infringing and unlawful conduct is causing and will
12 continue to cause Plaintiff substantial and irreparable injury by, among other things,
13 misleading consumers into believing that Plaintiff sponsors or endorses Brown and
14 his music, and violating Perry's first publication and other copyright interests in his
15 recorded vocal performances. Plaintiff believes that Brown's products and services,
16 and Perry's 1991 musical performances as augmented without permission by
17 Brown, do not meet the high standards for quality that Plaintiff demands of all
18 recordings and music with which his name is associated, and in any event Plaintiff
19 has no desire to be further associated with Defendant or his music. Defendants'
20 conduct is causing and will continue to cause Plaintiff substantial and irreparable
21 injury by misappropriating his rights in his name and identity. Defendants have also
22 arrogated wholly to themselves any income they have wrongfully receive from their
23 misuse of Plaintiff's name and identity. In short, Defendants' unlawful conduct
24 constitutes an unauthorized and intentional attempt to free-ride off the valuable
25 goodwill developed by Plaintiff over the course of his long and successful music
26 career.

1 **FIRST CLAIM FOR RELIEF**
2 **(False Designation of Origin and False Endorsement**
3 **Under the Lanham Act, 15 U.S.C. § 1125(a))**

4 19. Plaintiff repeats and incorporates by reference each and every
5 allegation contained in paragraphs 1 through 18 above.

6 20. Defendant's wrongful conduct as described above has damaged and is
7 continuing to damage Plaintiff's rights in his name and identity by, among other
8 things, exploiting those rights without Plaintiff's permission, thus diminishing their
9 value.

10 21. Further, Defendant has injured and continues to injure Plaintiff by
11 attempting to draw an association between Perry and Brown's music, even though
12 Perry has not chosen to further associate himself with Brown's music and has no
13 desire to be associated with it.

14 22. Defendant has also injured Plaintiff by commercially exploiting
15 Plaintiff's name and identity without Plaintiff's retaining control thereof or
16 receiving any income properly owing to him as the sole owner of commercial
17 endorsement rights in his name and identity.

18 23. Brown's acts have damaged, and will irreparably damage, Perry. Perry
19 has no adequate remedy at law for certain of these wrongs and injuries. The damage
20 to Perry includes harm to his goodwill and reputation, and the loss of control over
21 his name and identity as an indicator of his artistic output, that money damages
22 cannot compensate.

23 24. By reason of the foregoing, Perry is entitled to a temporary, preliminary
24 and permanent injunctive relief under 15 U.S.C. § 1116 restraining and enjoining
25 Defendant, his agents, servant and employees, all persons acting in concert with
26 Brown or on Brown's behalf, from using Perry's name or identity to promote Brown
27 or his services. Plaintiff also asserts a claim against Defendants for damages, costs
28 and attorneys' fees pursuant to 15 U.S.C. §§ 1125, 1116, and 1117.

1 **SECOND CLAIM FOR RELIEF**

2 (Declaratory Relief regarding copyright Ownership of Perry’s Recorded Vocal
3 Performances, 28 U.S.C. §§ 2201, 2202)

4 25. Plaintiff repeats and incorporates by reference each and every
5 allegation contained in paragraphs 1 through 24 above.

6 26. An actual and justiciable controversy has arisen and now exists
7 between Perry and Brown concerning their respective rights to the copyright in
8 Perry’s vocal performances recorded at Brown’s home in about 1991. Brown
9 contends that Brown is a joint copyright owner in Perry’s recorded vocal
10 performances because (a) they were recorded in Brown’s home, (b) Brown recorded
11 backing musical tracks to embellish Perry’s recorded vocal performance, and (c)
12 Brown presently possesses the physical recording of Perry’s performances. Perry
13 contends that Perry is and at all times has been the sole copyright owner of those
14 recorded vocal performances because, inter alia, (a) he never intended for his vocal
15 performances to be part of a joint work in which Brown would have a copyright
16 ownership interest, (b) Brown’s ownership of the physical tapes is irrelevant to
17 determining copyright ownership of Perry’s recorded vocal performances, and (c)
18 Brown’s failure to take legal action to dispute Perry’s exclusive copyright
19 ownership of his 1991 vocal performances after Perry expressly repudiated Brown’s
20 claim in 2002 bars Brown from asserting an ownership interest now pursuant to the
21 Copyright Act’s three year statute of limitations.

22 27. Perry desires a judicial determination and declaration of the parties’
23 respective rights to copyright in Perry’s vocal performances rendered at in Brown’s
24 home studio in 1991 in these circumstances.

25 28. A judicial declaration of the parties’ respective rights and obligations
26 with respect to the foregoing disputed matters is necessary and appropriate.
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THIRD CLAIM FOR RELIEF
(Violation of Common Law Right of Publicity)

29. Plaintiff repeats and incorporates by reference each and every allegation contained in paragraphs 1 through 28 above.

30. Through Defendant's use Plaintiff's name and image, Defendants have misappropriated Plaintiff's rights in his name and identity as provided under the common law right of publicity.

31. In exploiting Plaintiff's exclusive publicity rights as described above, Defendants have damaged and are continuing to damage those rights by, among other things, tarnishing and exploiting those rights without Plaintiff's permission, thus diminishing their value, including without limitation their value for future licensing. Further, Defendants have injured and continue to injure Plaintiff by exploiting his publicity rights without Plaintiff's retaining control thereof or receiving any income properly owing to him as the sole owner of his rights of publicity.

32. Defendants' wrongful actions as described above are causing Plaintiff irreparable harm, and have damaged and continue to damage Plaintiff in an amount yet to be determined.

33. Defendants did not engage in the above-described wrongful actions out of any sincere or proper motive, but did so knowingly, willfully, oppressively, and maliciously, intending to appropriate to themselves without compensation what they knew to be Plaintiff's valuable rights. Said misconduct was also fraudulent, in that the public has been misled and will continue to be misled to believe, incorrectly, that Plaintiff consented to such commercial use of his name and identity, when in fact he did not, and that Plaintiff is now associated with Defendant, Defendant's band and Defendant's music, when in fact he is not.

34. In engaging in the conduct alleged herein, Defendants acted with oppression, fraud, and/or malice, and Plaintiff is therefore entitled to an award of

1 punitive damages according to proof.

2 **FOURTH CLAIM FOR RELIEF**
3 **(Violation of Statutory Right of Publicity**
4 **Under California Civil Code § 3344)**

5 35. Plaintiff repeats and incorporates by reference each and every
6 allegation contained in paragraphs 1 through 34 above.

7 36. Defendants have misappropriated Plaintiff's rights in his name as
8 provided under California Civil Code § 3344.

9 37. In knowingly exploiting Plaintiff's name as described above,
10 Defendants have damaged and are continuing to damage Plaintiff's publicity rights
11 by, among other things, tarnishing and trivializing those rights, thus diminishing
12 their value, including without limitation their value for future licensing. Further,
13 Defendants have injured and continue to injure Plaintiff by purporting to exercise
14 Plaintiff's publicity rights without Plaintiff's retaining control thereof or receiving
15 any income properly owing to him as the sole owner of his right to publicity.

16 38. Defendants' wrongful actions as described above are causing Plaintiff
17 irreparable harm, and have damaged and continue to damage Plaintiff in an amount
18 yet to be determined.

19 39. Defendants did not engage in the above-described wrongful actions out
20 of any sincere or proper motive, but did so knowingly, willfully and oppressively,
21 intending to appropriate to themselves without compensation what they knew to be
22 Plaintiff's valuable rights. Said misconduct was also fraudulent, in that the public
23 has been misled and will continue to be misled to believe, incorrectly, that Plaintiff
24 consented to such commercial use of his name and identity, when in fact he did not,
25 and that Plaintiff is somehow associated with Defendants' website and streaming
26 service, when in fact he is not.

27 40. In engaging in the conduct alleged herein, Defendants acted with
28 oppression, fraud, and/or malice, and Plaintiff is therefore entitled to an award of

1 punitive damages according to proof.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff demands judgment in his favor and against
4 Defendants as follows:

- 5 1. For a preliminary and a permanent injunction prohibiting Defendant
6 from using Plaintiff's name, likeness, any confusingly similar variant of the
7 foregoing, or any other aspect of the name, voice, likeness, or other indicia of
8 identity of Plaintiff Steve Perry to promote Brown or his music or musical services,
9 or in any other manner to infringe Plaintiff's trademarks, rights of publicity and
10 other rights;
- 11 2. For a declaration that Perry is the sole owner of all copyrights in and to
12 the Perry's vocal performances recorded in Brown's home;
- 13 3. For a preliminary and permanent injunction prohibiting Brown or
14 anyone acting on Brown's behalf from reproducing, publicly performing,
15 distributing, releasing, or otherwise infringing Perry's copyrights in all of his vocal
16 performances rendered in Brown's home in 1991;
- 17 4. For compensatory and general damages in an amount to be proven at
18 trial, or in the alternative, statutory damages;
- 19 5. For punitive and exemplary damages;
- 20 6. For prejudgment interest on any recovery by Plaintiff;
- 21 7. For costs of suit incurred herein, including reasonable attorneys' fees
22 and expenses; and
- 23 8. For such other and further relief as the Court deems just and proper.

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DATED: November 9, 2018

RIMON, P.C.

By: /s/ Mark S. Lee

L. LEE PHILLIPS (SBN: 35694)

lphillips@manatt.com

JOHN M. GATTI (SBN: 138492)

jgatti@manatt.com

ERIC CUSTER (SBN: 166533)

ecuster@manatt.com

Manatt, Phelps & Phillips, LLP
11355 West Olympic Boulevard
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Telephone: (310) 312-4000
Facsimile: (310) 312-4224

Mark S. Lee (SBN: 94103)

mark.lee@rimonlaw.com

RIMON, P.C.
2029 Century Park East, Suite 400N
Los Angeles, CA 90067
Telephone/Facsimile: 310.375.3811

Attorneys for Plaintiff
STEPHEN PERRY