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14  
15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**  
17

18 FOUR JAYS MUSIC COMPANY,

19 Plaintiff,

20 v.

21 APPLE, INC., THE ORCHARD ENTERPRISES, INC.,  
22 ORCHARD ENTERPRISES, NY, INC., and  
CLEOPATRA RECORDS, INC.,

23 Defendants.

Case No.

**COMPLAINT  
FOR COPYRIGHT  
INFRINGEMENT  
AND DEMAND FOR  
JURY TRIAL**

24  
25 **Basis for Jurisdiction**

26 1. The Court has jurisdiction over the subject matter of this action pursuant  
27 to 28 U.S.C. § 1338(a) because this is an action for copyright infringement arising  
28 under the Copyright Act of 1976, 17 U.S.C. §§ 101, 106, 115, 501, 602 *et seq.*

## Introduction

2. Plaintiff is the legal and/or beneficial copyright owners of musical works authored by Harry Warren one of the premier composers of American music.

3. Harry Warren wrote over 800 songs, including *At Last*, *Chattanooga Choo Choo*, *I Only Have Eyes for You*, *You Must Have Been a Beautiful Baby*, *Jeepers Creepers*, *The Gold Diggers' Song (We're in the Money)*, *Lullaby of Broadway*, *You'll Never Know*, *On the Atchison, Topeka and the Santa Fe*, *That's Amore*, *Nagasaki*, *There Will Never Be Another You*, and *The More I See You*.

4. A list of Plaintiff's copyrighted compositions at issue in this case is annexed as Exhibit A (the "Subject Compositions").

5. The works of Warren have been recorded by the most prominent jazz and popular artists of all time, including Art Tatum, Benny Goodman, Billie Holliday, Cab Calloway, Charlie Parker, Coleman Hawkins, Count Basie, Dean Martin, Dizzy Gillespie, Duke Ellington, Ella Fitzgerald, Etta James, Frank Sinatra, Fred Astaire, John Coltrane, Judy Garland, Lena Horne, Louis Armstrong, Miles Davis, Ray Charles, and Sarah Vaughan to name only a few. These monumental works of art are, quite literally, national treasures.

6. These and other recordings of Plaintiff's copyrighted musical works have been pirated by the Defendants in this case. Defendants are all players in the digital music business that participate in, and jointly profit from, making digital phonorecord deliveries (*i.e.*, downloads) of pirated recordings of the Subject Compositions.

7. Digital phonorecord deliveries of musical recordings constitute a reproduction and distribution of the musical work embodied in the digital recording and require a negotiated license from the copyright owner of the musical composition, sometimes referred to as a "mechanical license."

8. Defendants have failed to obtain any license that would authorize them to reproduce, distribute, or sell the recordings of the Subject Compositions identified

1 on Exhibit B and, as a result, Defendants have infringed Plaintiff's exclusive rights of  
2 reproduction and distribution of the Subject Compositions, under 17 U.S.C. §§ 106(1)  
3 and 106(3).

4 9. Further, the activity of making digital phonorecord deliveries of pirated  
5 recordings of the Subject Compositions does not qualify for a compulsory license  
6 under Section 115 of the Copyright Act.

7 10. A list of the pirated recordings of the Subject Compositions that  
8 Defendants have reproduced and distributed without authorization, including by  
9 making digital phonorecord deliveries, and various methods of reproduction and  
10 distribution, thus far identified, is set forth in the Infringement Chart annexed as  
11 Exhibit B.

12 11. Plaintiff has thus far identified 98 pirated recordings of the Subject  
13 Compositions that have been separately reproduced and distributed as digital  
14 phonorecord deliveries by Defendants as set forth in the Infringement Chart annexed  
15 as Exhibit B. Defendants have infringed these works in a concerted and distinct  
16 distribution chain.

17 12. To put this case in context, in 2007, Jammie Thomas-Rasset, a single  
18 mother of four in Brainerd, Minnesota, was found liable, after three separate jury  
19 trials, for copyright infringement for using file sharing software that enabled the  
20 unauthorized downloading and distribution of 24 recordings by the Goo Goo Dolls  
21 and Def Leppard, among others. The juries awarded statutory damages in all three  
22 trials of up to \$80,000 per infringement. The Eighth Circuit Court of Appeals  
23 ultimately affirmed statutory damages in the amount of \$9,250 for each infringed  
24 recording, for a total award of \$222,000. Ms. Thomas-Rassett declared bankruptcy as  
25 she had "no other option."

26 13. In 2009, Joel Tenenbaum, a Massachusetts college student, who also  
27 used file-sharing software that permitted others to download 30 recordings by Limp  
28 Bizkit and Blink-182, was found liable and the jury awarded statutory damages of

1 \$22,500 per recording, for a judgment that totaled \$675,000 forcing Mr. Tenenbaum  
2 to file for Chapter 7 bankruptcy.

3 14. Unlike Ms. Thomas-Rassett and Mr. Tenenbaum who were not alleged  
4 to have sold their infringing recordings or profited from their conduct, Defendants in  
5 this case have engaged in massive music piracy operation for the purpose of  
6 generating profits from their sales of pirated recordings and by other means.

7 15. The copyright infringement operation detailed in this Complaint is only  
8 the latest in a long line of piracy schemes that have plagued composers, publishers,  
9 and record labels since the inception of the music industry over 100 years ago, when  
10 the perforated rolls used by player pianos to perform musical works were pirated. See  
11 *Aeolian Co. v. Royal Music Co.*, 196 F. 926 (W.D.N.Y. 1912).

12 16. As the technology employed by the music industry to reproduce musical  
13 works advanced, bootlegging efforts by music pirates kept pace. In the 1960s and  
14 1970s, organized criminal enterprises engaged in record and tape piracy operations  
15 on a scale that is dwarfed by the infringing conduct explained herein. Like the  
16 Defendants in this case, the “tape pirates” and “record pirates” of years past  
17 unlawfully duplicated popular pre-existing recordings, and then claimed their liability  
18 was limited by the compulsory license provision of the 1909 Copyright Act, Section  
19 1(e).

20 17. The landmark case *Duchess Music Corp. v. Stern*, 458 F.2d 1305 (9<sup>th</sup> Cir.  
21 1972) settled the issue as to whether tape pirates could limit their liability for piracy  
22 under the compulsory license provision of the 1909 Copyright Act. In *Duchess*, the  
23 defendant tape pirate engaged in the same conduct identified in this Complaint, and  
24 claimed her conduct was lawful because the compulsory license provision of the  
25 Copyright Act authorized the reproduction and distribution of the musical works  
26 embodied on the recordings she pirated. The Ninth Circuit rejected the argument,  
27 stating, “She may not continue her piracy under the flag of compulsory licensing.”  
28 The *Duchess* court concluded that the tape pirates’ activity was ineligible for a

1 compulsory license and that reproduction of a musical composition on a pirated  
2 recording infringed the copyright in the composition, even when a compulsory license  
3 was claimed.<sup>1</sup>

4 18. The holding in *Duchess* was codified when the Copyright Act was  
5 revised in 1976. The statutory bar against compulsory licensing of pirated recordings  
6 continues in the recent amendments to Section 115 of the Copyright Act, which  
7 provides that reproduction and distribution of pirated sound recordings is an activity  
8 that is ineligible for a compulsory license.

9 19. Defendants are nothing more than modern tape pirates flying the flag of  
10 compulsory licensing. Their conduct constitutes willful copyright infringement of the  
11 Subject Compositions in violation of the United States Copyright Act [17 U.S.C. §§  
12 101, 106, 115, 501, 602 *et seq.*] (the “Copyright Act”).

### 13 The Parties

#### 14 *Four Jays Music Company*

15 20. Plaintiff Four Jays Music Company is a California corporation with a  
16 principal place of business at 421 E. 6th St. in Los Angeles, California.

#### 17 *Apple*

18 21. Upon information and belief, Defendant Apple, Inc (“Apple”) is a  
19 corporation organized under the laws of the State of California with a place of  
20 business at 1 Apple Park Way in Cupertino, California.

21 22. Apple owns and operates the U.S. iTunes Store (“iTunes”), a digital  
22 music store that sells permanent downloads. iTunes opened in April 2003 and has  
23

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24 <sup>1</sup> The criminal conduct of “tape pirates” became a priority of the Attorney General of the  
25 United States, Edward H. Levi, in 1975 when the Justice Department determined that decisions  
26 reached by four Circuit Courts of Appeals, including the Ninth Circuit in *Duchess*, rendered tape  
27 pirates criminally liable even where the statutory royalty was tendered. See *Heilman v. Levi*, 391  
28 F.Supp. 1106 (E.D.Wisc. 1975). Criminal copyright infringement sentences continue to this day.  
See *Matter of Zaragoza-Vaquero*, 26 I&N Dec. 814 (BIA 2016)(defendant sentenced to 33 months  
in prison and ordered to be removed from the United States for selling bootleg copies of music  
CDs at a Florida flea market, as a crime involving moral turpitude).

1 been the largest music vendor in the United States since April 2008 and the largest  
2 music vendor in the world since February 2010. As of January 2017, the iTunes Store  
3 offered between 35–40 million recordings for download.

4 23. Apple specifically selected and contracted with Orchard to provide its  
5 digital music catalog to be sold in its iTunes store on negotiated financial terms.

6 24. Apple reproduced and distributed pirated recordings of the Subject  
7 Compositions it received from Cleopatra and/or Orchard as permanent downlaods  
8 among other types of digital phonorecord deliveries.

9 ***Orchard***

10 25. Upon information and belief, Defendant The Orchard Enterprises, Inc. is  
11 a corporation organized under the laws of the State of Delaware with offices in New  
12 York and Los Angeles.

13 26. Upon information and belief, Defendant Orchard Enterprises, NY, Inc.  
14 is a corporation organized under the laws of the State of New York with offices in  
15 New York and Los Angeles. Defendants The Orchard Enterprises, Inc. and Orchard  
16 Enterprises, NY, Inc. are united in interest and shall be referred to, individually and  
17 collectively, as “Orchard”.

18 27. Orchard engages in the distribution of digital music to the iTunes store,  
19 and upon infomation and belief, Orchard is iTunes largest distributor and has  
20 delivered several million recordings to iTunes for sale throughout the U.S..

21 28. Orchard specifically selected and contracted with Cleopatra to provide  
22 its digital music catalog to be sold in Apple’s iTunes store on negotiated financial  
23 terms.

24 29. Orchard unlawfully reproduced and distributed the pirated recordings of  
25 the Subject Compositions and distributed them to Apple, at the directon of Cleopatra,  
26 and unlawfully authorized Apple’s making of digital phonorecord deliveries in the  
27 iTunes store, at Cleopatra’s direction, as specifically set forth in Exhibit B.



*Cleopatra*

30. Upon information and belief, Defendant Cleopatra Records, Inc. ("Cleopatra") is a business entity organized under the laws of the State of California with a place of business at 11041 Santa Monica Blvd, Los Angeles, CA.

31. Cleopatra operates under many pirate label imprint names including Goldenlane Records, Magic Gold Records, Master Classics, Screenland Records, Soundtrack Classics, Stardust, Stereo Magic Records, and Vintage Masters Inc.

32. Cleopatra has made pirated copies of recordings embodying the Subject Compositions, distributed them to Orchard and/or Apple, unlawfully authorized Orchard's distribution and delivery of the pirated recordings to Apple for sale in its iTunes store, and unlawfully authorized Orchard and Apple's making of digital phonorecord deliveries in Apple's iTunes store as specifically set forth in the annexed Exhibit B.

33. Upon information and belief, Cleopatra has been one of the Apple's single largest record label source of digital recordings for its U.S. iTunes store, at times having been the record label responsible for as much as 1% of the entire iTunes catalog, with hundreds of thousands of recordings, outpacing even the major record labels.

34. Upon information and belief, Cleopatra is simply duplicating recordings of the Subject Compositions made by others without permission and authorizing Orchard and Apple to sell reproductions of the pirated copies for profit in iTunes.

**Jurisdiction, Venue and Joinder**

35. This Court has personal jurisdiction over Defendants because they are incorporated in California and/or have a principal place of business in this Judicial District and/or purposefully availed or directed their infringing activities in California. Cleopatra is a California corporation and has its principal place of business in this district. Apple is incorporated in California and has its principal offices in the state. The Orchard has offices in Los Angeles, California.

1        36. Further, Plaintiff's copyright infringement claims arise out of (a) the  
2 reproduction and distribution of pirated recordings of the Subject Compositions listed  
3 in Exhibit B, occurring in California, by Defendants and their purposeful direction,  
4 including the sale of pirated recordings of Subject Compositions to California  
5 residents; or (b) transactions consummated within California concerning  
6 reproduction, distribution and delivery of the pirated recordings of the Subject  
7 Compositions.

8        37. Cleopatra pirated the recordings of the Subject Compositions in this  
9 judicial district and directed its distributor, Orchard, to distribute the pirated  
10 recordings to Apple for sale in its iTunes store.

11        38. Orchard intentionally distributed and delivered the pirated recordings  
12 identified in Exhibit B to Apple and expressly aimed its infringing conduct at this  
13 jurisdiction by specifically selecting and consummating transactions with Cleopatra  
14 and Apple to reproduce and distribute pirated recordings of Subject Compositions.  
15 Orchard intentionally authorized Apple to reproduce the pirated recordings of the  
16 Subject Compositions in its iTunes store and to sell permanent downloads to  
17 California consumers. Orchard and Cleopatra receive royalties and royalty statements  
18 for all of Apple's sales of permanent downloads of the pirated recordings of the  
19 Subject Compositions in the iTunes store.

20        39. Apple reproduced the pirated recordings of the Subject Compositions  
21 and made available, distributed, and sold the pirated these pirated recordings to  
22 Californians in its iTunes store.

23        40. Venue is proper in this District pursuant to 28 U.S.C §§ 1391(b), 1391(c)  
24 and 1400(a) because Plaintiff and Cleopatra are both located in this Judicial District.  
25 In addition, Defendants are subject to personal jurisdiction in this Judicial District and  
26 have committed unlawful acts of infringement in this Judicial District. In addition,  
27 Defendants all have places of business in this Judicial District.  
28



41. Joinder of Cleopatra, Orchard and Apple is proper under Fed. R. Civ. P. 20 because Defendants are jointly and severally liable as members of a distinct distribution chain for the acts of copyright infringement identified herein.

### Harry Warren

42. Harry Warren (1893-1981) has perhaps contributed more to the great American songbook than any other songwriter in history. Warren was born to Italian immigrant parents in Brooklyn, New York. After serving in the US Navy in World War I, Warren began writing songs.

43. In the years 1931 to 1945, Warren wrote more hit songs than Irving Berlin. He was nominated for the Academy Award for Best Song eleven times (more than Berlin, George Gershwin, Cole Porter or Richard Rodgers) and won three Oscars for composing *Lullaby of Broadway*, *You'll Never Know*, and *On the Atchison, Topeka and the Santa Fe*.



44. Warren wrote the music for the 1933 film musical, *42nd Street*, choreographed by Busby Berkeley, with whom he would collaborate on many musical films. In 1980, producer David Merrick and director Gower Champion adapted the film into a Broadway musical that won the Tony Award for Best Musical in 1981 and ran for over 3,400 performances.

45. Warren wrote over 800 songs including *Chattanooga Choo Choo*, the first song to receive a gold record, presented by RCA Victor in 1942, for sales of 1.2 million copies. Over the course of his career, Warren wrote 81 top 10 hits, including

1 timeless classics such as *At Last, I Only Have Eyes For You*, *That's Amore*, *You Must*  
2 *Have Been A Beautiful Baby*, *Jeepers Creepers*, and *The Gold Diggers' Song (We're*  
3 *in the Money)*. Warren was one of America's most prolific film composers, and his  
4 songs have been featured in over 300 films. Harry Warren was inducted into the  
5 Songwriters Hall of Fame in 1971.

#### 6 **Four Jays Music Company**

7 46. In 1955 Harry Warren formed the Four Jays Music Company, a  
8 California corporation, to own the copyrights in his musical works.

9 47. Four Jays Music Company acquired the copyrights in the respective  
10 Subject Compositions by assignment from Harry Warren and third party music  
11 publishers, as well as by assignment by Harry Warren's wife, daughter, and  
12 grandchildren, who acquired the copyrights by termination notices timely served and  
13 filed with U.S. Copyright Office under Section 304 of the Copyright Act of 1976.

14 48. Plaintiff Four Jays Music Company is the legal owner of the U.S.  
15 copyright in certain of the Subject Compositions as identified in Exhibit A, along with  
16 all accrued causes of action.

#### 17 **The Subject Compositions**

18 49. Plaintiff is the owner of the musical compositions listed in the  
19 Composition Chart annexed as Exhibit A (collectively, the "Subject Compositions")  
20 that are the subject of this action.

21 50. The copyrights for all the Subject Compositions have been registered and  
22 renewed with the U.S. Copyright Office, and each Subject Composition is the subject  
23 of a valid U.S. copyright. The Composition Chart annexed as Exhibit A identifies the  
24 copyright registration numbers for each of the Subject Compositions.

25 51. Plaintiff is the owner of a share in each of the Subject Compositions in  
26 the percentages listed on Exhibit A.



59. The same deceit and manipulation are at work in all of the infringements identified in Exhibit B. Defendants have taken recordings of the Subject Compositions – in which they hold no rights – and reproduced and distributed pirated copies of them to the public, for profit, without authorization.

60. Virtually all of the recordings at issue in this case were originally made between 1930 and 1972. Because of the consolidation in the music industry, many of the record labels that originally released these recordings have been acquired or otherwise consolidated by the three remaining major labels, Sony, Universal, and Warner, and their catalogs were absorbed into the major labels' "back catalog." This consolidation occurred well before the first digital music stores started operating in the early 2000s.

61. Since Cleopatra did not exist prior to 1992, and it did not originally “fix” any of the relevant recordings, the only way for it to acquire the rights to duplicate and distribute them would be to purchase or license rights in these recordings.

62. Upon information and belief, Cleopatra never acquired permission or the rights to reproduce or distribute any of these back catalog recordings from the major labels.

63. Upon information and belief, all of the Defendants are simply duplicating pirated records of the Subject Compositions made by others without permission, and selling the pirated copies for profit.

### **Defendants Have Infringed the Subject Compositions**

64. Section 115 of the Copyright Act expressly excludes Defendants' activity of making the digital phonorecord deliveries identified herein of pirated recordings of the Subject Compositions from eligibility for a compulsory license and Defendants have failed to obtain any licenses for the Subject Compositions that authorize such activity.

65. Upon information and belief, some Defendants may have attempted to obtain licenses to make digital phonorecord deliveries of the pirated recordings of the Subject Compositions identified on the Infringement Chart from the Harry Fox Agency ("Harry Fox" or "HFA").

66. Harry Fox licenses, however, adopt the terms of Section 115 and are therefore not available for pirated recordings.

67. In addition, upon information and belief, some Defendants may have engaged third party services such as Music Reports, Inc., and RightsFlow to obtain compulsory licenses for digital phonorecord deliveries the Online Defendants make, however, the activity of making digital phonorecord deliveries of pirated recordings of the Subject Compositions is not eligible for a compulsory license so any such attempt is ineffective.

### **Unauthorized Methods of Digital Phonorecord Deliveries**

68. The Infringement Chart annexed as Exhibit B sets forth (1) each pirated recording of the Subject Compositions within the Cleopatra, Orchard, Apple distribution chain, thus far identified by Plaintiff that these Defendants have reproduced, distributed, and/or made available for digital phonorecord deliveries in Apple's iTunes store without authorization and (2) the specific types of reproductions, distributions, and/or digital phonorecord deliveries made ("Method").

69. The various types of unauthorized reproductions, distributions, and/or digital phonorecord delivery configurations of pirated recordings of the Subject Compositions made and/or authorized by Defendants (the “Methods” in Exhibit B) are discussed briefly below.

### ***Permanent Downloads***

70. Permanent download means a digital transmission of a sound recording of a musical work in the form of a download, where such sound recording is accessible for listening without restriction as to the amount of time or number of times it may be accessed.

71. Apple has made available, reproduced, and distributed permanent downloads of the pirated recordings of the Subject Compositions to their customers (“PD” on the Infringement Chart) and was unlawfully authorized and directed to do so by Cleopatra and/or Orchard.

72. Permanent downloads of pirated recordings of the Subject Compositions require licenses from the copyright owners of the Subject Compositions and all of the Defendants failed to obtain such licenses for each entry on the Infringement Chart at Exhibit B.

73. The reproduction and distribution of permanent downloads of pirated recordings of the Subject Compositions by Defendants, and their authorization of this activity, infringes Plaintiff’s exclusive reproduction and distribution rights under 17 U.S.C. § 106(1) and (3).

### ***Promotional Clips***

74. Apple’s iTunes store has a feature that allow users to interactively stream a sample, promotional clip, of the recordings that are available for sale as permanent downloads.

75. These promotional clips (“PC” on the Infringement Charts) are 30–90 seconds long and their purpose is to encourage the purchase of the tracks as permanent downloads.



77. Defendants' respective reproduction and distribution of promotional clips of pirated recordings of the Subject Compositions, and their authorization of this activity, infringes Plaintiff's exclusive reproduction and distribution rights under 17 U.S.C. § 106(1) and (3).

78. Apple reproduced the pirated recordings of the Subject Compositions on its servers for its iTunes store as server copies (“SC” on the Infringement Chart) and was unlawfully authorized to engage in this activity by Cleopatra and/or Orchard.

79. These server copies of pirated recordings of the Subject Compositions are reproductions that require a license from the copyright owners of the Subject Compositions and the Defendants failed to obtain such licenses for each entry on the Infringement Chart.

80. Apple's reproduction of server copies of pirated recordings of the Subject Compositions, and authorization of this activity by Cleopatra and Orchard, as well the distribution of the server copies of pirated recordings of Subject Composition to Apple, infringes Plaintiff's exclusive reproduction and distribution rights under 17 U.S.C. § 106(1) and (3).

81. Defendants have made and continue to make available, or authorize making available, permanent downloads of the pirated recordings of the Subject Compositions to the public by uploading and/or offering pirated recordings of the Subject Compositions for permanent downloads in iTunes.

82. The Defendants' making available ("MA" on the Infringement Chart) pirated recordings of the Subject Compositions for permanent downloads, and

1 unlawful authorization of this activity requires a license from the copyright owners of  
2 the Subject Compositions and all Defendants failed to obtain such licenses for each  
3 entry on the Infringement Chart. Defendants have thereby infringed Plaintiff's  
4 exclusive distribution rights under 17 U.S.C. § 106 as a "deemed distribution." *A&M*  
5 *Records v. Napster*, 239 F.3d 1004, 1014 (9<sup>th</sup> Cir. 2001); *Perfect 10, Inc. v.*  
6 *Amazon.com, Inc.*, 487 F.3d 701 718–19 (9<sup>th</sup> Cir. 2007).

### 7 *Exportation*

8 83. Exportation of phonorecords, the making of which constituted an  
9 infringement of copyright, requires authorization of the copyright owner under  
10 Section 602 of the Copyright Act.

11 84. Upon information and belief, Defendants have engaged in the  
12 unauthorized exportation ("EX" on the Infringement Chart) of phonorecords of  
13 pirated recordings of the Subject Compositions as identified on the Infringement  
14 Chart annexed as Exhibit B by digital phonorecord delivery to Apple's United  
15 Kingdom iTunes store without authorization for exportation from the U.S. copyright  
16 owners of the Subject Compositions.

17 85. Defendants' respective exportation of pirated recordings of the Subject  
18 Compositions constitutes infringement of Plaintiff's exclusive rights of exportation  
19 under 17 U.S.C. § 602.

### 20 *Illegal Downloading Prior to Exportation*

21 86. Defendants are engaged in a systematic process of illegally reproducing  
22 and distributing illegally downloaded pirated copies of recordings of the Subject  
23 Compositions in the U.S. prior to distribution or exportation of these works to the  
24 U.K. (also "EX" on the Infringement Chart). Many of the pirated recordings of the  
25 Subject Compositions provided by Cleopatra are exclusively made available for  
26 permanent downloads in Apple's foreign digital music store.

27 87. Defendants have each reproduced and/or distributed server copies of the  
28 pirated recordings of the Subject Compositions in the U.S. and/or unlawfully

1 authorized this activity, without any authority whatsoever to make these  
2 reproductions and/or distributions, the identical activity for which Ms. Thomas-  
3 Rasett and Mr. Tenenbaum were liable (see above).

4 88. Any reproduction and/or distribution of pirated recordings of the Subject  
5 Compositions in the United States by Defendants, or authorization of this activity,  
6 without a license from the U.S. copyright owners is an infringement of the copyright  
7 owners' rights under 17 U.S.C. § 106(1) ("the owner of the copyright has the  
8 exclusive right to . . . reproduce the copyrighted work in copies or phonorecords.").  
9 Whatever foreign copyright laws may say, the U.S. Copyright Act governs  
10 reproductions in the U.S. and distributions or exportation from the U.S.

11 89. Defendants' respective unauthorized reproductions and/or distributions  
12 of pirated recordings embodying the Subject Compositions in the U.S. prior to  
13 exportation, and unlawful authorization of this activity by Defendants constitutes  
14 infringement of Plaintiff's exclusive rights under 17 U.S.C. § 106(1).

#### 15 **Willfulness**

16 90. The infringing conduct of all of the Defendants is willful. Cleopatra  
17 knows that it does not have authorization for reproduction, distribution, and  
18 exportation of the Subject Compositions on pirated recordings.

19 91. Similarly, Orchard did not perform any investigation or due diligence to  
20 confirm that Cleopatra had authorization to make, or authorize the making of digital  
21 phonorecord deliveries, or the exportation, of pirated recordings of the Subject  
22 Compositions.

23 92. In fact, Orchard has had knowledge of the infringing conduct of  
24 Cleopatra for several years and has nevertheless continued to make digital  
25 phonorecord deliveries and other reproductions and distributions of the pirated  
26 recordings of the Subject Compositions that Cleopatra provides without valid  
27 licenses, and/or were recklessly indifferent or willfully blind to their own infringing  
28 conduct.

1        93. Finally, Apple has had knowledge of its own infringing conduct and that  
2 of Cleopatra and Orchard for several years and have continued to work with them and  
3 make digital phonorecord deliveries and other reproductions and distributions of the  
4 pirated recordings of the Subject Compositions that Cleopatra and Orchard provide  
5 and/or were recklessly indifferent or willfully blind to their own infringing conduct.

6        94. Further, Apple has willfully failed to employ adequate human resources,  
7 screening mechanisms, or use of digital fingerprinting technology to detect  
8 unlawfully duplicated recordings in their stores that it routinely uses for other  
9 services, for example, “scan and match.”

10       95. The infringement by Defendants of each Subject Composition on each  
11 pirated recording identified in the Infringement Chart at Exhibit B began as of the  
12 date of upload, receipt, delivery to and/or reproduction by Apple of server copies of  
13 the pirated recordings of the Subject Compositions designated for reproduction and  
14 distribution by Cleopatra and/or Orchard in iTunes and continues to the present. The  
15 infringements identified in Exhibit B all occurred and were first discovered by the  
16 respective Plaintiff within three years of filing this Complaint.

17       96. By their conduct described above, Defendants have infringed and are  
18 continuing to infringe Plaintiff’s copyrights on a regular basis in violation of 17  
19 U.S.C. §§ 101, 106, 115, 501, 602 *et seq.*

20       97. As a direct and proximate result of Defendants’ infringement, Plaintiffs  
21 are entitled to statutory damages under 17 U.S.C. § 504(c).

22       98. Defendants’ infringement is and has been willful, intentional, purposeful  
23 and with willful disregard of the rights of Plaintiffs. Anything less than maximum  
24 statutory damage awards would encourage infringement, amount to a slap on the  
25 wrist, and reward Defendants for their willful infringement on a grand scale.

26       99. Plaintiffs are also entitled to their costs, including reasonable attorneys’  
27 fees, pursuant to 17 U.S.C. § 505.

1        100. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a permanent  
2 injunction prohibiting Defendants from reproducing, distributing, streaming, and  
3 selling the pirated recordings of the Subject Compositions without license or  
4 authorization in violation of the Copyright Act.

5                                    **Claim for Copyright Infringement Against**  
6                                    **Cleopatra, Orchard and Apple**

7        101. Plaintiffs repeat each and every allegation of the Complaint.

8        102. Plaintiff Four Jays Music Company claims that Defendants Cleopatra,  
9 Orchard and Apple have unlawfully reproduced and distributed unauthorized  
10 recordings embodying its Subject Compositions including, but not limited to, the  
11 recordings identified in Exhibit B by the methods identified therein, and/or have  
12 unlawfully directed or authorized this activity. These Defendants have thereby  
13 willfully infringed, and are continuing to infringe, Plaintiff's copyrights in the Subject  
14 Compositions in violation of the Copyright Act.

15                                    **Prayer for Relief**

16        WHEREFORE, Plaintiff respectfully requests that judgment be entered against  
17 Defendants, jointly and severally, as follows:

18            1. A declaration that Defendants have infringed Plaintiff's copyrights in the  
19 Subject Compositions in violation of the Copyright Act;

20            2. A declaration that each of Defendants' infringements was willful;

21            3. A separate award of statutory damages in amounts to be determined by  
22 the jury for all infringements of involved in the action, with respect to any one work,  
23 for which any one infringer is liable individually, or for which any two or more  
24 infringers are liable jointly and severally;

25            4. A permanent injunction barring the Defendants from continued  
26 infringement of Plaintiff's copyrights in the Subject Compositions pursuant to 17  
27 U.S.C. § 502; and  
28

1           5. Reasonable attorneys' fees and costs of this action, statutory pre-  
2 judgment interest, and such other relief as this Court may deem just and proper.

3 Dated: New York, New York  
4 September 12, 2019

5  
6 Respectfully submitted,

7 By: /s/  
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26 E-mail: ogiskan@gslawny.com

27 *Attorneys for Plaintiff*  
28



**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38(b), Local Rule 38-1, and otherwise, Plaintiff respectfully demands a trial by jury on all issues so triable.

DATED: September 12, 2019

Respectfully submitted,

By: /s/ Allen Hyman  
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*Attorneys for Plaintiff*

# Attachment 1

# List of Works

#	Composition	Authors	Registration Numbers
1	Someone Like You	Harry Warren, Edgar Leslie	EP20314
2	Clementine (From New Orleans)	Harry Warren, Henry Creamer	E665729
			E673858
3	Howdy Neighbor, Happy Harvest	Harry Warren, Arthur Gordon	EP434973
			E623065
4	Howdy Neighbor, Happy Harvest	Harry Warren, Mack Gordon	EP47400
5	Love My Baby, My Baby	Harry Warren, Bud Green	E628868
6	Innamorata	Harry Warren, Jack Brooks	EP93123
7	Nagasaki	Harry Warren, Mort Dixon	E696775
8	One Sweet Letter From You	Harry Warren, Lew Brown, Sydney Clare	E658837
9	Someone Like You	Harry Warren, Ralph Blane	EP34103
10	There Will Never Be Another You	Harry Warren, Mack Gordon	EP106434
11	This Is Always	Harry Warren, Mack Gordon	EP7166
12	You Got Me Where You Want Me	Harry Warren, Johnny Mercer	EP124678
13	You'll Never Know	Harry Warren, Mack Gordon	EP112560

# Composition Copyright Chart

Writer - Owner (Share)	Composition Name	Copyright Registration Number
WARREN - Four Jays Music Company (50%)	<i>By The River Salute March</i>	EP20364
	<i>Clementine (from New Orleans)</i>	E673858
		E665729
	<i>Coffee Time</i>	EP2306
		EP134973
	<i>May I Say Baby, My Baby Loves Me</i>	E628968
	<i>Imagination</i>	EP93123
	<i>Magnolia</i>	E696275
	<i>Someone Like You</i>	EP34103
	<i>This Is Always</i>	EP7166
	<i>You Got Me Where You Want Me</i>	EP124678
	<i>You'll Never Know</i>	EP112560

WARREN - Four Jays Music Company (33.33%)

*One Sweet Letter From You*

E658837

*There Will Never Be Another You*

EP106434

WARREN - Four Jays Music Company (100%)

*Howdy Neighbor, Happy Harvest*

EP47400



## Exhibit B

## Infringement Chart

#	Imprint	Composition	Artist	Album	Method
1	Stardust Records	By The River Sainte Marie	Enoch Light And His Orchestra	Ultimate Lounge Classics	PD, PC, SC, MA
2	Master Classics	Clementine	Bing Crosby	Box Of Wonders	PD, PC, SC, MA, EX
3	Master Classics	Clementine	Bix Beiderbecke	Greatest Hits	PD, PC, SC, MA, EX
4	Master Classics	Clementine	Duke Ellington Orchestra	The Essential Duke Ellington	PD, PC, SC, MA, EX
5	Stardust Records	Clementine	Ted Heath	Greatest Swing & Big Band Collection	PD, PC, SC, MA, EX
6	VINTAGE MASTERS INC.	Coffee Time	Bobby Day	The Bobby Day Collection	PD, PC, SC, MA, EX
7	Stardust Records	Coffee Time	Carmen McRae	Coffee & Cigarettes - Smoking Songs & Vintage Tracks	PD, PC, SC, MA, EX
8	Stardust Records	Coffee Time	Gerald Wiggins	Hard Bop Essentials	PD, PC, SC, MA, EX
9	Master Classics	Coffee Time	Jackie Davis	100 Organ Classics	PD, PC, SC, MA, EX
10	Master Classics	Coffee Time	Jackie Davis	Hammond Organ Classics	PD, PC, SC, MA, EX
11	VINTAGE MASTERS INC.	Coffee Time	Kirby Stone Four	The Very Best Of	PD, PC, SC, MA
12	Screenland Records	Coffee Time	Ruth Gaby	It's A Good Time	PD, PC, SC, MA, EX
13	Goldenlane Records	Howdy Neighbor	Don Reno & Red Smiley	The Very Best Of	PD, PC, SC, MA
14	Stardust Records	I Love My Baby	Fred Waring & His Pennsylvanians	The Essential Fred Waring Classics	PD, PC, SC, MA
15	Stardust Records	I Love My Baby	Fred Waring & His Pennsylvanians	The Charleston	PD, PC, SC, MA
16	Magic Gold Records	I Love My Baby	Jill Carey	Valentine's Day Songs For Kids	PD, PC, SC, MA, EX



## Infringement Chart

#	Imprint	Composition	Artist	Album	Method
17	Goldenlane Records	I Love My Baby	Larry Darnell	The Very Best Of	PD, PC, SC, MA, EX
18	Master Classics	I Love My Baby	Lee Morse	The Very Best Of	PD, PC, SC, MA, EX
19	Stardust Records	I Love My Baby	Lee Morse And Her Blue Grass Boys	Best of the Roaring Twenties	PD, PC, SC, MA, EX
20	Master Classics	I Love My Baby	Lee Morse And Her Blue Grass Boys	Roaring '20s Jazz	PD, PC, SC, MA
21	Master Classics	I Love My Baby	Lowell Fulson	Birth Of A Blues Legend	PD, PC, SC, MA, EX
22	Master Classics	I Love My Baby	Lowell Fulson	Blues Legend	PD, PC, SC, MA, EX
23	Stardust Records	I Love My Baby	Tommy McClellan	The Very Best Of	PD, PC, SC, MA
24	Master Classics	Innamorata	Dick Contino	Accordion Music Greats	PD, PC, SC, MA, EX
25	Master Classics	Innamorata	Jerry Vale	Essential '50s Classics	PD, PC, SC, MA, EX
26	Master Classics	Innamorata	The Creative Crowd	The Brotherhood & Other Motion Picture Themes	PD, PC, SC, MA, EX
27	Master Classics	Nagasaki	Borrah Minevitch & His Harmonica Rascals	100 Harmonica Jazz & Blues Classics	PD, PC, SC, MA, EX
28	Master Classics	Nagasaki	Borrah Minevitch & His Harmonica Rascals	The Best Of	PD, PC, SC, MA, EX
29	Master Classics	Nagasaki	Charlie Barnet	Greatest Swing Masters	PD, PC, SC, MA, EX
30	Master Classics	Nagasaki	Django Reinhardt	100 Jazz Guitar Classics	PD, PC, SC, MA, EX
31	Stardust Records	Nagasaki	Django Reinhardt	Genius Of Gypsy Guitar	PD, PC, SC, MA
32	Master Classics	Nagasaki	Gerald Fried & His Orchestra	Evolution Of Essential Orchestral	PD, PC, SC, MA, EX



## Exhibit B

## Infringement Chart

#	Imprint	Composition	Artist	Album	Method
33	Master Classics	Nagasaki	Louis Metcalf	At The Ali Baba	PD, PC, SC, MA, EX
34	Goldenlane Records	One Sweet Letter From You	Bunk Johnson	Essential New Orleans Jazz Masters	PD, PC, SC, MA
35	Stardust Records	One Sweet Letter From You	Charleston Chasers	100 Vocal & Jazz Classics - Vol. 1 (1921-1927)	PD, PC, SC, MA
36	Master Classics	One Sweet Letter From You	Cliff Brunell's Texas Wanderers	Memphis Day, Stars & Stripes	PD, PC, SC, MA, EX
37	Stardust Records	One Sweet Letter From You	Ken Colyer's All Star Jazzmen	Rarest Big Band Music	PD, PC, SC, MA, EX
38	Master Classics	One Sweet Letter From You	Paul Gayten & Friends	The Rhythm & Blues (78 RPM Collection)	PD, PC, SC, MA, EX
39	Cleopatra Records	One Sweet Letter From You	Spade Cooley	The Best Of Western Swing	PD, PC, SC, MA
40	Goldenlane Records	One Sweet Letter From You	The Original Memphis Five	The Ultimate Collection	PD, PC, SC, MA
41	Stardust Records	Someone Like You	Arne Lamberth	Romantic Jazz Essentials	PD, PC, SC, MA
42	Master Classics	Someone Like You	Sergio Franchi	Do I Hear A Waltz (Original Broadway Cast Recording)	PD, PC, SC, MA, EX
43	Master Classics	That's Amore	The Creative Crowd	The Brotherhood & Other Motion Picture Themes	PD, PC, SC, MA, EX
44	Stardust Records	There Will Never Be Another You	Beverly Kenney	Sings for Johnny Smith	PD, PC, SC, MA, EX
45	Master Classics	There Will Never Be Another You	Bill Evans	Essential Jazz Masters '57	PD, PC, SC, MA, EX
46	Goldenlane Records	There Will Never Be Another You	Bill Jennings & Andy Johnson	Essential Masters 1951-1954	PD, PC, SC, MA, EX
47	Master Classics	There Will Never Be Another You	Billy Taylor Trio	Essential Jazz Masters	PD, PC, SC, MA, EX
48	Master Classics	There Will Never Be Another You	Blue Mitchell	Essential Jazz Masters 1951-1954	PD, PC, SC, MA, EX



## Exhibit B

## Infringement Chart

#	Imprint	Composition	Artist	Album	Method
49	Stardust Records	There Will Never Be Another You	Bob Brookmeyer	The Modernity Of Bob Brookmeyer	PD, PC, SC, MA
50	Stardust Records	There Will Never Be Another You	Bobby Jaspar	Essential Jazz Masters	PD, PC, SC, MA, EX
51	Stardust Records	There Will Never Be Another You	Bobby Jaspar & Blossom Dearie	Modern 50's & 60's Jazz Essentials	PD, PC, SC, MA
52	Stardust Records	There Will Never Be Another You	Cornel Basie & Joe Williams	Cornel Basie Sings & Joe Williams Sings	PD, PC, SC, MA, EX
53	Stardust Records	There Will Never Be Another You	Della Reese	Live In Hollywood, 1966	PD, PC, SC, MA
54	Master Classics	There Will Never Be Another You	Ferrante and Weinher	The Key To Her Charmment	PD, PC, SC, MA, EX
55	Stardust Records	There Will Never Be Another You	Frances Faye	Sexy Lounge Vintage Era	PD, PC, SC, MA
56	Master Classics	There Will Never Be Another You	George Smith	The Exotic Cubana Sounds Of George Smith	PD, PC, SC, MA, EX
57	Master Classics	There Will Never Be Another You	Gogi Grant	50 Greatest Masters	PD, PC, SC, MA, EX
58	Master Classics	There Will Never Be Another You	June Valli	The Ultimate Collection	PD, PC, SC, MA, EX
59	Master Classics	There Will Never Be Another You	Lennie Tristano Quartet	New York Jazz Sessions - 1955	PD, PC, SC, MA, EX
60	Master Classics	There Will Never Be Another You	Pete Rugolo And His Orchestra	Essential Jazz & Swing - The 78 RPM Collection	PD, PC, SC, MA, EX
61	Master Classics	There Will Never Be Another You	Red Garland Trio	The Ultimate Jazz Collection	PD, PC, SC, MA, EX
62	Master Classics	There Will Never Be Another You	Teddy Wilson & Lester Young	The Very Best Of	PD, PC, SC, MA, EX
63	Master Classics	This Is Always	Anita Kerr	Golden Masters	PD, PC, SC, MA, EX
64	Stardust Records	This Is Always	Bev Kelly	Live At The Coffee Gallery - San Francisco	PD, PC, SC, MA
65	Stardust Records	This Is Always	Dizzy Reece	Essential Jazz Masters	PD, PC, SC, MA, EX



## Exhibit B

## Infringement Chart

#	Imprint	Composition	Artist	Album	Method
66	Master Classics	This Is Always	James Moody	Essential Jazz Masters	PD, PC, SC, MA, EX
67	Master Classics	You Got Me Where You Want Me	John Brim	Rock N' Roll '50s Blues Essentials	PD, PC, SC, MA, EX
68	Master Classics	You Got Me Where You Want Me	John Brim	Rock N' Roll '50s Blues Essentials	PD, PC, SC, MA, EX
69	Master Classics	You Got Me Where You Want Me	John Brim	Rock N' Roll '50s Blues Essentials	PD, PC, SC, MA, EX
70	Master Classics	You Got Me Where You Want Me	John Brim	Rock N' Roll '50s Blues Essentials	PD, PC, SC, MA, EX
71	Soundtrack Classics	You'll Never Know	Alice Faye	Four Jills In A Jeep (Original Motion Picture Soundtrack)	PD, PC, SC, MA
72	Master Classics	You'll Never Know	Alice Faye	Four Jills In A Jeep (Original Motion Picture Soundtrack)	PD, PC, SC, MA, EX
73	Master Classics	You'll Never Know	Alice Faye	The Ultimate Collection	PD, PC, SC, MA, EX
74	Soundtrack Classics	You'll Never Know	Alice Faye	The Ultimate Collection	PD, PC, SC, MA, EX
75	Soundtrack Classics	You'll Never Know	Ann Sothern	Lady Be Good (Original Motion Picture Soundtrack)	PD, PC, SC, MA, EX
76	Screenland Records	You'll Never Know	Ann Sothern	The Complete Ann Sothern	PD, PC, SC, MA
77	Screenland Records	You'll Never Know	Ann Sothern	The Complete Ann Sothern	PD, PC, SC, MA
78	Master Classics	You'll Never Know	Ann Sothern	The Complete Ann Sothern	PD, PC, SC, MA, EX
79	Master Classics	You'll Never Know	Bea Wain	The Very Best Of	PD, PC, SC, MA, EX
80	Screenland Records	You'll Never Know	Bea Wain	The Very Best Of	PD, PC, SC, MA, EX
81	Screenland Records	You'll Never Know	Betty Grable	The Best Of	PD, PC, SC, MA
82	Master Classics	You'll Never Know	Betty Grable	The Best Of	PD, PC, SC, MA, EX
83	Master Classics	You'll Never Know	Billy Butterfield	Ultimate Collection (1944-1961)	PD, PC, SC, MA, EX



## Exhibit B

## Infringement Chart

#	Imprint	Composition	Artist	Album	Method
84	Master Classics	You'll Never Know	Bob Braun	All the Best of Bob Braun	PD, PG, SC, MA, EX
85	Master Classics	You'll Never Know	Dick Haymes	World War II Golden Memories	PD, PC, SC, MA, EX
86	Master Classics	You'll Never Know	Patricia Bass	Rescue Me, The Best Of	PD, PG, SC, MA, EX
87	Master Classics	You'll Never Know	Frank Chacksfield And His Orchestra	Greatest Musical Theme Songs	PD, PC, SC, MA, EX
88	Master Classics	You'll Never Know	George Auld	The Very Best Of	PD, PG, SC, MA, EX
89	Master Classics	You'll Never Know	Geraldo & His Orchestra	Vintage British Jazz	PD, PC, SC, MA, EX
90	Master Classics	You'll Never Know	Jimmy Clanton	Blue & Happy	PD, PG, SC, MA, EX
91	Master Classics	You'll Never Know	Judy Canova	Sings Her Hits	PD, PC, SC, MA, EX
92	Screenland Records	You'll Never Know	Nancy Steele	Nifty Nite	PD, PG, SC, MA
93	Master Classics	You'll Never Know	Polly Bergen	Greatest Hits	PD, PC, SC, MA, EX
94	Master Classics	You'll Never Know	Ricky Miller	Meet Ricky Miller	PD, PG, SC, MA, EX
95	Soundtrack Classics	You'll Never Know	The Berry Brothers	Lady Be Good (Original 1941 Motion Picture Soundtrack)	PD, PC, SC, MA
96	Soundtrack Classics	You'll Never Know	The Berry Brothers	Lady Be Good (Original Motion Picture Soundtrack)	PD, PG, SC, MA, EX
97	Master Classics	You'll Never Know	Vera Lynn	The Very Best Of	PD, PC, SC, MA
98	Stardust Records	You'll Never Know	Woolf Phillips	Jazz Classics	PD, PG, SC, MA, EX