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10 Attorneys for Plaintiffs

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 DOUGLAS CAMPBELL THOMSON; JOHN
14 ANTHONY HELLIWELL; and ROBERT
15 LAYNE SIEBENBERG,

16 Plaintiffs,

17 vs.

18 CHARLES ROGER POMFRET HODGSON,
19 a/k/a ROGER HODGSON; RICHARD
20 DAVIES; DELICATE MUSIC, a California
21 general partnership; and DOES 1-10,
22 inclusive,

23 Defendants.

24 AND RELATED COUNTERCLAIMS

Case No. 2:21-cv-08124 AB(PLAx)

Judge: Hon. Andre Birotte Jr.
Ctrm: 7B

FIRST AMENDED COMPLAINT FOR:

- (1) BREACH OF CONTRACT;**
- (2) BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;**
- (3) CONVERSION;**
- (4) OPEN BOOK ACCOUNT;**
- (5) MONEY HAD AND RECEIVED;**
- AND**
- (6) DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

25 Plaintiffs allege:

26 1. This lawsuit involves the business dealings of the multi-platinum band
27 Supertramp. Among other things, it has to do with the cessation of royalty payments to three of
28 the band members (Plaintiffs herein) by two of the other band members, Defendants Roger

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1 Hodgson and Richard Davies, and Defendants’ deliberate and calculated efforts to freeze out their
2 former bandmates from the income contractually due them from their collective band endeavors.

3 **PARTIES**

4 2. Plaintiff DOUGLAS CAMPBELL THOMSON is an individual and a resident of
5 the State of Illinois. Mr. Thomson was the bass guitarist for Supertramp and is a remaining
6 member (by and through a so-called “loan-out” entity) of the Supertramp partnership (hereafter
7 referred to as “SUPERTRAMP”).

8 3. Plaintiff JOHN ANTHONY HELLIWELL is an individual and a resident of the
9 United Kingdom. Mr. Helliwell was the saxophonist, keyboardist, clarinetist, and background
10 vocalist for Supertramp and is a remaining member (by and through a so-called “loan-out” entity)
11 of the SUPERTRAMP partnership.

12 4. Plaintiff ROBERT LAYNE SIEBENBERG is an individual and a resident of the
13 State of California. Mr. Siebenberg was the drummer for Supertramp and is a remaining member
14 (by and through a so-called “loan-out” entity) of the SUPERTRAMP partnership.

15 5. On information and belief, Defendant CHARLES ROGER POMFRET HODGSON,
16 a/k/a ROGER HODGSON, is a resident of Nevada County in the State of California. Mr.
17 Hodgson was the lead guitarist and vocalist for Supertramp and is a former member (by and
18 through a so-called “loan-out” entity) of the SUPERTRAMP partnership.

19 6. On information and belief, Defendant RICHARD DAVIES, is a resident of the State
20 of New York. Davies was the keyboard player and vocalist for Supertramp and is a remaining
21 member (by and through a so-called “loan-out” entity) of the SUPERTRAMP partnership.

22 7. On information and belief, Defendant DELICATE MUSIC is a California general
23 partnership with its principal place of business in Los Angeles County in the State of California.
24 At all relevant times, Mr. Hodgson and Mr. Davies were and currently are current partners of
25 Delicate Music. On information and belief, Delicate Music is one of the publishing administrators
26 (as that term is used in the music business) of the musical compositions (or songs) at issue in this
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1 case, and therefore receives some or all of the monies owed to Plaintiffs under the agreements at
2 issue here.

3 8. On information and belief, the true names and capacities, whether individual,
4 corporate, associate or otherwise, of Defendants named herein as Does 1 through 10, inclusive,
5 are unknown to Plaintiffs, who therefore sues said Defendants by such fictitious names. Plaintiffs
6 will amend this complaint to allege their true names and capacities when such have been
7 ascertained. On information and belief, each of the Defendants designated herein as “Doe” is
8 legally responsible for the events and actions alleged herein, and proximately caused or
9 contributed to the injuries and damages as hereinafter described.

10 **JURISDICTION AND VENUE**

11 9. The instant action was originally filed in the Superior Court of the State of
12 California for the County of Los Angeles, and was subsequently removed pursuant to claimed
13 Federal Question jurisdiction by Defendant RICHARD DAVIES. Plaintiffs disagree that there is
14 Federal Question jurisdiction and reserve the right to make a motion for remand. This Court has
15 personal jurisdiction over each Defendant inasmuch as he or it has consented to the Court’s
16 personal jurisdiction and/or has sufficient minimum contacts here under applicable law.

17 10. Venue is proper in this district under 28 U.S.C. § 1391(b) because a substantial
18 part of the events or omissions giving rise to the claims of this action occurred in, was directed
19 from, and/or emanated from, in whole or in part, this judicial district.

20 **FACTUAL BACKGROUND**

21 11. Supertramp is a world-famous multi-platinum English progressive rock band
22 formed in London in the 1970s. The group coalesced around the lineup of Mr. Hodgson on guitar
23 and vocals, Mr. Thomson on bass, Mr. Helliwell on saxophone, keyboards, and backing vocals,
24 Mr. Siebenberg on drums and percussion, and Mr. Davies on keyboards and vocals.

25 12. From 1973 to 1983, when Mr. Hodgson left the band, Supertramp released six
26 studio albums: *Crime of the Century*; *Crisis? What Crisis?*; *Even in the Quietest Moments*;
27 *Breakfast in America*; *Paris*; and *Famous Last Words* (the “Supertramp Recordings”). All six
28 albums went Gold, Platinum, Multi-Platinum, or Diamond (10x Platinum) in various countries in

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1 Europe and North America. For example, the band’s biggest hit record, *Breakfast in America*,
2 reached #1 in the U.S. in 1979 and was later certified 4x Platinum by the Recording Industry
3 Association of America.

4 13. All five members performed on and contributed to the Supertramp Recordings, and
5 all five members toured assiduously behind and in support of the release of those albums. In
6 connection with their collective endeavors, the band members formed SUPERTRAMP, a
7 California general partnership, sometime in the late 1970s, later memorializing their partnership
8 in a written agreement.

9 **The 1977 Agreement**

10 14. Messrs. Hodgson and Davies were the principal songwriters in the band and were
11 credited as such. However, as popular music acts often do, because the band members collectively
12 recognized the contributions of the non-songwriting members of the band to the success of the
13 band’s songs, on or about Jan. 18, 1977, the five members of Supertramp together with their
14 manager David Margereson entered into a Memorandum of Agreement (Publishing) (the “1977
15 Agreement”) pertaining to the sharing of songwriting and publishing royalties among them. A
16 true and correct copy of that agreement is attached hereto as Exhibit A.

17 15. The 1977 Agreement states that “all songwriting and publishing royalties [and/or
18 other income] derived from the parties’ songwriting and/or publishing activities” for
19 “compositions recorded by the performing group Supertramp [] shall be paid to each of the
20 undersigned in the following proportions”:

- 21 • 27% Roger Hodgson
- 22 • 27% Richard Davies
- 23 • 11.5% Douglas Thomson
- 24 • 11.5% John Helliwell
- 25 • 11.5% Robert Siebenberg
- 26 • 11.5% David Margereson

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1 The 1977 Agreement provides a different apportionment of songwriting and publishing royalties
2 for any musical compositions recorded by artists “other than the performing group Supertramp.”

3 16. The 1977 Agreement also provides that the “copyrights of the compositions shall
4 be owned by the respective writers who write the compositions and shall be administered by
5 Delicate Music, a partnership consisting of Richard Davies and Roger Hodgson.” A list of the
6 musical compositions (or songs) covered by the parties’ 1977 Agreement, and by successor
7 agreements discussed herein, is attached hereto as Exhibit B, referred to hereinafter as the
8 “Supertramp Songs.”

9 17. Because of the different treatment under the 1977 Agreement of songwriting and
10 publishing royalties depending on who recorded the Supertramp Songs, Delicate Music’s
11 obligation to administer the copyrights in and to the Supertramp Songs required it to allocate and
12 account for songwriting and publishing royalties derived from Supertramp’s recordings of those
13 songs as well as those derived from recordings by musical artists “other than the performing
14 group Supertramp.” The former included Plaintiffs; the latter did not.

15 **The 1984 Agreement**

16 18. On or about Dec. 13, 1984, Plaintiffs, and their respective loan-out entities,
17 Messrs. Hodgson and Davies and their respective loan-out entities, Delicate Music, and others,
18 entered into a Withdrawal Agreement (the “1984 Agreement”) pertaining to Mr. Hodgson’s
19 departure from the Supertramp band and partnership. A true and correct copy of the 1984
20 Agreement is attached hereto as Exhibit C.

21 19. Among other things, the 1984 Agreement addresses the parties’ relationship
22 regarding songwriting and publishing royalties to be paid in connection with the Supertramp
23 Songs. The 1984 Agreement acknowledges and largely leaves unchanged the parties’ respective
24 shares of those royalties derived from the use of Supertramp Songs on the Supertramp
25 Recordings. It also acknowledges the different treatment given to songwriting and publishing
26 royalties derived from the use of Supertramp Songs on a recording which “features the
27 performance of a recording artist other than Supertramp” (defined as an “Outside Cover
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1 Recording”) and confirms that Plaintiffs do not participate in any songwriting or publishing
2 royalties derived from the use of the Supertramp Songs on such recordings.

3 **The 1991 Agreement**

4 20. On or about Dec. 31, 1991, Plaintiffs entered into an agreement with Mr. Davies,
5 Delicate Music and others (the “1991 Agreement”) modifying certain aspects of the songwriting
6 and publishing royalties due them under the 1977 Agreement and the 1984 Agreement. A true and
7 correct copy of the 1991 Agreement is attached hereto as Exhibit D.

8 21. The 1991 Agreement confirms the share of songwriting and publishing royalties
9 owed to Plaintiffs under the 1977 Agreement and the 1984 Agreement, restates Delicate Music’s
10 obligation to account for and pay them “in perpetuity,” and prohibits Delicate Music from
11 “interfering or stopping any distribution to be made [of these royalties] to any other party.” Since
12 at least the time of the 1991 Agreement to about early 2018, Plaintiffs were accounted to and paid
13 more or less every 90 days for their respective shares of songwriting and publishing royalties,
14 either directly by Mr. Hodgson and/or Mr. Davies, or through Delicate Music. These royalties
15 have been substantial, as the Supertramp Songs generate hundreds of thousands of dollars in
16 yearly revenue.

17 22. On information and belief, some or all of the songwriting and publishing royalties
18 derived from the Supertramp Songs come from Universal Music Corp., a Delaware Corporation,
19 d/b/a Universal Music Publishing Group, a successor in interest by merger to ALMO Music Corp.
20 (“Universal Music”), and The American Society of Composers, Authors and Publishers, a New
21 York not-for-profit performing rights organization (“ASCAP”), who paid and continue to pay
22 those royalties to Mr. Hodgson, Mr. Davies, Delicate Music or a combination of the three, who in
23 turn are obligated to distribute them to the individual Plaintiffs in the percentages agreed upon.

24 **Accountings and Payments to Plaintiffs by Hodgson Cease**

25 23. Up until approximately 2018, Mr. Hodgson, by himself and through Delicate
26 Music, more or less faithfully adhered to the payment allocation prescribed by the 1977
27 Agreement, the 1984 Agreement, and the 1991 Agreement, and accounted to and paid Plaintiffs
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1 their respective shares of songwriting and music publishing royalties, either directly or through
2 Delicate Music, more or less every 90 days. Starting sometime in 2018, excepting various one-off
3 payments lacking any accounting for same, Mr. Hodgson, either by himself or by and through
4 Delicate Music, stopped accounting and paying (or instructed others not to account and pay) any
5 portion of songwriting or publishing royalties to Plaintiffs due them on the Supertramp Songs.
6 Even before these accountings ceased entirely, Mr. Hodgson’s and Delicate Music’s reporting
7 often included no more than a single line-item without any explanation for the calculation of
8 monies owed or employing accounting devices to minimize the amount paid Plaintiffs. For
9 example, on some of those accountings, Mr. Hodgson allocated substantially all of the
10 songwriting and publishing royalties he received from Universal Music, ASCAP and others to the
11 use of the Supertramp Songs on recordings other than the Supertramp Recordings. From Aug.
12 2019 to date, neither Mr. Hodgson, Delicate Music, nor any of their agents have given Plaintiffs
13 any explanation for their failure to account and pay these amounts. Upon receipt of a March 2021
14 letter from Plaintiffs’ counsel raising these issues, Mr. Hodgson’s attorney purported to “refute
15 each and every one of the allegations” pertaining to the subject, again without explanation, and
16 threatened “to consult with litigation counsel,” among other things. Upon information and belief,
17 Mr. Hodgson has told others that he stopped making the required payments because, in his words,
18 Plaintiffs “have been paid enough” and has expressed the sentiment that Plaintiffs “ripped me off”
19 and “will never make any money off me again.” Clearly, by these statements, Mr. Hodgson and
20 Delicate Music have evinced an awareness of their contractual obligations to Plaintiffs and have
21 chosen not to honor them, and in some circumstances, to actively frustrate and thwart them.

Mr. Davies Fails to Pay and Account for Royalties Owed to Plaintiffs

22
23 24. Up until sometime in or around 2019, Mr. Davies, by himself and through Delicate
24 Music, more or less faithfully adhered to the payment allocation prescribed by the 1977
25 Agreement, the 1984 Agreement, and the 1991 Agreement, and accounted to and paid Plaintiffs
26 their respective shares of songwriting and music publishing royalties, either directly or through
27 Delicate Music, more or less every 90 days.
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25. Starting sometime in or about 2019, Mr. Davies stopped paying and/or, on information and belief, instructed Delicate Music or others to stop paying the U.S. songwriting and publishing royalties due to Plaintiffs for those Supertramp Songs appearing on the Supertramp records *Breakfast in America* and *Famous Last Words*.

26. In December 2019, counsel for Mr. Davies and Delicate Music advised counsel for Plaintiffs that it would no longer pay domestic songwriting royalties to Messrs. Helliwell, Thomson, and Siebenberg for songs appearing on *Breakfast in America* and *Famous Last Words* and that Mr. Davies would retain all that income. In April 2020, Mr. Siebenberg received an email from Mr. Davies’ accountant attaching a royalty distribution summary and stating that “these royalties exclude domestic income participation for all non-writers from *Breakfast in America* and *Famous Last Words*. [* * *] The royalties for these albums totaled approx. \$29,000.”

FIRST CAUSE OF ACTION
(Breach of Contract)
(Against All Defendants)

27. Plaintiffs incorporate the allegations of paragraphs 1-26 as though fully set forth herein.

28. The parties’ 1977 Agreement is a valid and subsisting written contract.

29. The parties’ 1984 Agreement is a valid and subsisting written contract.

30. The parties’ 1991 Agreement is a valid and subsisting written contract.

31. As set forth above, Mr. Hodgson, Mr. Davies, and Delicate Music, and each of them, breached these contracts by failing to properly and timely account for and pay to Plaintiffs their share of songwriting and publishing royalties owed them.

32. Plaintiffs have performed all conditions, covenants, and promises to be performed on their part under the pertinent contracts.

33. As a direct and proximate cause of Mr. Hodgson’s, Mr. Davies’ and Delicate Music’s breaches, Plaintiffs, and each of them, have been damaged in an amount to be proven at trial.

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SECOND CAUSE OF ACTION

(Breach of Implied Covenant of Good Faith and Fair Dealing)

(Against All Defendants)

34. Plaintiffs incorporate the allegations of paragraphs 1-33 as though fully set forth herein.

35. The parties’ contracts each contain a covenant implied by law that Mr. Hodgson, Mr. Davies, and Delicate Music would act toward Plaintiffs in good faith and with fair dealing.

36. This implied covenant of good faith and fair dealing imposes on Mr. Hodgson, Mr. Davies, and Delicate Music the duty not to take any action with the motive to frustrate Plaintiffs’ enjoyment of their rights under those contracts and to exercise any discretion they have thereunder fairly.

37. In doing the acts alleged hereinabove, Mr. Hodgson, Mr. Davies, and Delicate Music, and each of them, have breached this covenant of good faith and fair dealing. They have done so in bad faith and with a motive intentionally to frustrate if not defeat Plaintiffs’ enjoyment of their rights under the parties’ contracts, and in a manner intended to freeze Plaintiffs out of their contractual entitlements, and to otherwise avoid timely and properly paying Plaintiffs what they are owed under the parties’ contracts in the accountings to them.

38. As a direct and proximate cause of the foregoing breaches of the covenant of good faith and fair dealing, Plaintiffs have been damaged in an amount to be determined according to proof at trial.

THIRD CAUSE OF ACTION

(Conversion)

(Against All Defendants)

39. Plaintiffs incorporate the allegations of paragraphs 1-38 as though fully set forth herein.

40. The songwriting and publishing royalties owed to Plaintiffs were and are the property of Plaintiffs.

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1 41. These royalties were and are a sum capable of identification, and were received by Mr.
2 Hodgson, Mr. Davies, and/or Delicate Music, who have in their exclusive possession, custody or
3 control the information necessary to identify and determine said sum, and have otherwise failed
4 and refused to account for any portion thereof on demand.

5 42. These royalties owed to Plaintiffs, or any portion thereof, were contractually required
6 to have been administered and paid to Plaintiffs by Mr. Hodgson, Mr. Davies and/or Delicate
7 Music, and neither Mr. Hodgson, Mr. Davies, nor Delicate Music had any right to retain or use
8 those funds.

9 43. Mr. Hodgson, Mr. Davies and Delicate Music, and each of them, with the aid of
10 others, intentionally and substantially interfered with receipt by Plaintiffs of these royalties by
11 wrongfully withholding these funds and misappropriating these funds for their own personal use
12 and enjoyment.

13 44. Plaintiffs did not consent in any manner to Mr. Hodgson, Mr. Davies, and Delicate
14 Music withholding these royalties.

15 45. Neither Mr. Hodgson, Mr. Davies, nor Delicate Music have remitted these royalties,
16 nor have they replaced any portion thereof, nor have they accounted for them, despite the demand
17 therefor.

18 46. Mr. Hodgson's, Mr. Davies' and Delicate Music's acts described herein were
19 malicious and oppressive. At all times herein, Mr. Hodgson, Mr. Davies and/or Delicate Music
20 acted willfully, capriciously, and with conscious disregard for Plaintiffs' rights. Plaintiffs are
21 therefore entitled to punitive damages against Mr. Hodgson, Mr. Davies and Delicate Music, and
22 each of them, in an amount appropriate to punish them and set an example.

23 47. In addition, Plaintiffs' damages are ongoing and increasing due to Mr. Hodgson's and
24 Delicate Music's contractual obligations to pay and account for these royalties.

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FOURTH CAUSE OF ACTION

(Open Book Account)

(Against All Defendants)

48. Plaintiffs incorporate the allegations of paragraphs 1-47 as though fully set forth herein.

49. Mr. Hodgson, Mr. Davies, and Delicate Music, on the one hand, and Plaintiffs, on the other hand, have had financial transactions giving rise to an open book account maintained by certified professional accountants on Mr. Hodgson’s, Mr. Davies’ and Delicate Music’s behalf, detailing the monies due and payable to Plaintiffs under the parties’ contracts.

50. Mr. Hodgson, Mr. Davies, and Delicate Music, and each of them, owe Plaintiffs and each of them on such open book account in an amount according to proof at trial.

FIFTH CAUSE OF ACTION

(Money Had and Received)

(Against All Defendants)

51. Plaintiffs incorporate the allegations of paragraphs 1-50 as though fully set forth herein.

52. Defendants, and each of them, have received monies belonging or intended to be paid to Plaintiffs.

53. On information and belief, such monies were not used for the benefit of Plaintiffs.

54. Defendants have not paid these monies to Plaintiffs.

SIXTH CAUSE OF ACTION

(Declaratory Relief)

(Against All Defendants)

55. Plaintiffs incorporate the allegations of paragraphs 1-54 as though fully set forth herein.

56. An actual controversy has arisen between Plaintiffs and Defendants. As described above, Plaintiffs contend that they are each entitled to certain songwriting and publishing

1 royalties derived from the Supertramp Songs and that Mr. Hodgson’s, Mr. Davies’, and Delicate
2 Music’s obligations to account to and pay Plaintiffs are continuing and contractual in nature. Mr.
3 Hodgson, Mr. Davies’ and Delicate Music disagree and have variously failed to pay and account
4 to Plaintiffs for these royalties since in or about 2018 and 2019 and have demonstrated by words
5 and deeds that they intend to continue to do so.

6 **Prayer for Relief**

7 WHEREFORE, Plaintiffs pray that the Court enter judgment in their favor and against
8 Defendants, and each of them, as follows:

- 9 1. That Defendants and each of them be ordered to furnish to Plaintiffs a complete
10 and accurate accounting of all songwriting and publishing royalties received and
11 paid in connection with the Supertramp Songs from May 2017 to the final
12 determination of this lawsuit;
 - 13 2. For actual damages in favor of Plaintiffs and against Mr. Hodgson, Mr. Davies,
14 and Delicate Music in an amount to be determined at trial;
 - 15 3. For the imposition of a constructive trust on the monies owed Plaintiffs and their
16 fruits;
 - 17 4. For compensatory, punitive, and exemplary damages against Mr. Hodgson, Mr.
18 Davies, and Delicate Music;
 - 19 5. For a declaratory judgment that each Plaintiff is entitled to a specified percentage
20 of all songwriting and publishing royalties received and derived from the
21 Supertramp Songs as embodied on the Supertramp Recordings, with an
22 accompanying order that such monies be paid from the source;
 - 23 6. That an award be made against Mr. Hodgson, Mr. Davies, and Delicate Music for
24 Plaintiffs’ costs, disbursements, and reasonable attorney fees, as applicable and
25 pursuant to statute;
 - 26 7. For an award of prejudgment and post-judgment interest; and
 - 27 8. For such other relief as the Court deems just and proper.
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Dated: January 28, 2022

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

By: /s/ David M. Given

David M. Given
Robert Carroll III
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby request a trial by jury of all issues so triable.

Dated: January 28, 2022

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

By: /s/ David M. Given

David M. Given
Robert Carroll III
Attorneys for Plaintiffs