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12 Attorneys for Plaintiff Eric Podwall

13  
14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**  
16

17 ERIC PODWALL, an individual,  
18  
19 Plaintiff,

20 vs.

21 WILLIAM "SMOKEY" ROBINSON, JR.,  
22 an individual,  
23  
24 Defendant.

Case No.: 2:16-cv-06088-ODW  
(AGR<sub>x</sub>)

Hon. Otis D. Wright II

**FIRST AMENDED COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Eric Podwall (“Podwall” or “Plaintiff”) alleges causes of action  
2 against defendant William “Smokey” Robinson, Jr. (“Robinson”) as follows:

3 **INTRODUCTION**

4 1. Defendant Smokey Robinson is well known to the public as the  
5 Motown legend behind such hits as *The Tracks of My Tears* and *The Tears of a*  
6 *Clown*. In 2012, Robinson signed a binding written agreement with Podwall,  
7 pursuant to which Podwall provided Robinson management services. In return,  
8 Robinson agreed to pay Podwall ten percent (10%) of all compensation Robinson  
9 received for Robinson’s services rendered or created during the term of the  
10 agreement. Consistent with the agreement, Podwall provided Robinson with  
11 management services. Among other things, Podwall helped secure Robinson a  
12 recording agreement that resulted in Robinson’s first hit record since the 1980s. In  
13 addition, Podwall was instrumental in closing an agreement to manage Robinson’s  
14 performance royalties. Moreover, Robinson engaged in numerous performances,  
15 in particular live performances.

16 2. Despite these successes, and in blatant disregard of the express  
17 language of the agreement, Robinson has refused to pay Podwall commissions due  
18 and owing to him.

19 3. Through this action, Podwall seeks the payment of monies due and  
20 owing to him under his management agreement with Robinson.

21 **FACTS COMMON TO ALL CAUSES OF ACTION**

22 4. Plaintiff Podwall is a resident of Los Angeles County, California.

23 5. On information and belief, Robinson was a resident of Los Angeles  
24 County, California.

25 6. A substantial portion of the wrongful conduct and omissions  
26 complained of herein occurred in the State of California and caused injury to a  
27 California resident.

28 ///

1                    **Robinson Agrees To Pay Podwall Ten Percent Of His Earnings**

2            7.        Podwall is a well-regarded talent and music manager with more than  
3 20 years of experience in the music and entertainment industries. Podwall’s clients  
4 range from young cutting edge performers to music industry legends.

5            8.        Podwall first met Robinson in 2012. On or about September 10,  
6 2012, Podwall and Robinson entered into a binding written agreement  
7 (“Management Agreement”), pursuant to which Robinson engaged Podwall as his  
8 personal manager. Per the express terms of the Management Agreement, and  
9 subject to a few narrow exceptions, Robinson agreed to pay Podwall ten percent  
10 (10%) of all “gross compensation derived from all products of [Robinson’s]  
11 services initially rendered or created” during the term of the agreement. A true and  
12 correct copy of the Management Agreement is attached hereto as Exhibit 1 and  
13 incorporated by this reference.

14           9.        The initial term of the Management Agreement was 18 months from  
15 the date of execution, followed by consecutive one-year extensions. The initial  
16 term of the Agreement concluded on March 10, 2014 and was automatically  
17 extended for another year on that date. Per the Management Agreement’s express  
18 terms, it was most recently extended through at least March 10, 2016.

19                    **Podwall Helps Revive Robinson’s Career**

20           10.       Consistent with the Management Agreement, Podwall has diligently  
21 served as Robinson’s manager, providing career advice, taking care of Robinson’s  
22 business arrangements, and charting the course of Robinson’s career.

23           11.       Among other things, Podwall was instrumental in securing Robinson a  
24 recording agreement with Verve Records for an album of duets, and arranging for  
25 Robinson to record with a who’s who of A-list artists, including Elton John, Steven  
26 Tyler, John Legend, Gary Barlow, James Taylor, JC Chasez, Aloe Blacc, and  
27 Miguel. That album, *Smokey & Friends* peaked at number two on the R&B charts  
28 and became the second best-selling record of Robinson’s solo career.

1           12. In addition, Podwall presented Robinson with innovative methods to  
2 increase the profitability of his touring revenue.

3           13. Despite repeated demands that he do so, however, Robinson has  
4 refused to pay Podwall commissions from Robinson's touring, performing, or  
5 recording activities.

6                   **Robinson's Failure to Pay Commissions from Performance Revenue**

7           14. Between approximately June 1, 2013, and March 2016, Robinson  
8 engaged in numerous performances, in particular live performances. These  
9 numerous performance engagements by Robinson occurred while Podwall was  
10 acting as Robinson's personal manager and/or during the term of the Management  
11 Agreement. Below is a chart that contains a non-exclusive list of some, though not  
12 necessarily all, of Robinson's live performances between approximately June 2013  
13 and March 2016.<sup>1</sup> These are just examples:

14

Date	City	Venue
6/21/2013	Toronto, ON	Star Stage
6/22/2013	Okmulgee, OK	Claude Cox Omniplex
6/27/2013	Saratoga, CA	The Mountain Winery
6/29/2013	Las Vegas, NV	Venetian Showroom
7/12/2013	Temecula, CA	Pechanga Resort & Casino
7/17/2013	Hammond, IN	Wolf Lake Memorial Park
7/18/2013	Sloan, IA	Winnavegas Casino
7/20/2013	San Ramon, CA	Dougherty Valler PAC
7/21/2013	Vacaville, CA	Vacaville PAC
7/25/2013	Coney Island, NY	Seaside Summer Concert Series
7/26/2013	Niagara Falls, NY	Seneca Niagara Casino
8/22/2013	Martha's Vineyard, MA	Tabernacle
8/23/2013	Baton Rouge, LA	L'Auberge Baton Rouge Casino
8/24/2013	Baton Rouge, LA	L'Auberge Baton Rouge Casino

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27 <sup>1</sup> The chart lists examples of Robinson's live performances. The chart identifies the date of the  
28 live performance, and the city (where applicable) and venue name where the live performance  
occurred.

1	8/28/2013	Grand Rapids, MI	Meijer Gardens Amphitheater
2	8/29/2013	Sterling Heights, MI	Freedom Hill Amphitheatre
3	8/31/2013	Carmel, IN	The Palladium
4	9/13/2013	St. Louis, MO	Sheldon Arts Foundation
5	9/15/2013	Yonkers, NY	Yonkers Raceway
6	9/19/2013	Chicago, IL	Jones Convocation Center
7	9/28/2013	Florence, IN	Belterra Resort & Casino
8	10/11/2013	Newark, NJ	NJ PAC - Prudential Hall
9	10/18/2013	Cerritos, CA	Cerritos PAC
10	10/19/2013	Pasadena, CA	Pasadena Convention Center
11	11/7/2013	Highland, CA	San Manuel Indian Bingo & Casino
12	11/9/2013	Las Vegas, NV	The Eastside Cannery Casino
13	11/14/2013	Regina, Canada	Regina Casino
14	11/15/2013	Regina, Canada	Regina Casino
15	11/22/2013	Durant, OK	Choctaw Events Center
16	11/24/2013	Lake Buena Vista, FL	Disney
17	11/30/2013	Laughlin, NV	Edgewater Casino Resort
18	12/14/2013	Chica, IL	Arie Crown Theater
19	12/27/2013	Bethlehem, PA	Sands Bethlehem Event Center
20	12/29/2013	Tunica, MS	Harrah's
21	1/16/2014	Windsor, ON	The Colosseum at Caesars Windsor
22	2/15/2014	Primm, NV	Buffalo Bill's Resort & Casino
23	2/21/2014	Tacoma, WA	Emerald Queen Casino
24	3/8/2014	Phoenix, AZ	Arizona Grand Resort
25	3/14/2014	Anniston, AL	Anniston PAC
26	3/15/2014	West Palm Beach, FL	Kravis Center PAC
27	3/16/2014	Miami, FL	Adrienne Arsht PAC
28	3/28/2014	Newkirk, OK	First Council Casino
	3/31/2014	Dallas, TX	Meyerson Symphony Center
	5/16/2014	Cabazon, CA	Moronggo Casino Resort & Spa
	5/24/2014	Atlantic City, NJ	Caesars
	6/4/2014	Bethesda, MD	Music Center at Strathmore
	6/6/2014	New York, NY	Beacon Theater
	6/7/2014	Mashantucket, CT	Foxwoods
	6/20/2014	Del Mar, CA	San Diego County Fair
	6/21/2014	Valley Center, CA	Harrah's Rincon
	6/22/2014	San Francisco, CA	Sigmund Stern Grove
	6/28/2014	Tucson, AZ	Ava Amphitheater

1	6/29/2014	Littleton, CO	The Hudson Gardens & Event Center
2	7/25/2014	Niagara Fallas, ON	Seneca Niagara Casino
3	8/1/2014	Rama, ON	Casino Rama
4	8/6/2014	Albuquerque, NM	Sandia Resort & Casino
5	8/8/2014	Toledo, OH	Hollywood Casino
6	8/9/2014	Milwaukee, WI	Riverside Theater
7	8/16/2014	Los Angeles, CA	Greek Theater
8	8/20/2014	San Antonio, TX	Majestic Theater
9	8/22/2014	Biloxi, MS	IP Casino Resort & Spa
10	8/23/2014	Montgomery, AL	Alabama Shakespeare Festival Theatre
11	8/29/2014	Willemstad, Curaco	North Sea Jazz Fest
12	9/6/2014	Meadowlands, PA	Meadows Racetrack & Casino
13	9/20/2014	Newport Beach, CA	Lido Theater
14	10/3/2014	Waukegan, IL	Genesee Theater
15	10/4/2014	Prior Lake, MN	Mystic Lake Casino
16	10/17/2014	Temecula, CA	Pechanga Resort & Casino
17	10/18/2014	Las Vegas, NV	The Eastside Cannery Casino
18	10/23/2014	Virginia Beach, VA	Sandler Center
19	10/24/2014	Morristown, NJ	Mayo PAC
20	10/25/2014	Bethlehem, PA	Zoellner Arts Center
21	12/11/2014	Brooklyn, NY	Barclays Theater
22	12/12/2014	Baltimore, MD	The Lyric
23	12/13/2014	King of Prussia, PA	Valley Forge Casino Resort
24	1/8/2015	Niagara Fallas, ON	Fallsview Casino
25	1/9/2015	Niagara Fallas, ON	Fallsview Casino
26	1/17/2015	Indio, CA	Fanastas Springs Resort
27	2/11/2015	Calgary, AB	Grey Eagle Resort
28	2/13/2015	Richmond, BC	River Rock Casino
	2/14/2015	Portland, OR	Arlene Schnitzer Concert Hall
	3/6/2015	Tacoma, WA	Emerald Queen Casino
	4/8/2015	Austin, TX	Paramount Theater
	4/10/2015	Bossier City, LA	Riverdome
	4/12/2015	St. Petersburg, FL	Mahaffey Theater
	4/14/2015	Ft. Myers, FL	Barbara B. Mann PAC
	4/16/2015	Fayetteville, NC	Crown Theater
	4/18/2015	Columbus, OH	Ohio Theater
	4/21/2015	Cozumel, Mexico	Carnival Cruise Lines
	4/22/2015	Cozumel, Mexico	Carnival Cruise Lines
	4/23/2015	Cozumel, Mexico	Carnival Cruise Lines
	5/16/2015	Atlantic City, NJ	Caesars AC

1	5/29/2015	New Buffalo, MI	Four Winds Casino Resort
2	6/20/2015	Quapaw, OK	Downstream Casino Resort
3	6/27/2015	Laytonville, CA	Black Oak Ranch
4	7/2/2015	Hollywood, CA	Hollywood Bowl
5	7/3/2015	Hollywood, CA	Hollywood Bowl
6	7/4/2015	Hollywood, CA	Hollywood Bowl
7	7/9/2015	Pittsburgh, PA	Heinz Hall
8	7/11/2015	Park City, UT	Snow Park Outdoor Amp
9	7/25/2015	Hollywood, FL	Seminole Hard Rock Casino
10	9/3/2015	Livermore, CA	Wente Vineyards
11	9/4/2015	Rohnert Park, CA	Sonoma State University
12	9/18/2015	Sahuarita, AZ	Desert Diamond Casino
13	10/9/2015	Bethlehem, PA	Sands Bethlehem Event Center
14	10/10/2015	Ridgefield, CT	The Ridgefield Playhouse
15	10/11/2015	Westbury, NY	Theater at Westbury
16	11/13/2015	Thackerville, OK	Winstar World Casino
17	11/21/2015	Alabama	The Alabama Theater
18	12/6/2015	St. Louis, MO	Peabody Opera House
19	12/10/2015	Nashville, TN	Schermerhorn Center
20	12/11/2015	Nashville, TN	Schermerhorn Center
21	12/29/2015	Telluride, CO	Sheridan Opera House
22	1/16/2016	Enoch, AB	River Cree Resort & Casino
23	1/21/2016	Tulsa, OK	Hard Rock Hotel & Casion
24	1/23/2016	Newkirk, OK	First Council Casino
25	1/30/2016	At sea	Soul Train Cruise
26	2/13/2016	Chandler, AZ	Wild Horse Pass Casino
27	2/14/2016	Chandler, AZ	Wild Horse Pass Casino

21           15. Under the Management Agreement, Robinson was required to pay  
22 Podwall ten percent (10%) of all gross compensation that Robinson derived from  
23 Robinson's numerous performances that occurred (or were booked) between June  
24 1, 2013, and the end of the Management Agreement's term. Despite Robinson's  
25 contractual obligation, Robison failed to pay Podwall the required ten percent  
26 (10%) commission on all of Robinson's gross compensation derived from  
27 Robinson's performances that occurred (or were booked) between June 1, 2013,  
28 and the end of the Management Agreement's term.

1                   **Podwall Helps Negotiate A Royalty Agreement For Robinson**

2           16.    When a song is publicly broadcast, the songwriter and publisher are  
3 entitled to receive income from the broadcasters. Such royalties are monitored,  
4 collected, and paid to artists by performing rights organizations (“PRO”).

5           17.    In 2014, Robinson’s attorney John Mason was involved in negotiating  
6 an agreement with Global Music Rights (“GMR”) for GMR to be Robinson’s PRO  
7 and collect broadcast royalties on behalf of Robinson.

8           18.    On information and belief, Mason flagrantly breached his fiduciary  
9 duties to Robinson in these negotiations by demanding that GMR pay \$1 million to  
10 an entity run by Mason and Kerry Gordy (another of Mason’s clients) in order to  
11 have access to Robinson’s catalogue.

12           19.    On information and belief, the proposed agreement between GMR and  
13 Robinson was on the verge of collapse as a result of Mason’s self-interested  
14 demand.

15           20.    Consequently, GMR reached out to Podwall for help, and Robinson  
16 requested that Podwall intervene and complete the negotiations with GMR on his  
17 behalf. Podwall then successfully closed the GMR deal on terms even more  
18 favorable to Robinson than had previously been offered.

19           21.    Despite repeated demands that he do so, however, Robinson has  
20 refused to pay Podwall any commissions from the GMR deal.

21                   **Robinson Wrongly Tries To Terminate The Management Agreement**

22           22.    In January 2016, Podwall received a letter from Robinson dated  
23 December 18, 2015, which purported to terminate the Management Agreement  
24 (“Purported Termination Letter”).

25                                   **FIRST CAUSE OF ACTION**

26                                   **(Breach of Contract Against Robinson)**

27           23.    Plaintiff realleges and incorporates by reference the allegations in  
28 paragraphs 1 through 22 as though fully set forth herein.

1           24. In 2012, Podwall and Robinson entered into the Management  
2 Agreement, pursuant which Robinson agreed to pay Podwall ten percent (10%) of  
3 all gross compensation derived from all products of Robinson's services rendered  
4 or created by Robinson during the term of the Management Agreement, including  
5 without limitation all recording agreements, live performances, and the GMR deal  
6 (and other copyright royalties resulting from the exploitation of Robinson's music).

7           25. Podwall has performed all conditions, covenants, and promises  
8 required to be performed on his part in accordance with the terms and conditions of  
9 the Management Agreement.

10           26. On information and belief, since entering into the Management  
11 Agreement, Robinson has received compensation from, among other things, his  
12 recording, performing, and touring activities as well as from the GMR deal (and  
13 other copyright royalties resulting from the exploitation of Robinson's music).

14           27. Robinson has breached the Management Agreement by failing and  
15 refusing to pay commissions due and owing to Podwall from Robinson's income  
16 described above. In particular, Robinson has failed to pay Podwall ten percent  
17 (10%) of all gross compensation that Robinson derived from Robinson's numerous  
18 performances/touring, his recording, and the GMR deal (and other copyright  
19 royalties resulting from the exploitation of Robinson's music).<sup>2</sup>

20           28. As a direct, proximate and foreseeable consequence of the breach of  
21 the Management Agreement by Robinson, Podwall has suffered damages, and will  
22 continue to suffer damages in excess of the minimum jurisdictional amount,  
23 according to proof at trial.

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25 \_\_\_\_\_  
26 <sup>2</sup> For the avoidance of doubt, Podwall does not seek to recover commissions in connection with  
27 Robinson's BBC Hyde Park Performance or Robinson's performance on The Voice. There was  
28 also a certain Peoria Concert and a certain CSAAC Concert that never occurred. For the  
avoidance of doubt, Podwall is not seeking commissions in connection with those two concerts  
that never occurred.

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**SECOND CAUSE OF ACTION**

**(Quantum Meruit Against Robinson)**

29. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1 through 28 as though fully set forth herein.

30. As alleged hereinabove, Podwall provided management services to Robinson.

31. Robinson accepted, used and enjoyed, and is and continuing to use and enjoy, the benefits of Podwall’s management services.

32. The fair and reasonable value of the management services provided by Podwall to Robinson is equal to no less than ten percent (10%) of the gross earnings derived by Robinson for all entertainment industry engagements during the relevant period, including without limitation, gross compensation that Robinson derived from Robinson’s numerous performances/touring, his recording, and the GMR deal (and other copyright royalties resulting from the exploitation of Robinson’s music).

33. Podwall has made demand on Robinson for payment of the reasonable value of his management services provided. Robinson, however, has failed and refused to make payment to Podwall as demanded.

**FOURTH CAUSE OF ACTION**

**(Accounting Against Robinson)**

34. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1 through 33 as though fully set forth herein.

35. As alleged hereinabove, Podwall provided management services to Robinson pursuant to the Management Agreement.

36. Pursuant to the Management Agreement, Podwall is entitled to a ten percent (10%) commission on all income that Robinson receives from Robinson’s services and creations.

37. On information and belief, Robinson has received monies that are

1 commissionable under the terms of the Management Agreement, but for which  
2 Robinson has not accounted to Podwall.

3 38. Podwall hereby demands an accounting of all amounts of income that  
4 Robinson received from the foregoing sources so that Podwall can determine the  
5 amount of commissions that Robinson owes Podwall.

6 WHEREFORE, Plaintiff prays for judgment against Robinson as follows:

7 On Plaintiff's First Cause of Action for Breach of Written Contract:

- 8 1. For compensatory damages according to proof at trial.
- 9 2. For consequential damages according to proof at trial.

10 On Plaintiff's Second Cause of Action for Quantum Meruit:

- 11 1. For compensatory damages according to proof at trial.

12 On Plaintiff's Third Cause of Action for Accounting:

- 13 1. For an accounting of all sums due from Robinson to Podwall pursuant  
14 to the Management Agreement.

15 On All Causes of Action:

- 16 1. For prejudgment interest on the damages;
- 17 2. For costs of suit incurred herein; and
- 18 3. For such other and further relief as the Court may deem just and  
19 proper.

20  
21 Dated: December 11, 2018

FREEDMAN + TAITELMAN, LLP

22  
23 By: \_\_\_\_\_/s/  
24 Bryan J. Freedman  
25 Jesse A. Kaplan  
26 Adam N. Pugatch  
27 Attorneys for Plaintiff Eric Podwall  
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**DEMAND FOR JURY TRIAL**

Plaintiff respectfully demands a trial by jury for all issues so triable in this action.

Dated: December 11, 2018

FREEDMAN + TAITELMAN, LLP

By: \_\_\_\_\_ /s/  
Bryan J. Freedman  
Jesse A. Kaplan  
Adam N. Pugatch  
Attorneys for Plaintiff Eric Podwall