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7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
9

10 In re PANDORA MEDIA, LLC
11 COPYRIGHT LITIGATION

Master File No. 2:22-cv-00809-MCS-MAR
CONSOLIDATED ACTION

12
13
14 This Document Relates to:
15 ALL ACTIONS

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

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19 Plaintiffs YELLOW ROSE PRODUCTIONS, INC., on behalf of Bill
20 Engvall; MAIN SEQUENCE, LTD.; RON WHITE, INC., on behalf of Ron White;
21 ROBIN WILLIAMS TRUST; BRAVE LION, INC., on behalf of Andrew Clay
22 Silverstein a/k/a Andrew Dice Clay; and NICK DI PAOLO, individually and on
23 behalf of ACID TONGUE, INC., by and through their attorneys of record, allege
24 as follows:

25 **JURISDICTION**

26 1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
27 1331 as the action arises under the original and exclusive jurisdiction of the federal

1 court and 28 U.S.C. § 1338(a) as the controversy arises under the Copyright Act of
2 1976 (17 U.S.C. § 101 *et seq.*).

3 2. This Court has personal jurisdiction over Defendant as discussed fully
4 below.

5 3. This Court has general personal jurisdiction over Pandora Media,
6 LLC (“Pandora”) because Pandora’s principal place of business is in Oakland,
7 California, while also having a substantial office in Santa Monica, California,
8 meaning that Pandora is at home in the State of California. Furthermore:

9 a. Upon information and belief, through January 28, 2022, Pandora was
10 qualified to do business in California and was registered as a foreign
11 corporation with the California Secretary of State.

12 b. Pandora is also registered as a foreign limited liability company with
13 the California Secretary of State.

14 c. Pandora’s designated DMCA Copyright Agent identified in its
15 “Intellectual Property Policy” on its website is located in California at
16 2100 Franklin Street, 7th Floor, Oakland, California 94612.

17 d. Pandora has previously admitted in other federal court filings that
18 California has jurisdiction over it. *See, Wixen Music Publishing, Inc.*
19 *v. Pandora Media, Inc.*, Case No. 2:19-cv-5278-SVW (C.D. Cal.), Dkt.
20 15 (Pandora Media, Inc.’s Answer) at ¶¶ 16-17 (“Pandora admits that
21 [it] has availed itself of California law . . . and venue is proper in the
22 [Central District of California]”).

23 4. This Court has specific personal jurisdiction over Pandora because its
24 suit-related conduct creates a substantial connection with the State of California
25 and this Judicial District. Plaintiffs are the equitable and legal owners of the
26 copyrights in properly registered literary works (appended hereto as Exhibits A
27 through F, and collectively referred to as the “Works”). Upon information and

1 belief, Pandora has generated substantial revenue from exploitation of the Works
2 in California, as further discussed below:

3 a. Pandora actively and purposely does business in California, as
4 evidenced by its (i) subscribers and users in California, which Pandora
5 actively reaches out to through, at a minimum, its website
6 (www.pandora.com) and mobile app; (ii) contracts and other
7 transactions that it has entered into in California; (iii) revenue
8 generated from California residents and businesses in connection with
9 its services; and (iv) advertisements that target California residents.

10 b. Pandora has purposefully availed itself of California law and could
11 and did reasonably anticipate being brought into this Court because,
12 among other reasons, Pandora (i) has been engaged and is engaged in
13 infringing conduct within the State of California and this District,
14 including by knowingly, intentionally, and repeatedly streaming
15 sound recordings and the Works over the Internet to California
16 residents via its services; (ii) knew or should have known that the harm
17 caused by its repeated unlicensed public performance of the Works
18 over the Internet was aimed at comedy writers and comedy publishers,
19 including the majority of Plaintiffs in this matter, who control the
20 Works and are managed and administered in or near Los Angeles
21 County, California, a global hub of the entertainment industry; and
22 (iii) knew or should have known that Plaintiffs, industry leading
23 comedians, would suffer, and in fact did suffer, the brunt of the harm
24 caused by Pandora's unauthorized acts in California and around the
25 world.

1 VENUE

2 5. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b),
3 and § 1400(a), as a substantial part of the events or omissions giving rise to the
4 claim occurred in this district, including for example, by the maintenance of
5 Pandora’s corporate office in Santa Monica, California.

6 PARTIES

7 6. Plaintiff, YELLOW ROSE PRODUCTIONS, INC., represents the
8 intellectual property rights of Bill Engvall, who is an actor, writer, and comedian
9 who resides in Utah. YELLOW ROSE PRODUCTIONS, INC. is a corporation in
10 the care of JP Williams and Jennifer Riker of Parallel Entertainment located at 9696
11 Culver Boulevard, Suite 308, Culver City, CA 90232. YELLOW ROSE
12 PRODUCTIONS, INC. is a copyright owner of the properly registered literary
13 works attached hereto as **Exhibit A** (the “Engvall Works”).

14 7. Plaintiff, MAIN SEQUENCE, LTD. (“Main Sequence” or “Carlin”)
15 owns and represents the intellectual property rights of the late George Carlin, who
16 was an actor and comedian who resided in California. MAIN SEQUENCE, LTD.
17 is a corporation with its principal place of business located at 11911 San Vicente
18 #348, Los Angeles, CA 90049, and is in the care of Jerold Hamza, who is also the
19 executor of the Estate of George Carlin. Carlin is a copyright owner of the properly
20 registered literary works attached hereto as **Exhibit B** (the “Carlin Works”).

21 8. Plaintiff, RON WHITE, INC. is the owner of intellectual property
22 rights, on behalf of Ron White who is a comedian, actor, and author who resides in
23 California. Ron White Inc., is a Georgia corporation with its principal place of
24 business at 75 Washington Street, Unite 1877, Fairburn, Georgia 30213. Ron White,
25 Inc. is a copyright owner of the properly registered literary works attached hereto
26 as **Exhibit C** (the “White Works”).

1 compositions, as noted, are referred to herein as “the Works”). Pursuant to 17 U.S.C.
2 §§ 106 and 204 of the Copyright Act of 1976, copyright owners have the exclusive
3 right to, among other things, reproduce, distribute, license, and publicly perform
4 their works. Anyone wishing to obtain the right to do so, must get a license from
5 the respective copyright owner in both of these copyrights, and pay agreed to
6 royalties. The failure to do so constitutes copyright infringement. As discussed
7 below, Pandora not only did not obtain any license to Plaintiffs’ Works but
8 admitted that it did not obtain the required public performance licenses in Security
9 and Exchange Commission (SEC) filings, and admitted that it would very likely
10 face copyright infringement liability as a result. But Pandora did what most
11 goliaths do: it decided it would just infringe to ensure it had this very valuable
12 intellectual property on its platform to remain competitive, and deal with the
13 consequences later. Later is now.

14 **STATEMENT OF FACTS**

15 14. For generations, society has turned to comedy as a place of refuge to
16 escape the troubles of their life and view their struggles through a filter of laughter.
17 There’s something about watching comedians on stage talking about everyday
18 problems that just transports a person from a place of sadness or frustration to one
19 of hope and happiness. Laughter transcends all languages, backgrounds, and
20 ideologies. Comedians serve a crucial role in our society; they give others relief
21 and allow them to laugh at any circumstance or situation without feeling guilty
22 about it. And it is for this very reason that Pandora sought to include the Works
23 from famous comedians, including Plaintiffs, to profit from this good will.

24 15. Plaintiffs are all iconic, world famous comedians, each of whom have
25 captivated audiences for decades and are considered, by many, as legends in the
26 entertainment field, having brought to their audiences works that will be treasured
27 for years to come.

1 21. Defendant has made fifty-one (51) of Engvall’s Works available for
2 dissemination to the public via their digital broadcast radio service knowing full
3 well that it did not possess a valid license to publicly perform them. (*See* Exhibit
4 A). In addition to no license, Pandora also made no royalty payments for the
5 Engvall Works. The Engvall Works are contained on the albums, “Dorkfish”,
6 “Here’s Your Sign”, “Now That’s Awesome (Live)”, and “Cheap Drunk:
7 Autobiography”. Plaintiff has duly complied with all required provisions of the
8 copyright laws of the United States applicable to the Engvall Works, including but
9 not limited to, registering copyrights in and to said Engvall Works with the United
10 States Copyright Office (*see* Exhibit A for applicable copyright registration
11 numbers) on or about March 3, 1997, November 5, 1997, October 19, 1998, July
12 26, 2002, and October 21, 2002 respectively.

13 22. Further, and in addition to a public performance license, it is required
14 by law, and fully understood, that digital service providers, like Pandora, must also
15 get a mechanical digital reproduction license from the owner of the underlying
16 composition in order to make the underlying composition of a recording available
17 for reproduction and distribution through interactive streaming. This is true even
18 where the digital service provider has a license to interactively stream a sound
19 recording. Pandora made all fifty-one (51) of Engvall’s Works available via its
20 Pandora Premium interactive streaming service, also knowing full well that it did
21 not possess a valid license to not only publicly perform his works but also no license
22 to distribute and reproduce the Works. Pandora made no royalty payments for the
23 public performance and no royalty payments for the reproduction of the Engvall
24 Works. The end result is Pandora took Engvall’s Works, gained listeners, subscribers
25 and market share with full knowledge it did not have licenses and made no royalty
26 payments for the Engvall Works, to increase its stock price helping them to
27 reorganize the company with Sirius XM (although the two companies remain to this

1 day completely separate corporations) for billions all while depriving Engvall of his
2 royalties and the benefits of his ongoing legacy.

3 23. As of January 28, 2022, www.pandora.com advertised that Bill
4 Engvall had 227,000 monthly listeners. If each listener listened to only one (1)
5 available work per month, that's 2,724,000 broadcasts or interactive streams per
6 year at a minimum. In fact, as of 2020, more than six hundred million streams
7 (600,000,000) of the Engvall Works had streamed on Pandora alone. Unfortunately,
8 Engvall has not received a fraction of a penny for any of these broadcasts or
9 interactive streams of the Engvall Works from Pandora.

10 24. Pandora only needed to contact one entity, Engvall, to obtain the
11 required licenses. Or Pandora could have chosen not to use the Engvall Works,
12 particularly since it knew it did not have a license. Instead, it chose to infringe.

13 25. Bill Engvall entered into a recording agreement with Warner Bros.
14 Records, Inc. ("WBR") dated May 1, 1996 (the "Engvall Warner Agreement").
15 Under the terms of the Engvall Warner Agreement, Mr. Engvall was obligated to
16 provide his exclusive performance services to WBR, and WBR acquired exclusive
17 ownership rights in the sound recordings of Mr. Engvall's comedic performances
18 in perpetuity.

19 26. Mr. Engvall retained all of his exclusive rights in the Engvall Works.

20 27. Pandora nonetheless did not even take the simplest of steps to ask
21 Engvall or his representatives for a license for the Engvall Works. To the contrary,
22 beginning in or about August of 2020, Word Collections ("WC"), a Spoken
23 Word/Literary Works Collection Agency contacted Pandora in an effort to
24 negotiate a licensing agreement for various copyright owners. From that initial
25 contact and on an ongoing basis over the course of the following year, WC made
26 numerous efforts on behalf of WC's other spoken word/literary works clients,
27

1 including on behalf of Engvall beginning in November 2020, to engage Pandora in
2 good faith negotiations, to no avail.

3 28. While Pandora’s counsel wrote on September 14, 2021 to advise that
4 counsel would respond with Pandora’s position about unlicensed spoken word
5 content appearing on Pandora’s platform, no substantive response from Pandora or
6 its counsel has been sent or received.

7 29. Further, in a letter to WC on September 3, 2021, WBR/Warner Music
8 Group (“WMG”) informed WC that WMG grants rights only as to its recordings
9 and does not grant rights as to any other types of material embodied in those
10 recordings (whether mechanical rights, performance rights or otherwise). That
11 principle applies to comedic material embodied in comedy recordings.

12 30. To paraphrase Mr. Engvall’s famous “Here’s Your Sign”
13 collaboration with Travis Tritt, why can’t Pandora get the picture? Why don’t they
14 understand? We’re not dealing with the planet of apes, we’re talking about comedic
15 works. So to all the digital service providers like Pandora . . . “Here’s Your Sign.”

16 **George Carlin**

17 31. Dubbed the Dean of Counterculture Comedians, the late George
18 Carlin was known for his politically charged and dark comedy, as well as taboo
19 subjects. There really wasn’t a topic or area of culture that Mr. Carlin wasn’t willing
20 to tackle.

21 32. For fifty-two (52) years, the late George Carlin was an integral part of
22 the entertainment world, and his works even graced the hallowed halls of the United
23 States Supreme Court. Mr. Carlin’s ever famous “seven dirty words” comedy
24 routine was at the center of the 1978 Supreme Court case, *F.C.C. v. Pacifica*
25 *Foundation*, which set a precedent concerning government power to censor
26 indecent material on public airwaves. George Carlin was able to express unique
27

1 meaningful insights, observations and ideas through spoken word comedy,
2 impacting culture, society and millions of fans around the globe.

3 33. In many ways George Carlin was a trailblazer in the comedy industry,
4 filming fourteen (14) stand-up comedy specials for HBO. Today, these types of
5 stand-up routines are common on streaming services like Netflix, but had it not
6 been for Carlin, these types of comedy specials may never have been popular.

7 34. After George Carlin’s death in 2008, he was posthumously awarded
8 the Mark Twain Prize for American Humor in 2008 and ranked by Rolling Stone
9 magazine as the second-best stand-up comedian of all time, and he continues to
10 remain a relevant figure in the entertainment industry and has helped chart the way
11 for countless comedians after him.

12 35. Since his passing, Main Sequence, Ltd., has been and continues to be
13 the legal and beneficial owner of the exclusive rights to the literary works of George
14 Carlin, including the Carlin Works Pandora has exploited without a license.
15 Accordingly, Main Sequence, Ltd., has the sole right to protect those copyrights
16 and pursue any and all remedies.¹

17 36. Defendant has made fifty-six (56) of Carlin’s works available for
18 dissemination to the public via their digital broadcast radio service knowing full
19 well that it did not possess a valid license to publicly perform the Carlin Works.
20 (see Exhibit B). In addition to no license, it also made no royalty payments for the
21 Carlin Works. The Carlin Works are contained on the albums “An Evening with
22 Wally Londo”, “Class Clown”, “Classic Gold”, “George Carlin on Comedy”, “On
23

24
25 ¹ A non-exclusive license to Carlin’s literary works has been granted to Laugh.com,
26 Inc. which digitally distributes sound recordings, embodying them, on an exclusive
27 basis, and which serves as an advisor and the collection agent for any revenues
28 arising from that exploitation.

1 the Road”, “SOFA - Comedy Clips”, “The George Carlin Collection”, “Toledo
2 Window Box”, and “You Are All Diseased”. Plaintiff has duly complied with all
3 required provisions of the copyright laws of the United States applicable to the
4 Carlin Works, including but not limited to, registering copyrights in and to said
5 Carlin Works with the United States Copyright Office (*see* Exhibit B for applicable
6 copyright registration numbers) on or about October 4, 1972, January 8, 1973,
7 September 19, 1974, September 11, 1975, and February 28, 1977, respectively.

8 37. Further, and in addition to a public performance license, it is required
9 by law, and fully understood, that digital service providers, like Pandora, must also
10 get a mechanical digital reproduction license from the owner of the underlying
11 composition in order to make the underlying composition of a recording available
12 for reproduction and distribution through interactive streaming. This is true even
13 where the digital service provider has a license to interactively stream a sound
14 recording. Pandora made eleven (11) of the Carlin Works available via its Pandora
15 Premium interactive streaming service, also knowing full well that it did not
16 possess a valid license to not only publicly perform Carlin’s works but also no
17 license to distribute and reproduce the Carlin Works. Pandora made no royalty
18 payments for the public performance and no royalty payments for the reproduction
19 of the Carlin Works. The end result is Pandora took Carlin’s Works, gained
20 listeners, subscribers and market share with full knowledge it did not have licenses
21 and making no royalty payments, to increase their stock price helping them to enter
22 into a merger with Sirius XM (although the two companies remain to this day
23 completely separate corporations) for billions all while depriving the George Carlin
24 Estate and his child the legacy her father left her.

25 38. As of January 28, 2022, www.pandora.com advertised that George
26 Carlin had 81,000 monthly listeners. If each listener listened to only one (1)
27 available work per month, that’s 972,000 broadcasts or/interactive streams per year

1 at a minimum. Unfortunately, Carlin has not received a fraction of a penny for any
2 of these broadcasts or interactive streams of the Carlin Works from Pandora.

3 39. Pandora only needed to contact one entity, Carlin, to obtain the
4 required licenses. Or Pandora could have chosen not to use Carlin’s Works,
5 particularly since it knew it did not have a license. Instead, Pandora chose to
6 infringe.

7 40. Carlin, over the course of his career entered into numerous recording
8 and record distribution contracts with Atlantic Recording Corporation (“Atlantic”),
9 and its affiliates from August 21, 1981, to October 15, 2005. Carlin retained the
10 rights to digitally distribute his sound recordings which it exploits on an exclusive
11 basis through an alternative distribution channel.

12 41. Carlin retained all of his exclusive rights in the Carlin Works.

13 42. Pandora nonetheless did not even take the simplest of steps to ask
14 Carlin or his representatives for a license for the Carlin Works. To the contrary,
15 beginning in or about August of 2020, Word Collections (“WC”), a Spoken
16 Word/Literary Works Collection Agency contacted Pandora in an effort to
17 negotiate a licensing agreement for various copyright owners. From that initial
18 contact and on an ongoing basis over the course of the following year, WC made
19 numerous efforts on behalf of WC’s other spoken word/literary works clients,
20 including on behalf of Carlin beginning in August 2020, to engage Pandora in good
21 faith negotiations, to no avail.

22 43. While Pandora’s counsel, on September 14, 2021, more than a year
23 after Carlin’s representatives contacted them, wrote to advise that counsel would
24 respond with Pandora’s position, no response from Pandora or its counsel has been
25 sent or received.

1 He continued to set the bar for comedy specials with his one-hour special *You Can't*
2 *Fix Stupid* on Comedy Central, reaching 4.5 million viewers making it the #1 show
3 on primetime basic cable. The CD of that special stayed at #1 on the Billboard
4 Comedy Charts for nine (9) consecutive weeks.

5 49. After his success on the Blue Collar Comedy Tour alongside his
6 friends Jeff Foxworthy, Bill Engvall, and Larry the Cable Guy, Mr. White upped
7 his game once again becoming a New York Times Best Seller with his first book
8 *Ron "Tater Salad" White: I Had the Right to Remain Silent...But I Didn't Have*
9 *the Ability*. But he didn't stop there. Mr. White has made a name for himself as an
10 actor and producer, starring in the comedy-drama series *Roadies*, and as a
11 supporting actor in major theatrical films such as *Horrible Bosses* and *Sex in the*
12 *City 2*, and as a co-Executive Producer of the documentary, *Bridegroom*, winning
13 the Audience Award for Best Documentary at the NYC Tribeca Film Festival in
14 2013.

15 50. To say Mr. White is a man of many talents would be putting it mildly,
16 but one thing is certain, his ability to craft everyday life experiences into hilarious
17 stories that mesmerize his audiences and make them feel good about their own lives
18 is remarkable. Everyone deals with struggles and frustrations from the situations
19 faced throughout their day, but being able to laugh about those frustrations is truly
20 nature's best medicine, and "Tater Salad" is just a little something for the road to
21 keep you going.

22 51. Defendant has made eighty-six (86) of White's works available for
23 dissemination to the public via their digital broadcast radio service knowing full
24 well that it did not possess a valid license to publicly perform the White Works.
25 (See Exhibit C). In addition to no license, it also made no royalty payments for the
26 White Works. The White Works are contained on the albums, "Drunk in Public",
27 "Behavioral Problems", "You Can't Fix Stupid", "A Little Unprofessional" and the

1 “Blue Comedy Tour”. Plaintiff has duly complied with all required provisions of
2 the copyright laws of the United States applicable to the White Works, including
3 but not limited to, registering copyrights in and to said White Works with the
4 United States Copyright Office (*see* Exhibit C for applicable copyright registration
5 numbers) on or about April 16, 2004, August 1, 2006, July 7, 2009, July 21, 2006,
6 and June 24, 2002 respectively.

7 52. Further, and in addition to a public performance license, it is required
8 by law, and fully understood, that digital service providers, like Pandora, must also
9 get a mechanical digital reproduction license from the owner of the underlying
10 composition in order to make the underlying composition of a recording available
11 for reproduction and distribution through interactive streaming. This is true even
12 where the digital service provider has a license to interactively stream a sound
13 recording. Pandora made all eighty-six (86) of the White Works available via its
14 Pandora Premium interactive streaming service, also knowing full well that it did
15 not possess a valid license to not only publicly perform White’s Works but also no
16 license to distribute and reproduce the Works. Pandora made no royalty payments
17 for the public performance of the White Works and no royalty payments for the
18 reproduction of the White Works. The end result is Pandora took White’s Works,
19 gained listeners, subscribers and market share with full knowledge it did not have
20 licenses and made no royalty payments for the White Works, to increase its stock
21 price helping it to reorganize its company with Sirius XM (although the two
22 companies remain to this day completely separate corporations) for billions all
23 while depriving White of his royalties and the benefits of his ongoing legacy.

24 53. As of February 2, 2022, www.pandora.com advertised that Ron White
25 had 233,000 monthly listeners. If each listener listened to only one (1) available
26 work per month, that’s 2,796,000 broadcasts or/interactive streams per year at a
27 minimum. In fact, as of 2020, more than four hundred million streams
28

1 (400,000,000) of the White Works had streamed on Pandora alone. Unfortunately,
2 White has not received a fraction of a penny for any of these broadcasts or
3 interactive streams of the Works from Pandora.

4 54. Mr. White, over the course of his career entered into numerous
5 agreements for the creation/distribution of sound recordings.

6 55. White however retained all of his exclusive rights in the White Works.
7 Digital Service Providers, like Pandora, had to come to White to secure the
8 necessary licenses for exploitation of the White Works, and they knew it. But they
9 did not.

10 56. Pandora nonetheless did not even take the simplest of steps to ask
11 White or his representatives for a license for the White Works. To the contrary,
12 beginning in or about August of 2020, Word Collections (“WC”), a Spoken
13 Word/Literary Works Collection Agency contacted Pandora in an effort to
14 negotiate a licensing agreement for various copyright owners. From that initial
15 contact and on an ongoing basis over the course of the following year, WC made
16 numerous efforts on behalf of WC’s other spoken word/literary works clients,
17 including on behalf of White beginning in April 2021, to engage Pandora in good
18 faith negotiations, to no avail.

19 57. While Pandora’s counsel wrote on September 14, 2021 to advise that
20 counsel would respond with Pandora’s position about unlicensed spoken word
21 content appearing on Pandora’s platform, no substantive response from Pandora or
22 its counsel has been sent or received.

23 58. The reality is, Pandora had “the right to remain silent” (in other words,
24 the right to not publicly perform or reproduce the White Works without valid
25 licenses) but it did not have the right to disregard its obligations in the pursuit of
26 personal gain at Mr. White’s expense.

Robin Williams

1
2 59. Throughout history, comedy and spoken word have been the bedrock
3 of entertainment. From Shakespearian comedies to modern-day standup comedians,
4 comedy has brought happiness to the faces of billions of people, and for nearly the
5 last five decades, Robin Williams has been an integral part of that history.

6 60. Spanning nearly forty (40) years with unique insights expressed as an
7 active comedian, philosopher, and entertainer in literally every format imaginable,
8 the comedic works of Robin Williams have enriched global culture, our lives, the
9 entertainment industry and provided insights into the absurdity, joy, pains, and
10 irony of life. He pushed other comedians and entertainers to further hone their craft
11 while continuing to trail blaze as a comedic talent until the end of his career.

12 61. From his early beginnings at the Holy City Zoo in San Francisco and
13 the Roxy in West Hollywood, California, to the television show Mork & Mindy
14 and then through a plethora of movie acting roles, such as Genie in Disney's
15 Aladdin, and his iconic roles in Dead Poets Society and Good Will Hunting,
16 Williams put his heart, soul and mind into every composition he wrote or role he
17 played. His heart was never more evident and on display then when he spent years
18 lending his comedic talent to the charitable organization Comic Relief USA, whose
19 mission was to raise funds to those in need, particularly America's homeless. He
20 was joined on those Comic Relief USA television specials by Billy Crystal and
21 Whoopi Goldberg among others. It is nowhere close to an exaggeration to say that
22 Robin Williams was a national treasure.

23 62. Williams' on-stage presence and skill with comedic improvisation set
24 the standard for stand-up comedians. Not only was he skilled at communicating
25 through comedy, but he brought a personal honesty to his comedic routines,
26 touching on subjects such as depression and addiction. In fact, Williams was so
27

1 talented in free-form comedy that other comedians, who are now household names,
2 impersonated him, which is the highest compliment a comedian can receive.

3 63. Williams won six (6) Golden Globe Awards, including the Cecil B.
4 DeMille Award, two (2) Primetime Emmy Awards, two (2) Screen Actors Guild
5 Awards, an Academy Award, and most notably five (5) Grammy Awards for his
6 comedy albums, including Best Comedy Album and Best Spoken Word Comedy
7 Album.

8 64. Defendant has made twenty-seven (27) of Williams' works available
9 for dissemination to the public via their digital broadcast radio service knowing full
10 well that it did not possess a valid license to publicly perform the Williams Works.
11 (*See* Exhibit D). In addition to no license, it also made no royalty payments for the
12 Williams Works. The Williams Works are contained on the albums, "Reality ...
13 What a Concept", and "A Night at the Met". Plaintiff has duly complied with all
14 required provisions of the copyright laws of the United States applicable to the
15 Williams Works, including but not limited to, registering copyrights in and to said
16 Williams Works with the United States Copyright Office (*see* Exhibit D for
17 applicable copyright registration numbers) on or about January 25, 1980, and
18 October 27, 1986 respectively.

19 65. Further, and in addition to a public performance license, it is required
20 by law, and fully understood, that digital service providers, like Pandora, must also
21 get a mechanical digital reproduction license from the owner of the underlying
22 composition in order to make the underlying composition of a recording available
23 for reproduction and distribution through interactive streaming. This is true even
24 where the digital service provider has a license to interactively stream a sound
25 recording. Pandora made sixteen (16) of the Williams' Works available via its
26 Pandora Premium interactive streaming service, also knowing full well that it did
27 not possess a valid license to not only publicly perform his works but also no

1 license to distribute and reproduce the Williams’ Works. Pandora made no royalty
2 payments for the public performance and no royalty payments for the reproduction
3 of the Williams Works. The end result is Pandora took Williams’s Works, gained
4 listeners, subscribers and market share with full knowledge it did not have licenses
5 and made no royalty payments for the Williams Works, to increase its stock price
6 helping them to reorganize the company with Sirius XM (although the two
7 companies remain to this day completely separate corporations) for billions all
8 while depriving the Robin Williams Estate and its beneficiaries from the legacy of
9 Robin Williams.

10 66. As of January 28, 2022, www.pandora.com advertised that Robin
11 Williams had 223,000 monthly listeners. If each listener listened to only one (1)
12 available work per month, that’s 2,676,000 broadcasts or/interactive streams per
13 year at a minimum. Unfortunately, Williams has not received a fraction of a penny
14 for any of these broadcasts or interactive streams of the Williams Works from
15 Pandora.

16 67. Pandora only needed to contact one entity, Williams, to obtain the
17 required licenses. Or Pandora could have chosen not to use the Williams Works,
18 particularly since it knew it did not have the required licenses. Instead, it chose to
19 infringe.

20 68. Williams, via his company Little Andrew Enterprises, Inc., (“LAE
21 Inc.,”) entered into a recording agreement with Casablanca Record and Filmworks,
22 Inc. (“Casablanca”), dated March 13, 1979 (the “Williams Casablanca
23 Agreement”). Under the terms of the Williams Casablanca Agreement, Williams
24 was obligated to provide his exclusive performance services to Casablanca, and
25 Casablanca acquired exclusive ownership rights in the sound recordings of
26 Williams’ comedic performances in perpetuity. Williams, however, retained all of
27 his exclusive rights in the underlying literary works.

1 license to distribute and reproduce the Clay Works. Pandora made no royalty
2 payments for the public performance of the Clay Works and no royalty payments
3 for the reproduction of the Works. The end result is Pandora took Clay's Works,
4 gained listeners, subscribers and market share with full knowledge it did not have
5 licenses and made no royalty payments for the Clay Works, to increase its stock
6 price helping it to reorganize the company with Sirius XM (although the two
7 companies remain to this day completely separate corporations) for billions all
8 while depriving Clay of his royalties and the benefits of his ongoing legacy.

9 81. As of February 1, 2022, www.pandora.com advertised that Andrew
10 Dice Clay had 8,200 monthly listeners. If each listener listened to only one (1)
11 available work per month, that's 98,400 broadcasts or/interactive streams per year
12 at a minimum. Unfortunately, Clay has not received a fraction of a penny for any
13 of these broadcasts or streams of the Clay Works from Pandora.

14 82. Pandora only needed to contact one entity, Clay, to obtain the required
15 licenses. Or Pandora could have chosen not to use the Clay Works, particularly
16 since it knew it did not have the required licenses. Instead, Pandora chose to
17 infringe.

18 83. Clay, through his company, Fleebin Dabble Productions, Inc., entered
19 into a recording agreement with Def American Recordings, Inc., ("Def American")
20 on May 19, 1988 (the "Clay Def American Agreement"). Under the terms of the
21 Clay Def American Agreement, Mr. Clay was obligated to provide his exclusive
22 performance services to Def American, and Def American acquired exclusive
23 ownership rights in the sound recordings of Mr. Clay's comedic performances in
24 perpetuity. Mr. Clay retained his exclusive rights in the underlying literary works.

25 84. Pandora nonetheless did not even take the simplest of steps to ask Clay
26 or his representatives for the any of the proper licenses for the Clay Works. To the
27 contrary, beginning in or about August of 2020, Word Collections ("WC"), a

1 Spoken Word/Literary Works Collection Agency contacted Pandora in an effort to
2 negotiate a licensing agreement for various copyright owners. From that initial
3 contact and on an ongoing basis over the course of the following year, WC made
4 numerous efforts on behalf of WC's other spoken word/literary works clients,
5 including on behalf of Clay beginning in April 2021, to engage Pandora in good
6 faith negotiations, to no avail.

7 85. While Pandora's counsel wrote on September 14, 2021 to advise that
8 counsel would respond with Pandora's position about unlicensed spoken word
9 content appearing on Pandora's platform, no substantive response from Pandora or
10 its counsel has been sent or received.

11 86. As the Diceman might say, Pandora and Dice went up the hill, but
12 Pandora came down with all the money

13 **Nick Di Paolo**

14 87. Born in Danvers, Massachusetts, it is only fitting that Nick Di Paolo's
15 thirty-five (35) year career as a comedian started at an open mic night at Stitches
16 club in Boston. As a fan of stand-up comedy, he was influenced most by comedians
17 who appeared on various television shows, including Johnny Carson, David
18 Letterman, Jay Leno, and Robert Klein.

19 88. Di Paolo's observational comedy, news satire, and political humor
20 have made him a favorite of millions around the world. After the success of his first
21 stand-up album, *Born This Way*, comedian Chris Rock offered Di Paolo a writing
22 position on *The Chris Rock Show*, completing two (2) seasons, as well as writing
23 for the 77th Annual Academy Awards, and was twice nominated for an Emmy
24 Award for Outstanding Writing for Variety, Music, or Comedy Program.

25 89. Di Paolo went on to make appearances on various television and radio
26 shows including the *Late Show with David Letterman*, *The Howard Stern Show*,
27 *The Tonight Show with Jay Leno*, and *Jimmy Kimmel Live*. However, Di Paolo's

1 most iconic appearances include his regular appearances on Comedy Central’s
2 *Tough Crowd with Colin Quinn* and *The Comedy Central Roasts* including Pamela
3 Anderson, Denis Leary, Jeff Foxworthy and Larry the Cable Guy. Di Paolo’s strong
4 political opinions and razor-sharp wit made him the perfect fit across the board.

5 90. Di Paolo is not one to shy away from controversy, or water down his
6 comedy. He prides himself on being brutally honest in a funny, socially relevant
7 and a little bit reckless way. And his fans love him for it—so it’s no surprise that
8 Di Paolo has had three (3) standup specials on Comedy Central, a Showtime
9 Special called *Raw Nerve*, a self-released special *Another Senseless Killing*, and
10 true to form his most controversial release *A Breath of Fresh Air*.

11 91. However, Di Paolo is more than a comedian, radio host and writer,
12 he’s also an accomplished actor, appearing on FX’s *Louie*, *Inside Amy Schumer*,
13 HBO’s *The Sopranos*, *Cop Show*, and CK’s critically acclaimed *Horace and Pete*.
14 Additionally, Di Paolo has enjoyed major success as a national radio host such as
15 the *Nick Di Paolo Show* on 92.3 FM in Manhattan, New York, and *The Nick and*
16 *Arti Show* on DirectTV. No matter the medium, Di Paolo’s quick wit and infectious
17 personality shines through and keeps his fans wanting more.

18 92. Di Paolo has brought comedic relief to millions of people over his
19 career, but most notably, some of his most meaningful performances were during
20 his three (3) United Service Organizations’ Tours (USO Tours) in Japan,
21 Guantanamo Bay, Cuba, and in Afghanistan as part of Operation Mirth.

22 93. Defendant has made one hundred and forty-two (142) of Di Paolo’s
23 works available for dissemination to the public via their digital broadcast radio
24 service knowing full well that it did not possess a valid license to publicly perform
25 the Di Paolo Works. (See Exhibit F). In addition to no license, it also made no
26 royalty payments for the Di Paolo Works. The Di Paolo Works are contained on
27 the albums, “Born This Way”, “Road Rage”, “Funny How?”, “Raw Nerve”,
28

1 “Another Senseless Killing”, and “A Breath of Fresh Air”. Plaintiff has duly
2 complied with all required provisions of the copyright laws of the United States
3 applicable to the Di Paolo Works, including but not limited to, registering
4 copyrights in and to said Di Paolo Works with the United States Copyright Office
5 (see Exhibit F for applicable copyright registration numbers) on or about June 1,
6 1998, August 23, 2004, January 15, 2009, February 8, 2013, February 2, 2015, and
7 October 27, 2021.²

8 94. Further, and in addition to a public performance license, it is required
9 by law, and fully understood, that digital service providers, like Pandora, must also
10 get a mechanical digital reproduction license from the owner of the underlying
11 composition in order to make the underlying composition of a recording available
12 for reproduction and distribution through interactive streaming. This is true even
13 where the digital service provider has a license to interactively stream a sound
14 recording. Pandora made one-hundred and forty-two (142) of the Di Paolo Works
15 available via its Pandora Premium interactive streaming service, also knowing full
16 well that it did not possess a valid license to not only publicly perform his works
17 but also no license to distribute and reproduce the Di Paolo Works. Pandora made
18 no royalty payments for the public performance and no royalty payments for the
19 reproduction of the Di Paolo Works. The end result is Pandora took Di Paolo’s
20 Works, gained listeners, subscribers and market share with full knowledge it did
21 not have licenses and made no royalty payments for the Di Paolo Works, to increase
22 its stock price helping them to reorganize the company with Sirius XM (although
23
24

25
26 ² Including three (3) standalone Works: “Old People”, “Doggy Hotel”, and “Hair
27 In Food” registered with the Copyright Office on February 21, 1995.

1 the two companies remain to this day completely separate corporations) for billions
2 all while depriving Nick Di Paolo from his hard-earned royalties.

3 95. As of February 17, 2022, www.pandora.com advertised that Nick Di
4 Paolo had 9,100 monthly listeners. If each listener listened to only one (1) available
5 work per month, that’s 109,200 broadcasts or/interactive streams per year at a
6 minimum. Unfortunately, Di Paolo has not received a fraction of a penny for any
7 of these broadcasts or interactive streams of the Di Paolo Works from Pandora.

8 96. Pandora only needed to contact one entity, Di Paolo, to obtain the
9 required licenses. Or Pandora could have chosen not to use the Di Paolo Works,
10 particularly since it knew it did not have the required licenses. Instead, it chose to
11 infringe.

12 97. Di Paolo, over the course of his career entered into numerous
13 agreements for the creation/distribution of sound recordings and television specials.

14 98. Di Paolo, however, retained all of his exclusive rights in the
15 underlying literary works. Digital Service Providers, like Pandora, had to come to
16 Di Paolo to secure the necessary licenses for exploitation of the Di Paolo Works,
17 and they knew it—but they did not.

18 99. Pandora nonetheless did not even take the simplest of steps to ask Di
19 Paolo or his representatives for licenses for the Di Paolo Works. To the contrary,
20 beginning in or about August of 2020, Word Collections (“WC”), a Spoken
21 Word/Literary Works Collection Agency contacted Pandora in an effort to
22 negotiate a licensing agreement for various copyright owners. From that initial
23 contact and on an ongoing basis over the course of the following year, WC made
24 numerous efforts on behalf of WC’s other spoken word/literary works clients, to
25 engage Pandora in good faith negotiations, to no avail.

26 100. While Pandora’s counsel wrote on September 14, 2021 to advise that
27 counsel would respond with Pandora’s position about unlicensed spoken word

1 content appearing on Pandora’s platform, no substantive response from Pandora or
2 its counsel has been sent or received.

3 101. The bottom line is that Pandora’s actions were willful and they knew
4 they had their hand in the cookie jar and would eventually get caught—it was just
5 a matter of when. Di Paolo would likely give the following advice to Pandora from
6 his dad: “[comedy] is like pizza, even when it’s bad you still gotta pay for it.” – the
7 only difference is, Di Paolo’s comedy isn’t bad, which means it’s worth even more.

8 **Pandora’s Willful Infringement of the Works**

9 102. According to www.pandora.com, Pandora is the largest digital
10 broadcast and streaming music provider in the U.S. “providing a highly-
11 personalized listening experience to approximately 70 million listeners and users
12 each month” through “its mobile app, the web, and integrations with more than
13 2,000 connected products.”

14 103. One would think that entertainment giants like Pandora would honor
15 the legacy of such amazing artists, but instead it chose to illegally profit from the
16 creative minds and literary/comedic works of Plaintiffs.

17 104. For years, Pandora has illegally made reproductions and digital
18 broadcasts on its servers and provided streaming access to its users without a proper
19 public performance license and, when applicable, a reproduction right license. This
20 infringement continues on a daily basis as the Works were broadcast on Pandora
21 radio and/or remained available for interactive streaming on Pandora Premium
22 through the filing of the actions.

23 105. While it is commonplace in the music industry for companies like
24 Pandora to enter into public performance licensing agreements with performance
25 rights organizations like BMI and ASCAP for musical compositions, these entities
26 do not license literary works. Therefore, it was the responsibility of Pandora to seek
27 out the copyright owners and obtain valid licenses.

1 106. As described above, for each Plaintiff, Pandora only needed to contact
2 one entity to obtain the required licenses. Or Pandora could have chosen not to use
3 Plaintiffs' Works, particularly since it knew it did not have the required licenses.
4 Instead, Pandora chose to infringe.

5 107. Pandora's failure to obtain the necessary licenses for the Works, or
6 pay any royalties for the Works, but to nonetheless infringe by exploiting the Works,
7 has been willful. In Pandora's own SEC 10K public filing with the SEC from 2011
8 to 2017, three quarters of a decade, Pandora admitted in its Risk Factors every year
9 that it performs spoken-word comedy content "absent a specific license from any
10 [] performing rights organization" and it has never obtained a license for the
11 underlying literary works for the sound recordings of spoken-word comedy content
12 that it streams. Pandora further admitted that it "could be subject to significant
13 liability for copyright infringement and may no longer be able to operate under
14 [their] existing licensing regime." This admission was only removed, not so
15 coincidentally, after Pandora's transaction with Sirius XM Radio.

16 108. Pandora made it clear in other places in its SEC disclosures that having
17 to enter into licenses and pay royalties is a burden to the business: "To secure the
18 rights to stream musical works embodied in sound recordings over the internet, we
19 obtain licenses from or for the benefit of copyright owners and pay royalties to
20 copyright owners or their agents. Those who own copyrights in musical works are
21 vigilant in protecting their rights and seek royalties that are very high in relation to
22 the revenue that can be generated from the public performance of such works. . . If
23 we are unable to secure and maintain rights to stream musical works or if we cannot
24 do so on terms that are acceptable to us, our ability to stream music content to
25 listeners, and consequently our ability to attract and retain advertisers, will be
26 adversely impacted." Pandora decided with respect to spoken word content to
27 simply not license and not pay to reduce the cost to the business.

1 109. Not only did Pandora admit to the federal government that it willfully
2 broadcast and streamed spoken-word comedy content without a specific license,
3 Pandora also shamelessly advertised its “newfound” comedy stations to the public
4 and generated revenue from advertising sales. In 2011, major news outlets such as
5 *CNN* and *The New York Times* reported that “[Pandora has] taken the same
6 approach to comedy as [they] have to music: carefully and deliberately analyzing
7 comedic 'bits' across a very large number of attributes to capture the style, delivery
8 and content of each performance.”³—there is just one glaring omission, they failed
9 to obtain the required licenses.

10 110. In February 2011, *CNNMoney* reported that Pandora wasn’t “yet
11 profitable,”⁴ posting “a net loss of \$328,000 on revenue of \$90.1 million in the first
12 nine months of its most recent fiscal year.” Its biggest expense— “royalties it pays
13 for the music it streams. As Pandora’s audience grows, so do those costs, which
14 reached \$45.4 million in the first nine months of 2010.”

15 111. The timing is significant, following Pandora’s reported net losses, the
16 astronomical amount of costs incurred for music streams, and its intention to raise
17 \$100 million in an initial public offering, Pandora announced in May of 2011 that
18 it was adding comedy to its list of offerings and that those stations would include
19 audio advertisements, touting Unilever as their first major advertiser—promoting
20 its Axe body spray and Klondike bars.⁵ Pandora thereby generated additional

21
22
23 ³ Ben Parr, Pandora adds 10,000 comedy clips to its archives *CNN* (2011),
24 <http://www.cnn.com/2011/TECH/web/05/04/pandora.comedy.mashable/index.html>
(last visited Feb 25, 2022).

25 ⁴ Stacy Cowley, Pandora files for \$100 million IPO *CNNMoney* (2011),
26 https://money.cnn.com/2011/02/11/technology/pandora_ipo/index.htm (last visited
27 Feb 25, 2022).

28 ⁵ *Id.*

1 advertising revenue for the company while excluding comedians like Plaintiffs and
2 many others from their hard earned royalties and licensing fees. Pandora found a
3 cash cow in a new revenue stream, and in a brazen business decision determined
4 that the risk was worth the gain—that is until now.

5 112. Since the filing of the lawsuits against Pandora by Plaintiffs, which
6 are now consolidated in this action, Pandora has proceeded to remove each
7 comedian’s catalogue from their platform. While Pandora has refused to comment
8 verbally on these lawsuits, their actions in removing the Works from its platform
9 constitute an outright admission that they knew they were infringing the copyrights
10 of the Works, which they admitted in SEC filings, and now wish to belatedly stop
11 the bleeding having been caught and sued.

12 **CAUSE OF ACTION**

13 **(Copyright Infringement – 17 U.S.C. § 501)**

14 113. Plaintiffs repeat and re-allege the foregoing paragraphs as if fully set
15 forth herein.

16 114. Plaintiffs are the legal and beneficial owners of the United States
17 copyrights in the Works, duly registered with the United States Copyright Office,
18 (See Exhibits A through F), as discussed above.

19 115. Defendant has directly, vicariously, and/or contributorily infringed
20 and/or induced infringement of Plaintiffs’ copyrights in violation of 17 U.S.C. §
21 501.

22 116. Defendant has publicly performed, broadcasted, reproduced,
23 displayed, and distributed the Works, as discussed hereinabove.

24 117. Defendant’s acts were performed without authorization, license, or
25 consent. Defendant’s unauthorized and unlicensed reproduction, distribution,
26 public performance and display of the Works infringes Plaintiffs’ exclusive rights
27 in violation of the Copyright Act, 17 U.S.C. § 106 *et. seq.*

1 118. Defendant’s infringement has been and continues to be, willful,
2 intentional, purposeful, and with complete disregard to Plaintiffs’ rights.

3 119. As a direct and proximate result of Defendant’s infringement,
4 Plaintiffs have been irreparably harmed.

5 120. Defendant has infringed Plaintiffs’ copyright interest in the Works by
6 making reproductions and digital broadcasts on its servers and provided streaming
7 access to its users without a proper public performance and, when applicable,
8 reproduction rights license.

9 121. Plaintiffs have received no royalties or payments for the Works
10 embodied in the sound recording of the underlying literary compositions.

11 122. Defendant has admitted that it did not and does not possess a valid
12 public performance license for any of the Works at issue, and with that knowledge
13 of infringement, continued to infringe upon Plaintiffs’ copyrights.

14 123. The infringement is continuing as the Works continue to be exploited,
15 performed, broadcast, and streamed across Defendant’s applicable platforms
16 through the filing of the respective actions.

17 124. As a direct and proximate result of Defendant’s infringement,
18 pursuant to 17 U.S.C. § 504(a)(1) and (b), Plaintiffs are entitled to actual damages
19 in addition to Defendant’s profits attributable to the infringements both
20 domestically and relating to foreign sales of other exploitation of the Works that
21 were distributed, performed, broadcast, or otherwise infringed domestically.
22 Further, Plaintiffs are entitled to a running royalty on all future exploitations of the
23 Works following judgement in an amount to be determined.

24 125. In the alternative to profits and actual damages, pursuant to 17 U.S.C.
25 § 504(c), Plaintiffs are entitled to the maximum amount of statutory damages,
26 \$150,000 per copyrighted work for each willful act of copyright infringement as
27 follows:

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment and relief, as follows:

134. For Judgment in favor of Plaintiffs and against Defendant.

135. For a declaration and finding that Defendant has willfully infringed Plaintiffs' copyrighted works in violation of the Copyright Act;

136. For declaration and finding that Defendant is directly, vicariously, and/or contributorily liable for copyright infringement pursuant to 17 U.S.C. § 504(a)(1) and (b), including a finding that Defendant is liable for actual damages, as well as for Defendant's profits;

137. For an accounting of all profits, income, receipts, or other benefits derived by Defendant from the production, copying, display, promotion, distribution, broadcast, public performance, or sale of products and services or other media, either now known or hereafter devised, that improperly or unlawfully infringe Plaintiffs' copyrights pursuant to 17 U.S.C. § 504(a)(1) and (b);

138. For statutory damages, upon election prior to final judgment in the alternative to actual damages and profits, for willful copyright infringement pursuant to 17 U.S.C. § 504(c);

139. For costs of suit herein, including an award of attorneys' fees pursuant to 17 U.S.C. § 505;

140. For pre-judgment and post-judgment interest;

141. For a running royalty stemming from use of the Works by Defendant following judgment in an amount to be proven at trial, or in the alternative, for the entry of an injunction requiring Defendant, its officers, agents, servants, employees, representatives, successors, licensees, partners, attorneys, and assigns, and all persons acting in concert or participation with each or any one of them to be permanently enjoined from directly or indirectly infringing, reproducing, displaying, promoting, advertising, distributing, or selling any work that infringes,

1 contributorily infringes, or vicariously infringes Plaintiffs’ rights in the Works
2 protected by the Copyright Act;

3 142. For such other and further relief as the Court may deem just and proper.
4

5 **DEMAND FOR JURY TRIAL**

6 Pursuant to Federal Rule of Civil Procedure 38(b), and otherwise, Plaintiff
7 respectfully demands a jury trial on all issues raised in this complaint.
8

9 PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 38(b), AND
10 OTHERWISE, PLAINTIFFS DEMAND A JURY TRIAL ON ALL ISSUES
11 RAISED IN THIS COMPLAINT.
12

13 Dated: March 29, 2022

Respectfully submitted,
By: /s/ Richard S. Busch
Richard S. Busch
Attorney for Plaintiff