

1 **STEVEN AMES BROWN**
Entertainment Law 83363
2 69 Grand View Avenue
San Francisco, California 94114-2741
3 415/647-7700 Telephone
415/285-3048 Fax
4 sabrown@entertainmentlaw.com

5 Attorney for Plaintiff

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 DARLENE LOVE,

13 Plaintiff,

Civil No.

14 vs.

15 GOOGLE, INC.,
16 72 & SUNNY, INC.

Defendants.

COMPLAINT FOR INFRINGEMENT
OF COMMON LAW RIGHT OF
PUBLICITY; DEMAND FOR JURY
TRIAL

17 _____/

1 1. Jurisdiction. Plaintiff Darlene Love (“Love”) is a citizen of the state of New York.
2 Defendant Google, Inc. (“Google”) is a Delaware corporation with a principal place of
3 business in California. Defendant 72 & Sunny, Inc. (“Sunny”) is a California corporation with
4 a principal place of business in California. The matter in controversy exceeds, exclusive of
5 interest and costs, the sum of \$75,000.00. This Court has diversity jurisdiction under 28
6 U.S.C. § 1332. Venue is proper pursuant to 28 U.S.C. § 1391(a)(1)&(2).

7 2. Intradistrict Assignment. Venue is proper in the San Francisco Division because a
8 substantial part of the events or omissions which give rise to the claims herein alleged
9 occurred in Contra Costa County.

10 3. Darlene Love is an icon of pop music’s golden age. Her distinctive voice is widely
11 known to millions of Americans of all ages from her recordings of *He’s a Rebel* (as the
12 *Crystals*), *Zip-a-Dee-Doo-Dah* (as Bob B. Soxx & the Blue Jeans), *Alone on Christmas* for the
13 soundtrack of the motion picture *Home Alone 2* and *Christmas (Baby Please Come Home)*
14 which she sang on *Late Night with David Letterman*’s Christmas shows for 28 years, from
15 1986 through 2014 and on *The View* in 2015. She is also widely known for the perennial
16 holiday classic *It’s a Marshmallow World*. She is ranked 84 on *Rolling Stone*’s 100 Greatest
17 Singers. She is a *Rock & Roll Hall of Fame* inductee. She holds a Rhythm & Blues
18 Foundation Pioneer Award. She portrayed Danny Glover’s wife in the *Lethal Weapon* motion
19 pictures and had Broadway roles in *Leader of the Pack*, *Carrie*, *Grease* and *Hairspray*.

20 4. Google sells Nexus 5X and 6P mobile phones in America and advertises them to
21 the public through television commercials. Sunny is an advertising agency that produces
22 Nexus 5X and 6P commercials for Google.

23 5. Within the statutory period of limitations Google retained Sunny to produce for
24 Google and Sunny & Google jointly caused to be broadcast on television throughout America
25 over 1,400 times and around the world on the Internet over 31,000,000 times a commercial
26 which embodied Love’s identity through copying of her voice singing the song *It’s a*

1 *Marshmallow World*. Said appropriation was for Defendants' commercial advantage, e.g., to
2 appropriate Love's goodwill for the purpose of selling Nexus phones to consumers.

3 6. Defendants' conduct was without Love's consent.

4 7. As a direct and proximate result of Defendants' conduct Love was deprived of the
5 right to control the use of her identity in connection with the advertising of goods and services
6 and was damaged in an amount in excess of \$75,000.00 for the loss of the fees she had a
7 right to charge as a condition of her identity and goodwill being used to induce the public to
8 buy Google's Nexus phones.

9 8. A voice does not end up in a commercial advertisement by accident. Rather, a
10 number of people are involved in the creation of commercials. The voice of a famous
11 performer, singing a famous song is selected for the express purpose of trading on the
12 performer's goodwill. Defendants consciously and deliberately selected Love's vocal
13 performance of *It's a Marshmallow World* for their commercials.

14 9. However, Defendants refused to take any steps to obtain Love's consent and had
15 no reason to believe she had or would consent to such use. Instead, Defendants took
16 deliberate measures to evade contacting her or obtaining her permission.

17 10. Love and virtually every successful recording artist records with labels which are
18 signatories to the AFTRA collective bargaining agreement commonly referred to as the
19 "Phono Code". Defendants knew that Love recorded *It's a Marshmallow World* under the
20 protection of the Phono Code. An honest company, doing business in good faith, would not
21 attempt to deprive Love of the benefits of the union protection and would have engaged a
22 SAG-AFTRA affiliated advertising agency so that the performer (and the background singers)
23 would receive at minimum, the union-mandated benefits.

24 11. However, Google engages in anti-labor advertising practices and in an effort to
25 harm Love, hired Sunny, a scab shop that utilizes recordings of artists created under the
26 protection of collective bargaining agreements, without themselves becoming signatories and

1 complying with the union-mandated obligations for the reuse of phonograph records in
2 commercials.

3 12. Defendants actions were despicable and in conscious disregard of Love's rights.
4 They turned her into an involuntary pitchman for products of dubious quality. They created a
5 commercial that falsely implied to the public that Love had endorsed Google's products. They
6 broadcast the commercial on television throughout America over 1,400 times and around the
7 world on the Internet over 31,000,000 times which was likely to result in Love witnessing the
8 appropriation of her identity on national television. Google's conduct was so loathsome that
9 it intentionally hired a disreputable non-union affiliated advertising company and the two of
10 them deprived Love of her union protections, all to enrich themselves at her expense.

11 13. Defendants actions entitle Love to an award of exemplary damages in a sum
12 sufficient to punish them and make examples of them to others.

13 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

- 14 1. For damages in excess of \$75,000.00;
15 2. For exemplary damages;
16 3. For costs of suit;
17 4. For such other relief as the Court may deem just;
18 5. Plaintiff demands a trial by jury

19 Dated: January 19, 2015

20 Respectfully submitted,

21 /s/

22 STEVEN AMES BROWN,
23 Attorney for Plaintiff
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