

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JAMES SAINT-AMOUR and ALENA
IVLEVA a/k/a JERRRA BLUES, doing
business as SATORII, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

THE RICHMOND ORGANIZATION, INC.
(TRO INC.) and LUDLOW MUSIC, INC.,

Defendants.

C.A. No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs, James Saint-Amour (“Saint-Amour”) and Alena Ivleva a/k/a Jerrra Blues (“Jerrra Blues”), doing business as Satorii (“Satorii”), on behalf of themselves and all others similarly situated, by their undersigned attorneys, as their Complaint against Defendants, The Richmond Organization, Inc. (TRO Inc.) (“TRO”) and Ludlow Music, Inc. (“Ludlow”) for: (1) declaratory judgment pursuant to 28 U.S.C. § 2201; (2) declaratory and injunctive relief and damages under 28 U.S.C. § 2202; (3) violations of New York General Business Law § 349; (4) breach of contract; (5) common law money had and received; and (5) rescission for failure of consideration, hereby alleges as follows:

JURISDICTION AND VENUE

1. The Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338 with respect to claims seeking declaratory and other relief arising under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*; pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*; and supplemental jurisdiction over the entire case or controversy pursuant to 28 U.S.C. § 1367.

2. The Court has personal jurisdiction over Defendants and venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) and 28 U.S.C. § 1400(a), in that the claims arise in this Judicial District where Defendants' principal place of business is located and where they regularly conduct business.

PARTIES

3. Plaintiffs Saint-Amour and Jerrra Blues are individuals residing in Kings County, New York, doing business as Satorii. Under a disputed claim of copyright ownership by Defendants, on or about February 18, 2016, pursuant to 17 U.S.C. § 115, Plaintiffs paid the sum of \$45.50 to Defendants for a compulsory license (commonly known as a "mechanical license") to use the musical composition *This Land is Your Land* ("*This Land*" or the "Song") to produce and distribute digital phonorecords, as alleged more fully below.

4. Defendant TRO is a New York corporation with its principal place of business located at 266 W. 37th Street, 17th Floor, New York, New York 10018.

5. Defendant Ludlow is a New York corporation with its principal place of business also located at 266 W. 37th Street, 17th Floor, New York, New York 10018. Upon information and belief, at all relevant times, Defendant TRO has wholly owned Defendant Ludlow as a subsidiary and imprint.

6. Throughout the Class Period (defined below), Defendants have falsely claimed they own the exclusive copyright to *This Land* based upon the copyright Defendant Ludlow registered in 1956.

a. Non-party BMI provides non-dramatic public performance licenses to bars, clubs, websites, and many other venues. According to BMI's website, its blanket

license includes *This Land*. As a BMI member and purported owner of the copyrights in *This Land*, Defendants obtain a share of blanket license revenue that would otherwise be paid to all other BMI members, in proportion to their songs' survey shares. At all relevant times, Plaintiffs have been members of BMI.

b. Established in 1927, non-party Harry Fox Agency is the leading provider of rights management, licensing, and royalty services for the music industry in the United States. It licenses, collects, and distributes royalties on behalf of musical copyright owners, and provides a variety of online tools to help music publishers manage their catalogs. According to the Harry Fox Agency's website, Defendant Ludlow owns the copyright to *This Land*.

INTRODUCTION

7. This is an action to declare that, despite their claim to the contrary, Defendants do not own a valid copyright to *This Land* and that the Song is dedicated to public use and in the public domain; and for return of the unlawful licensing fees collected by Defendants pursuant to their wrongful assertion of copyright ownership of the Song.

8. According to the United States Copyright Office ("Copyright Office"), a "musical composition consists of music, including any accompanying words, and is normally registered as a work of the performing arts." Copyright Office Circular 56A, "Copyright Registration of Musical Compositions and Sound Recordings," at 1 (Feb. 2012) (available at www.copyright.gov/circs/circ.56a.pdf). The author of a musical composition is the composer, and the lyricist (if a different person). *Id.*

9. *This Land* is one of the nation's most famous and important folk songs.

10. Upon information and belief, the melody to *This Land* was taken from a Baptist

gospel hymn from the late 19th or early 20th century.

11. Upon information and belief, the Song's lyrics were written by American folk singer Woody Guthrie ("Guthrie") in 1940 in response to Irving Berlin's song *God Bless America*.

12. Guthrie published the Song in 1945 with a proper copyright notice, which created a federal copyright in the Song. The copyright to the 1945 publication was not renewed. As a result, the copyright expired after 28 years, and the Song fell into the public domain in 1973.

13. Despite Guthrie's 1945 publication of the Song, Defendant Ludlow purportedly copyrighted the Song in 1956. Based on that 1956 copyright, Defendant Ludlow has wrongfully and unlawfully insisted it owns the copyright to *This Land*, together with the exclusive right to control the Song's reproduction, distribution, and public performances pursuant to federal copyright law.

14. For example, on July 23, 2004, Defendant Ludlow's counsel wrote to counsel for Jib Jab Media, Inc. ("Jib Jab"), regarding Jib Jab's use of the Song. In that letter, Defendant Ludlow's counsel asserted that "Ludlow is the exclusive copyright owner of the classic folk song 'This Land is Your Land' written by the well-known folk artist Woody Guthrie." The letter also asserted that Jib Jab's use of the Song's melody and "the well-known lyrics 'This land is your land, this land is my land' and 'From California to the New York Island'" infringed Ludlow's copyright.

15. Irrefutable documentary evidence shows that Defendants own no valid copyright related to *This Land*. The popular verses of the Song were first published in 1945, and the copyright in those verses ended no later than 1973 (if not earlier). Defendants never owned a valid copyright to the Song's pre-existing melody.

16. Significantly, no court has ever adjudicated either the scope or validity of Defendants' claimed interest in *This Land*, nor in the Song's melody or its familiar lyrics, which are independent works.

17. Defendants have unlawfully demanded and extracted licensing fees from those unwilling or unable to challenge their false ownership claims.

18. Plaintiffs, on behalf of themselves and all others similarly situated, seek a declaration that Defendants do not own copyright in the melody of *This Land*, the familiar lyrics to that Song, a variety of additional lyrics for that Song, or the combination of the melody and any of those lyrics, and that the Song is dedicated to public use and is in the public domain. Plaintiffs also seek monetary damages and restitution of all the unlawful licensing fees that Defendants have improperly collected from Plaintiffs and all other Class members.

FACTUAL BACKGROUND

The Origin of the Song

19. Guthrie did not write the melody to *This Land*. The Song's melody is substantially identical to that of a previously existing work, a Baptist gospel hymn which has been variously called "Fire Song," "When the World's on Fire," "What you gonna do when the world's on fire," and "O My Loving Brother," ("Fire Song"), all of those titles derived from lyrics associated with that hymn. Guthrie did not write that hymn or its melody.

20. Upon information and belief, Guthrie heard "Fire Song," or a variation, before writing the lyrics for *This Land* and copied the melody for use with the lyrics for *This Land*.

21. Upon information and belief, Guthrie wrote the Song's lyrics in or about 1940 to accompany the pre-existing melody of "Fire Song."

22. Upon information and belief, Guthrie's 1940 lyrics for *This Land* were as follows:

This land is your land, this land is my land
From California to the New York Island,
From the Redwood Forest, to the Gulf stream waters,
This land was made for you and me.

As I went walking that ribbon of highway
And saw above me that endless skyway,
And saw below me the golden valley, I said:
This land was made for you and me.

I roamed and rambled and followed my footsteps
To the sparkling sands of her diamond deserts,
And all around me, a voice was sounding:
This land was made for you and me.

Was a high wall there that tried to stop me
A sign was painted said: Private Property,
But on the back side it didn't say nothing –
This land was made for you and me.

When the sun come shining, then I was strolling
In wheat fields waving and dust clouds rolling;
The voice was chanting as the fog was lifting:
This land was made for you and me.

One bright sunny morning in the shadow of the steeple
By the Relief Office I saw my people –
As they stood hungry, I stood there wondering if
This land was made for you and me.

Defendant Ludlow's Disputed Copyright Claim

23. In April, 1944, Guthrie recorded *This Land* for Moses Asch, the owner of Folkways Records.

24. In 1945, Guthrie wrote and published a songbook, entitled “Ten 10 of Woody Guthrie’s Songs Book One,” (“*10 Songs*”), which he sold for \$0.25 per copy.

25. Guthrie offered *10 Songs* for sale to the general public and sold copies of *10 Songs* to the general public, as a general publication of that work, including *This Land*. Underscoring the general nature of the publication of *10 Songs*, the songbook itself contains


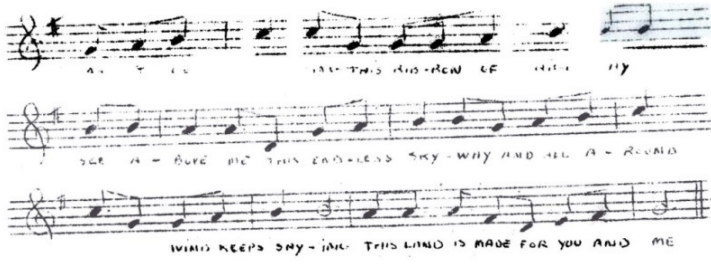
printed instructions about how to order additional copies of the book: “For more copies of this song book: Woody Guthrie, 3520 Mermaid Avenue, Brooklyn, 24, New York.” Upon information and belief, copies of this songbook are preserved in the collections of the Library of Congress, the Smithsonian Institution, and the Woody Guthrie Center in Tulsa, Oklahoma.

26. The 1945 songbook *10 Songs* was not registered with the Copyright Office prior to or subsequent to its general publication. However, the front cover of *10 Songs* contained the following copyright notice:

Copyright 1945 W. Guthrie

27. The melody and five verses of lyrics for *This Land*, together with the notation “Words and music by W. Woody Guthrie,” were printed on page 8 of *10 Songs*, as follows:

T H I S L A N D
Words and music by: W. W o o d u t h r i e

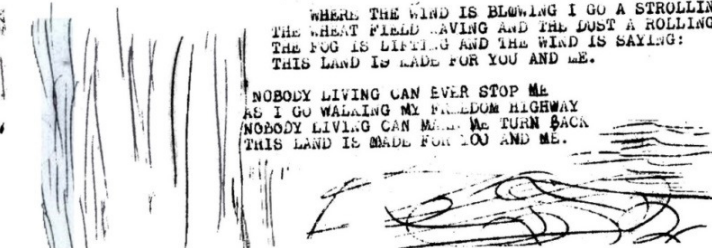
CHORUS: THIS LAND IS YOUR LAND. THIS LAND IS MY LAND.
FROM THE REDWOOD FOREST TO THE NEW YORK ISLAND
THE CANADIAN MOUNTAIN TO THE GULF STREAM WATERS
THIS LAND IS MADE FOR YOU AND ME.

AS I GO WALKING THIS RIBBON OF HIGHWAY
I SEE ABOVE ME THIS ENDLESS SKYWAY
AND ALL AROUND ME THE WIND KEEPS SAYING:
THIS LAND IS MADE FOR YOU AND ME.

I ROAM AND I RAMBLE AND I FOLLOW MY FOOTSTEPS
TILL I COME TO THE SANDS OF HER WINDY DESERT
THE MIST IS LIFTING AND THE VOICE IS SAYING:
THIS LAND IS MADE FOR YOU AND ME.

WHERE THE WIND IS BLOWING I GO A STROLLING
THE WHEAT FIELD WAVING AND THE DUST A ROLLING
THE FOG IS LIFTING AND THE WIND IS SAYING:
THIS LAND IS MADE FOR YOU AND ME.

NOBODY LIVING CAN EVER STOP ME
AS I GO WALKING MY FREEDOM HIGHWAY
NOBODY LIVING CAN MAKE ME TURN BACK
THIS LAND IS MADE FOR YOU AND ME.



28. Although *10 Songs* was not registered with the Copyright Office, the initial 28-year copyright term for *10 Songs*, including *This Land*, began to run on April 3, 1945, when Guthrie made a general publication of *10 Songs*.

29. The copyright for *10 Songs* was not renewed. As a result, the copyright for *10 Songs*, including *This Land*, expired on December 31, 1973, and the work, including *This Land*, fell into the public domain at the end of that day.

30. In 1951, with permission from Guthrie, Folkways Records, released a phonograph entitled *This Land is My Land; A Collection of American Folk Songs*, which included a recording of Guthrie performing *This Land*.

31. The lyrics to all five verses, including the lyrics Guthrie published in 1945, were printed on the liner notes for *This Land is My Land*, and again were published generally, without any copyright notice for the lyrics (which were previously published in 1945) or any copyright notice for the liner notes, as follows:

This land is your land, this land is my land.
From California to the New York island,
From the redwood forest to the Gulf Stream waters,
This land was made for you and me.

As I went walking that ribbon of highway,
I saw above me that endless skyway,
I saw below me that golden valley,
This land was made for you and me.

I roamed and rambled, and I followed my footsteps,
To the sparkling sands of her diamond deserts,
And all around me a voice was sounding,
This land was made for you and me.

When the sun come shining, then I was strolling,
And the wheat fields waving, and the dust clouds rolling,
A voice was chanting as the fog was lifting,
This land was made for you and me.

This land is your land, this land is my land.
From California to the New York island,
From the redwood forest to the Gulf Stream waters,
This land was made for you and me.

When the sun come shining, and I was strolling,
The wheat fields waving, the dust clouds rolling,
A voice was chanting and the fog was lifting,
This land was made for you and me.

32. Thus, to the extent there was any valid copyright to the lyrics of *This Land* in *10 Songs*, that copyright was divested in 1951 because they were published without notice of the lyrics' previous publication. In fact, they were published without any copyright notice at all.

33. Despite the fact that Guthrie published *This Land* in 1945 and that Folkways published the lyrics to *This Land* in 1951 (without a copyright notice), on March 30, 1956, Defendant Ludlow filed an Application for Registration of a Claim to Copyright (Reg. No. EU432559) (the "1956 Application") for an unpublished work with the Copyright Office.

34. In the 1956 Application for Reg. No. EU432559, Defendant Ludlow identified the title of the song as "This Land is Your Land," and identified Guthrie as the author of the Song's words and music. As alleged above, the Song's music was not Guthrie's original work.

35. In paragraph 5 of the 1956 Application, Defendant Ludlow failed to disclose the fact that the Song had been previously published by Guthrie in 1945 and the lyrics had been previously published by Folkways in 1951. Thus, the copyright Defendant Ludlow obtained in 1956 was invalid.

36. Additionally, Defendant Ludlow identified Guthrie as the author of the Song's music in the 1956 Application when, in fact, he did not write the melody as an original composition. Thus, for this additional reason, the copyright Defendant Ludlow obtained in 1956 was invalid.

37. On December 15, 1958, Defendant Ludlow filed an Application for Registration

of a Claim to Copyright (Reg. No. EP126345) (the “1958 Application”) for a derivative work with the Copyright Office.

38. In the 1958 Application for Reg. No. EP126345, Defendant Ludlow identified the title of the song as “This Land is Your Land,” and again identified Guthrie as the author of the Song’s words and music. As alleged above, the Song’s melody was not Guthrie’s original work. The 1958 Application for Reg. No. EP126345 claimed a copyright in new matter consisting only of a new piano accompaniment.

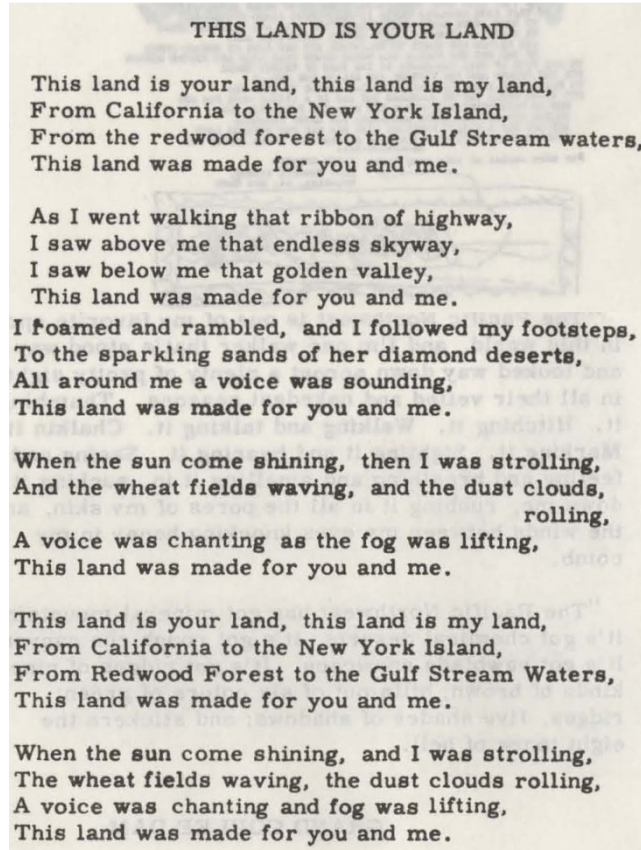
39. In the 1958 Application, Defendant Ludlow failed to disclose the fact that the Song had been previously published by Guthrie in 1945 and the lyrics had been previously published by Folkways in 1951. Thus, the copyright Defendant Ludlow obtained in 1958 was invalid.

40. Additionally, Defendant Ludlow identified Guthrie as the author of the Song’s music in the 1958 Application when, in fact, he did not write the melody as an original composition. Thus, for this additional reason, the copyright Defendant Ludlow obtained in 1958 was invalid.

41. Over a period of more than 50 years, Folkways Records released dozens of phonograph records of music published by Defendant Ludlow, many of which were recorded by Guthrie. Upon information and belief, in 1956, with permission from Defendant Ludlow or Guthrie, Folkways Records, released a phonograph entitled *Bound for Glory: The Songs and Story of Woody Guthrie*, which included a recording of *This Land*.

42. The lyrics to all five verses of the Song, including the lyrics published by Guthrie in 1945 and Folkways in 1951, were printed on the liner notes for *Bound for Glory: The Songs and Story of Woody Guthrie*, and were published generally, without any copyright notice for the

lyrics (which were previously published in 1945, 1951, and 1956), as follows:



43. Thus, if and to the extent Reg. No. EU432559 was valid and covered any part of the lyrics published in the liner notes for *Bound for Glory: The Songs and Story of Woody Guthrie*, the copyright to those lyrics was divested in 1956 because they were published without any copyright notice.

44. Upon information and belief, in 1961, again with permission from Defendant Ludlow or Guthrie, Folkways Records re-released the 1951 phonograph record under the title *This Land is My Land, Songs to Grow On, Vol. 3: American Work Songs* (“*This Land is My Land*”), which included the same recording of *This Land* as the 1951 phonograph record. The lyrics to all five verses, including the lyrics that Guthrie published in 1945 and that Folkways published in 1951, were again printed on the liner notes for *This Land is My Land*, and again

were published generally, without any copyright notice for the lyrics (which were previously published in 1945, 1951, and 1956), as follows:

This land is your land, this land is my land.
From California to the New York island,
From the redwood forest to the Gulf Stream waters,
This land was made for you and me.

As I went walking that ribbon of highway,
I saw above me that endless skyway,
I saw below me that golden valley,
This land was made for you and me.

I roamed and rambled, and I followed my footsteps,
To the sparkling sands of her diamond deserts,
And all around me a voice was sounding,
This land was made for you and me.

When the sun come shining, then I was strolling,
And the wheat fields waving, and the dust clouds rolling,
A voice was chanting as the fog was lifting,
This land was made for you and me.

This land is your land, this land is my land.
From California to the New York island,
From the redwood forest to the Gulf Stream waters,
This land was made for you and me.

When the sun come shining, and I was strolling,
The wheat fields waving, the dust clouds rolling,
A voice was chanting and the fog was lifting,
This land was made for you and me.

45. Thus, if and to the extent Reg. No. EU432559 was valid and covered any part of the lyrics published in the liner notes for *This Land is My Land*, the copyright to those lyrics was divested again in 1961 because they were published without copyright notice.

46. On July 21, 1970, Defendant Ludlow filed an Application for Registration of a Claim to Copyright (Reg. No. EP276540) (the “1970 Application”) for a published musical composition with the Copyright Office.

47. In the 1970 Application for Reg. No. EP276540, Defendant Ludlow identified the

title of the song as “This is Your Land,” and identified Guthrie as the author of the Song’s words and music, and claimed a copyright in a guitar arrangement composed as “new matter” by Claudia Block as a work for hire and added words. Reg. No. EP276540 covers only the guitar arrangement composed by Claudia Block and the added words, not the Song’s melody or familiar lyrics.

48. In the 1970 Application, Defendant Ludlow again failed to disclose the fact that the Song had been previously published by Guthrie in 1945 and the lyrics had been previously published by Folkways in 1951. Thus, the copyright Defendant Ludlow obtained in 1970 was invalid.

49. Additionally, Defendant Ludlow identified Guthrie as the author of the Song’s words and music in the 1970 Application when, in fact, he did not write the melody as an original composition. Thus, for this additional reason, the copyright Defendant Ludlow obtained in 1970 was invalid.

50. On May 3, 1972, Defendant Ludlow filed an Application for Registration of a Claim to Copyright (Reg. No. EP301279) (the “1972 Application”) for a published musical composition with the Copyright Office.

51. In the 1972 Application for Reg. No. EP301279, Defendant Ludlow identified the title of the song as “This Land is Your Land,” and identified Guthrie as the author of the Song’s words and music. The 1972 Application claimed a copyright in only “some words” as “new matter.”

52. Based upon the purported renewal of Reg. No. EP301279 on July 10, 2000, the words claimed as new matter were two verses as follows:

As I went walking I saw a sign there
And on the sign it said “No Trespassing.”

But on the other side it didn't say nothing,
That side was made for you and me.

In the shadow of the steeple I saw my people
By the Relief Office I seen my people
As they stood there hungry, I stood there asking
Is this land made for you and me?

Therefore, Reg. No. EP301279 covers only those new lyrics.

53. As alleged above, the Song's music was not Guthrie's original work.

54. In the 1972 Application, Defendant Ludlow again failed to disclose the fact that the Song had been previously published by Guthrie in 1945 and the lyrics had been previously published by Folkways in 1951. Thus, the copyright Defendant Ludlow obtained in 1970 was invalid.

55. Additionally, Defendant Ludlow again identified Guthrie as the author of the Song's words and music in the 1972 Application when, in fact, he did not write the melody as an original composition. Thus, for this additional reason, the copyright Defendant Ludlow obtained in 1972 was invalid.

Plaintiff's Use of This Land

56. Satorii is a band based in New York City. Saint-Amour is Satorii's drummer and Jerrra Blues is Satorii's lead singer.

57. Section 115 of the Copyright Act, 17 U.S.C. § 115, provides for a compulsory license for the distribution of phonorecords and digital phonorecord deliveries (*i.e.*, web-based "downloads") of musical compositions. Failure to obtain such a license prior to distribution of a cover version of a song constitutes copyright infringement subject to the full remedies of the Copyright Act.

58. Accordingly, on February 18, 2016, Plaintiff Satorii provided a Notice of

Intention to Obtain Compulsory License to Defendants and paid them the sum \$45.50 for a mechanical license to produce and distribute 500 copies of the Song as a digital phonorecord.

59. Plaintiffs recorded a version of *This Land*, which is available for sale on iTunes and on other sites such as cdbaby (<http://www.cdbaby.com/Artist/Satorii>).

60. Plaintiffs' version of *This Land* has the same melody as Guthrie's 1945 publication and includes the following lyrics:

This land is your land, this land is my land
From California to New York Island
From Redwood Forest to Gulf Stream Waters
This land was made for you and me

This land is your land, this land is my land
From California to New York Island
From Redwood Forest to Gulf Stream Waters
This land was made for you and me

As I was walking that ribbon of highway
I saw above me that endless skyway
I saw below me that golden valley
This land was made for you and me

I've roamed and rambled and I followed footsteps
In the sparkling sands of her diamond deserts
And all around me their voice was sounding
This land was made for you and me

Nobody living can ever stop me
As I go walking my freedom highway
Nobody living can make me turn back
This land was made for you and me

This land is your land, this land is my land
From California to New York Island
From Redwood Forest to Gulf Stream Waters
This land was made for you and me

61. In addition to the cover version of the Song that Satorii recorded using the both the melody and the lyrics that Defendants claim to own, Satorii recorded a different version of

This Land using a completely different melody but the same disputed lyrics. Plaintiffs cannot risk releasing that version of their sound recording without permission from Defendants to create a derivative work, because the change in the Song's melody would not entitle Plaintiffs to a compulsory mechanical license, thus exposing Plaintiffs to substantial potential statutory penalties, attorneys' fees, and costs if the Defendants' disputed copyright claim to the Song were upheld.

62. Satorii also desires to produce a music video of the Song, but Plaintiffs cannot produce and release a music video of the Song without purchasing a synchronization license from Defendants because releasing a music video of the Song without a synchronization license would expose Plaintiffs to the same substantial penalties, fees and costs as alleged above.

CLASS ALLEGATIONS

63. Plaintiff brings this action under Federal Rules of Civil Procedure 23(a) and (b) as a class action on behalf of themselves and all others similarly situated for the purpose of asserting the claims alleged in this Complaint on a common basis.

64. The Class is comprised of all persons or entities, excluding Defendants and their directors, officers, employees, and affiliates, who entered into a license with Ludlow, or paid Ludlow, directly or indirectly, a royalty or licensing fee for *This Land* at any time since 2010, and until Defendants' unlawful conduct as alleged herein has ceased.

65. Although Plaintiff does not know the exact size of the Class or the identities of all members of the Class, upon information and belief that information can be readily obtained from the books and records of Defendants. Plaintiff believes that the Class includes hundreds if not thousands of persons or entities who are widely geographically disbursed. Thus, the proposed Class is so numerous that joinder of all members is impracticable.

66. The claims of all members of the Class involve common questions of law and fact including:

- a. whether the 1945 publication of *This Land* constituted a general publication of the Song;
- b. whether any proper renewal application was filed for *This Land* in 1973, and if not, whether the Song has fallen into the public domain as a result;
- c. whether the 1951 publication of the lyrics to *This Land* by Folkways divested Guthrie of the 1945 copyright to *This Land* in *10 Songs*;
- d. whether the copyrights Defendants registered in 1956, 1958, 1970, and 1972 are invalid because they were procured fraudulently;
- e. whether Defendants obtained any rights from the original author(s) of the prior work(s) from which *This Land* is derived and, if so, what rights were obtained;
- f. whether the copyright claimed by Defendants over the melody is valid because the melody was not original to the author;
- g. whether the familiar lyrics and the lesser-known lyrical verses to *This Land* were forfeited because they were published with permission on numerous occasions without any copyright notice;
- h. whether the 1956 copyright is valid;
- i. whether *This Land* is in the public domain and dedicated to public use;
- j. whether Defendants are the exclusive owners of the copyright to *This Land* and are thus entitled to all of the rights conferred in 17 U.S.C. § 102;
- k. whether Defendants have the right to collect fees for the use of *This Land*;
- l. whether Defendants have violated the law by demanding and collecting

fees for the use of *This Land* despite not having a valid copyright to the Song; and

m. whether Defendants are required to return unlawfully obtained payments to Plaintiff and the other members of the Class and, if so, what amount is to be returned.

67. With respect to Counts Three through Six, the common questions of law and fact predominate over any potential individual issues.

68. Plaintiffs' claims are typical of the claims of all other members of the Class. Plaintiff's interests do not conflict with the interests of any other member of the Class, in that Plaintiff and the other members of the Class were subjected to the same unlawful conduct.

69. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent legal counsel experienced in class action and complex litigation.

70. Plaintiffs are adequate representatives of the Class and, together with their attorneys, are able to and will fairly and adequately protect the interests of the Class and its members.

71. A class action is superior to other available methods for the fair, just, and efficient adjudication of the claims asserted herein. Joinder of all members of the Class is impracticable and, for financial and other reasons, it would be impractical for individual members of the Class to pursue separate claims.

72. Moreover, the prosecution of separate actions by individual members of the Class would create the risk of varying and inconsistent adjudications, and would unduly burden the courts.

73. Plaintiffs anticipate no difficulty in the management of this litigation as a class action.

COUNT ONE

DECLARATORY JUDGMENT PURSUANT TO 28 U.S.C. § 2201

74. Plaintiffs repeat and reallege paragraphs 1 through 73 above as though they were fully set forth herein.

75. Plaintiffs bring this claim individually on behalf of themselves and on behalf of the Class pursuant to Federal Rule of Civil Procedure 23(b)(2).

76. Plaintiffs seek adjudication of an actual controversy arising under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*, in connection with Defendants' purported copyright claim to *This Land*. Plaintiffs seek the Court's declaration that the Copyright Act does not bestow upon Defendants the rights they have asserted and have enforced against Plaintiffs and the other members of the Class. This is because either: (1) the 1945 publication of *This Land* by Guthrie was a general publication that was not renewed in 1973 and therefore expired; (2) the 1951 publication of the lyrics to *This Land* by Folkways without any copyright notice divested Guthrie of any copyright he had in the song's lyrics; (3) the melody to the Song that was purportedly copyrighted in 1956 was not original to Guthrie; (4) Defendants fraudulently obtained the copyrights in 1956, 1958, 1970, and 1972, and therefore those copyrights are invalid; and (5) the lyrics to the Song that were purportedly copyrighted in 1956 were published without any copyright notice in 1951, 1956, and 1961, and thus any copyright to them was forfeited.

77. Defendants falsely assert that they are entitled to control the use of the musical composition *This Land* and are entitled to mechanical, synchronization, and performance royalties pursuant to 17 U.S.C. § 115 for the creation and distribution of phonorecords and digital downloads of the Song, under threat of a claim of copyright infringement.

78. Defendants have threatened to sue users of *This Land* for copyright infringement

in the past and as a result, Plaintiffs were obligated to pay Defendants the sum of \$45.50 for a mechanical license based upon their claim of copyright ownership. Defendants' claims and demands were coercive in nature, and Plaintiff's entering into the mechanical license agreement and payment of \$45.50 was involuntary. In addition, Plaintiffs desire to release a version of *This Land* with a completely different melody that would not be covered by a mechanical license pursuant to the Copyright Act and desire to create a music video using the Song that would require them to purchase a synchronization license.

79. Plaintiffs' claim presents a justiciable controversy because Plaintiff is unable release a different version of *This Land* as a result of Defendants' claim of copyright ownership and the resulting risk that Plaintiffs might be exposed to substantial statutory penalties under the Copyright Act if it releases a different version of the Song without permission from Defendants to create a derivative work.

80. In addition, Plaintiffs' agreement to pay Defendants, and their actual payment to them for use of the Song, were the involuntary result of Defendants' assertion of a copyright and the risk that Plaintiffs might be exposed to substantial statutory penalties under the Copyright Act if they failed to pay Defendants the statutory fee for the compulsory license.

81. Plaintiffs seek the Court's determination as to whether Defendants are entitled to assert ownership of the copyright to *This Land* against Plaintiffs and the other members of the Class as Defendants claim, or whether Defendants are wielding a false claim of ownership to inhibit Plaintiff's (and the public's) use and enjoyment of intellectual property which is rightfully in the public domain.

82. If and to the extent that Defendants rely upon the 1956 copyright for the melody or lyrics of the Song, that copyright was invalid or was forfeited as alleged herein.

83. As alleged above, Guthrie published *This Land* in a 1945 songbook, which included the entire musical composition of the Song and the copyright to the songbook was not renewed and accordingly expired at the end of December 1973. Moreover, Folkways published the lyrics to *This Land* in 1951 without any copyright notice and divested Guthrie of any copyright in the song's lyrics.

84. The 1958 copyright for Reg. No. EP126345 was invalid as alleged above, or at most covered only a piano accompaniment for the Song.

85. The 1970 copyright for Reg. No. EP276540 also was invalid as alleged above, or at most covered only a guitar arrangement for the Song.

86. The 1972 copyright for Reg. No. EP301279 was likewise invalid as alleged above, or at most covered only two obscure alternate verses. Neither copyright covers the Song's melody or familiar lyrics.

87. If declaratory relief is not granted, Defendants will continue wrongfully to assert the exclusive copyright to the Song at least until the current term of the copyrights expire under existing copyright law.

88. Plaintiffs therefore request a declaration that:

a. Defendants do not own the copyright to, or possess the exclusive right to reproduce, distribute, or publicly perform, the melody or lyrics of the musical composition *This Land*;

b. Defendants do not have the right to prohibit the use, reproduction, distribution, or public performance of the melody or lyrics of the musical composition *This Land*;

c. Defendants do not own the exclusive right to demand or grant a license for

use of *This Land*; and

d. the musical composition *This Land* is in the public domain and is dedicated to the public use.

COUNT TWO
UPON ENTRY OF DECLARATORY JUDGMENT

**DECLARATORY AND INJUNCTIVE RELIEF
PURSUANT TO 28 U.S.C § 2202**

89. Plaintiffs repeat and reallege paragraphs 1 through 88 above as though they were fully set forth herein.

90. Plaintiffs brings these claims individually on its own behalf and on behalf of the Class pursuant to Federal Rules of Civil Procedure 23(b)(2).

91. Under 28 U.S.C. § 2202, this Court is authorized to grant, “necessary or proper relief based on a declaratory judgment or decree . . . after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.”

92. Plaintiffs and the other Class members have been harmed, and Defendants TRO and Ludlow have been unjustly enriched, by Defendants’ wrongful takings as alleged herein.

93. Plaintiffs seeks relief for itself and the other members of the Class upon the entry of declaratory judgment upon Count One, as follows:

a. an injunction to prevent Defendants from making further representations of ownership of the copyright to the Song;

b. restitution to Plaintiffs and the other Class members of all fees paid to Defendants, directly or indirectly through their agents, to use the Song;

c. an accounting for all monetary benefits obtained by Defendants, directly or indirectly through their agents, from Plaintiff and the other Class members in

connection with its claim to ownership of the copyright to *This Land*; and

d. such other further and proper relief as this Court sees fit.

COUNT THREE

DECEPTIVE ACTS AND PRACTICES IN VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349

94. Plaintiffs repeat and reallege paragraphs 1 through 73 above as though they were fully set forth herein.

95. Plaintiffs brings this claim individually on their own behalf, and also on behalf of the Class pursuant to Federal Rule of Civil Procedure 23(b)(3).

96. As alleged herein, Plaintiffs and the other Class members have paid licensing fees to Defendants and have therefore suffered injury in fact and have lost money or property as a result of Defendants' conduct.

97. New York General Business Law ("GBL") § 349 prohibits "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service."

98. In the conduct of its business, Defendants have engaged and continue to engage in deceptive acts and practices by, inter alia, claiming to own a copyright to the melody and well-known lyrics of *This Land* despite the fact that the 1956, 1958, 1970, and 1972 copyrights are invalid or cover at most only a piano accompaniment, a guitar arrangement, and obscure new lyrics (as opposed to the well-known lyrics), despite the fact that the melody has been in the public domain since the late 19th or early 20th century, despite the fact that the familiar lyrics entered the public domain in 1951 but in no event later than 1973, and despite the fact that any copyright to the lyrics was forfeited in 1961.

99. Defendants' actions, claims, nondisclosures, and misleading statements, as alleged herein, were unfair, false, misleading, and likely to deceive the consuming public within

the meaning of GBL § 349.

100. The conduct of Defendants in exerting control over exclusive copyright ownership to the Song to stifle the useful arts or to extract licensing fees is deceptive and misleading because Defendants do not own any copyrights to the Song.

101. Plaintiffs and the other members of the Class have, in fact, been deceived as a result of their reasonable reliance upon Defendant's materially false and misleading statements and omissions, as alleged above.

102. As a result of Defendants' unfair and fraudulent acts and practices as alleged above, Plaintiffs and the other Class members have suffered substantial monetary injuries.

103. Plaintiff and the other Class members reserve the right to allege other violations of law which constitute other unfair or deceptive business acts or practices. Such conduct is ongoing and continues to this date.

104. As a result of its deception, Defendants have been able to reap unjust revenue and profit.

105. Defendants' unfair or deceptive acts or practices, including its concealments, omissions, and misstatements of material facts alleged above, had a tendency or capacity to mislead, tended to create a false impression in consumers, and were likely to (and did in fact) deceive reasonable consumers, including Plaintiffs and the other members of the Class, about the limited scope and validity of Defendants' copyright to the Song.

106. Defendants' unfair and deceptive practices, including its concealments, omissions, and misstatements of material facts alleged above, had a tendency or capacity to mislead, tended to create a false impression in consumers, and were likely to (and did in fact) deceive reasonable consumers, including Plaintiffs and the other members of the Class, about

whether Defendants in fact owned a copyright to the Song's melody or lyrics.

107. Plaintiffs and the other members of the Class suffered ascertainable losses, caused by Defendants' misrepresentations and failure to disclose material information. Had Plaintiff and the other members of the Class been aware of the true facts about the limited scope of the copyrights and their forfeiture, they would not have paid Defendants to use the Song and would have used the Song despite Defendants' insistence that they not do so. Thus, Plaintiff and the other members of the Class were harmed as a result of Defendants' misconduct.

108. Plaintiff and the other members of the Class suffered ascertainable losses, caused by Defendants' misrepresentations and failure to disclose material information.

109. As a direct and proximate result of Defendant's violations of GBL §349, Plaintiffs and the other members of the Class have suffered injury-in-fact or actual damage.

110. Because Defendant's willful and knowing conduct caused injury to Plaintiffs and the other members of the Class, they seek recovery of actual damages or \$50, whichever is greater and discretionary treble damages up to \$1,000 per violation, punitive damages, reasonable attorneys' fees and costs, an order enjoining Defendants' deceptive conduct, and any other just and proper relief available under GBL § 349.

111. Upon information and belief, since 1956 Defendants have collected millions of dollars from its false claims of copyright ownership for the Song.

112. Unless restrained and enjoined, Defendants will continue to engage in the above-described conduct. Accordingly, injunctive relief is appropriate.

113. Plaintiffs, individually on its own behalf and on behalf of the other members of the Class, seeks restitution and disgorgement of all money obtained from Plaintiff and the other members of the Class, collected as a result of unfair competition, and all other relief this Court

deems appropriate, consistent with GBL § 349.

COUNT FOUR

BREACH OF CONTRACT

114. Plaintiffs repeat and reallege paragraphs 1 through 73 above as though they were fully set forth herein.

115. Plaintiffs entered into a compulsory license for the Song, pursuant to which Defendants implicitly represented and warranted that they own the copyright to the Song as licensed therein. All other members of the Class who entered into licenses for the Song did likewise.

116. Plaintiffs and the other members of the Class have satisfied their obligations under each such licensing agreement with Defendants.

117. As alleged herein, Defendants do not own the copyright interests claimed in the Song and, as a result of its unlawful and false assertions of the same, Defendants have violated the representations and warranties made in the licensing agreements, thereby materially breaching the licensing agreements.

118. By reason of the foregoing, Plaintiffs and the Class have been damaged in an amount to be determined at trial.

COUNT FIVE

COMMON COUNT FOR MONEY HAD AND RECEIVED

119. Plaintiffs repeat and reallege paragraphs 1 through 73 above as though they were fully set forth herein.

120. Within the last four years, Defendants became indebted to Plaintiffs and all Class members for money had and received by Defendants for the use and benefit of Plaintiff and the

other Class members. The money in equity and good conscience belongs to Plaintiffs and the other Class members.

COUNT SIX

RESCISSION FOR FAILURE OF CONSIDERATION

121. Plaintiffs repeat and reallege paragraphs 1 through 73 above as though they were fully set forth herein.

122. Defendants' purported licenses were worthless and ineffective, and do not constitute valid consideration.

123. Plaintiffs and the other members of the Class are entitled to rescind their license agreements with Defendants and obtain a return of all the money previously paid thereunder.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury to the extent that the allegations contained herein are triable by jury under Federal Rules of Civil Procedure 38 and 39.

PRAYER RELIEF

WHEREFORE, Plaintiffs, on behalf of itself and the other members of the Class, demands judgment against Defendants TRO and Ludlow, jointly or individually in the alternative, as follows:

- A. certifying the Class as requested herein;
- B. declaring that the musical composition *This Land* is not protected by federal copyright law, is dedicated to public use, and is in the public domain;
- C. permanently enjoining Defendants from asserting ownership of any copyright to the musical composition *This Land*;
- D. permanently enjoining Defendants from charging or collecting any licensing or

other fees for use of the musical composition *This Land*;

E. imposing a constructive trust upon the money Defendants unlawfully collected from Plaintiffs, the other members of the Class, BMI, or Harry Fox Agency for use of the musical composition *This Land*;

F. ordering Defendants to return to Plaintiffs and the other members of the Class all the licensing or other fees it has collected from them, directly or indirectly through its agents, for use of the musical composition *This Land*, together with interest thereon;

G. awarding Plaintiffs and the other members of the Class restitution for Defendants' prior acts and practices;

H. awarding Plaintiffs and the Class reasonable attorneys' fees and costs; and

I. granting such other and further relief as the Court deems just and proper.

Dated: June 14, 2016

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP

By: /s/ Randall S. Newman
Randall S. Newman
newman@whafh.com
Mark C. Rifkin
rifkin@whafh.com
Gloria K. Melwani
melwani@whafh.com
270 Madison Ave.
10th Floor
New York, NY 10016
(212) 545-4600

Attorneys for Plaintiff and the Class