

1 Howard E. King (77012)
2 hking@khpslaw.com
3 Henry D. Gradstein (89747)
4 hgradstein@khpslaw.com
5 Andres Monserrate (324991)
6 amonserrate@khpslaw.com
7 **KING, HOLMES, PATERNO & SORIANO, LLP**
8 1900 Avenue of the Stars, 25th Floor
9 Los Angeles, CA 90067
10 Telephone: (310) 282-8989

11 Edwin F. McPherson (106084)
12 emcpherson@mcpherson-llp.com
13 Pierre B. Pine (211299)
14 ppine@mcpherson-llp.com
15 **MCPHERSON LLP**
16 1801 Century Park East, 24th Floor
17 Los Angeles, CA 90067
18 Telephone: (310) 553-8833

19 Steven G. Sklaver (237612)
20 ssklaver@susmangodfrey.com
21 Kalpana D. Srinivasan (237460)
22 ksrinivasan@susmangodfrey.com
23 **SUSMAN GODFREY L.L.P.**
24 1900 Avenue of the Stars, Suite 1400
25 Los Angeles, CA 90067
26 Telephone: (310) 789-3100

27 Attorneys for Plaintiffs
28 (Additional Counsel for Plaintiffs Listed on Signature Page)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

SOUNDGARDEN, a Partnership;
TOM WHALLEY, as Trustee of the
Afeni Shakur Trust; JANE PETTY;
HOLE, a Partnership; STEVE EARLE,
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

UMG RECORDINGS, INC., a
Delaware corporation,

Defendant.

) CASE NO.

) **CLASS ACTION**

) **CLASS ACTION COMPLAINT
FOR BREACH OF CONTRACT**

) **JURY TRIAL DEMANDED**

1 Plaintiffs Soundgarden, a partnership, Tom Whalley, trustee of the Afeni
2 Shakur Trust, Jane Petty, Hole, a partnership, and Steve Earle (collectively
3 “Plaintiffs”), on behalf of themselves and all other similarly situated recording
4 artists, and the heirs, successors or assigns of recordings artists, allege as follows:

5 **NATURE OF THE ACTION**

6 1. Master recordings (“Master Recordings”)—the original sound
7 recordings of songs—are the embodiment of a recording artist’s life’s work and
8 musical legacy. They are the irreplaceable primary source of recorded music.
9 Master Recordings are essential to releasing re-mixed and re-mastered versions of
10 previously released material in new configurations; creating new releases from
11 previously-unreleased tracks, outtakes, and alternative versions from recording
12 sessions; and generating new sources of revenue as technology evolves. Plaintiffs,
13 and the class they seek to represent, are recording artists and the heirs, successors or
14 assigns of recording artists, who entered into recording agreements with UMG
15 Recordings, Inc. (“UMG”) or its predecessors-in-interest to create and furnish
16 Master Recordings embodying their musical works to UMG for their mutual
17 commercial benefit and safekeeping.

18 2. UMG acknowledged the great trust and confidence reposed in UMG by
19 its recording artists and the need to protect their musical legacy embodied in the
20 Master Recordings. As its website touts: “Our vast catalog of recordings and songs
21 stretches back over a century and comprises the largest, most diverse and culturally
22 rich collection of music ever assembled....Knowing that music, a powerful force for
23 good in the world, is unique in its ability to inspire people and bring them together,
24 we work with our artists and employees to serve our communities. We are the home
25 for music’s greatest artists, innovators and entrepreneurs.”

26 3. UMG’s “intellectual property,” which includes “the original studio
27 master recordings,” is described as among UMG’s “most prized and valuable
28 assets.” UMG promises to maintain and store them “only by secure, company-

1 approved methods.” It promises to “use them responsibly so that we deliver the best
2 possible service to our artists.” It confirms that “we are all responsible for
3 protecting them” and promises to “tak[e] all reasonable steps to make sure they are
4 not damaged, abused, destroyed, wasted, lost or stolen.” Finally, UMG represents
5 that it will “[s]peak[] up immediately if we see abuse or misuse of company assets.”

6 4. However, UMG did not protect the Master Recordings that were
7 entrusted to it. It did not take “all reasonable steps to make sure they are not
8 damaged, abused, destroyed, wasted, lost or stolen,” and it did not “speak[] up
9 immediately [when it saw] abuse or misuse” of assets. Instead, UMG stored the
10 Master Recordings embodying Plaintiffs’ musical works in an inadequate,
11 substandard storage warehouse located on the backlot of Universal Studios that was
12 a known firetrap. The Master Recordings embodying Plaintiffs’ musical works
13 stored in that warehouse were completely destroyed in a fire on June 1, 2008 (“the
14 Fire”). UMG did not speak up immediately or even ever inform its recording artists
15 that the Master Recordings embodying their musical works were destroyed. In fact,
16 UMG concealed the loss with false public statements such as that “we only lost a
17 small number of tapes and other material by obscure artists from the 1940s and
18 50s.” To this day, UMG has failed to inform Plaintiffs that their Master Recordings
19 were destroyed in the Fire.

20 5. Yet, even as it kept Plaintiffs in the dark and misrepresented the extent
21 of the losses, UMG successfully pursued litigation and insurance claims which it
22 reportedly valued at \$150 million to recoup the value of the Master Recordings.
23 UMG concealed its massive recovery from Plaintiffs, apparently hoping it could
24 keep it all to itself by burying the truth in sealed court filings and a confidential
25 settlement agreement. Most importantly, UMG did not share any of its recovery
26 with Plaintiffs, the artists whose life works were destroyed in the Fire—even
27 though, by the terms of their recording contracts, Plaintiffs are entitled to 50% of
28 those proceeds and payments.

1 than a dozen movies. Tupac entered into a recording agreement with Interscope
2 Records, a predecessor to UMG. On information and belief, Master Recordings
3 embodying the musical works of Tupac were stored in the warehouse leased by
4 UMG at the Universal Studios backlot and destroyed in the Fire.

5 9. Plaintiff Jane Petty (“Jane”) was the wife of Tom Petty (“Petty”) and is
6 the owner, assignee, and successor in interest to all contractual rights of Petty at
7 issue in this action. Petty was an American singer/songwriter, multi-instrumentalist,
8 record producer and actor, as well as the lead singer of Tom Petty and Heartbreakers
9 formed in 1976. In his career, he sold more than 80,000,000 records worldwide. He
10 was inducted into the Rock & Roll Hall of Fame in 2002. From at least February 6,
11 1984, Petty entered into recording agreements with MCA Records, a predecessor of
12 UMG. Petty assigned a fifty percent (50%) interest in certain of his recording
13 agreements with UMG to Jane, including a fifty percent (50%) interest in all master
14 recordings released by UMG through a certain time period, including seminal
15 albums *Damn the Torpedoes*, *Full Moon Fever* and *Southern Accents*. On
16 information and belief, Master Recordings embodying the musical works of Petty
17 owned by Jane were stored in the warehouse leased by UMG at the Universal
18 Studios backlot and destroyed in the Fire.

19 10. Plaintiff Hole is a partnership of Courtney Love and Eric Erlandson.
20 Hole is one of the most commercially successful rock bands in history fronted by a
21 woman, Courtney Love. Hole has received numerous accolades, including four
22 Grammy Award nominations. They were also commercially successful, selling over
23 three million records in the United States alone, and had a far reaching influence on
24 contemporary female artists. Music and feminist scholars have also recognized the
25 band as the most high-profile musical group of the 1990s to discuss gender issues in
26 their songs, due to Love’s aggressive and violent lyrical content, which often
27 addressed themes of body image, abuse, and sexual exploitation. In 1993, Hole
28 entered into a recording agreement with Geffen Records, a predecessor of UMG.

1 On information and belief, Master Recordings embodying the musical works of
2 Hole were stored in the warehouse leased by UMG at the Universal Studios backlot
3 and destroyed in the Fire.

4 11. Plaintiff Steve Earle (“Earle”) is an American singer who has released
5 over 15 studio albums. In or about 1985, Earle entered into a recording agreement
6 with MCA Records, a predecessor in interest of UMG Recordings, Inc. That
7 agreement, as amended from time to time, remained in effect through at least 2008.
8 On information and belief, Master Recordings embodying the musical works of
9 Earle were stored in the warehouse leased by UMG at the Universal Studios backlot
10 and destroyed in the June 1, 2008 fire.

11 12. Plaintiffs are informed and believe and, based upon such information
12 and belief, allege that Defendant UMG Recordings, Inc. is a Delaware corporation
13 with its principal place of business in Los Angeles County, California.

14 **JURISDICTION AND VENUE**

15 13. This Court has jurisdiction over plaintiffs’ claims pursuant to 28 U.S.C.
16 § 1332(d) because this is a class action with diversity between at least one class
17 member and one defendant and the aggregate amount of damages exceeds
18 \$5,000,000. This action therefore falls within the original jurisdiction of the federal
19 courts pursuant to the Class Action Fairness Act, 28 U.S.C § 1332(d).

20 14. This Court has personal jurisdiction over UMG because: (a) UMG is
21 located and has its principal place of business in Santa Monica, California, and (b)
22 the Fire and the destruction of the Master Recordings occurred in Studio City,
23 California. For the same factual reasons, venue in this District exists pursuant to 28
24 U.S.C. § 1391(b) and (c) because UMG resides and is subject to personal
25 jurisdiction in this District and a substantial part of the events or omissions giving
26 rise to the claims occurred in this District.

27
28

FACTUAL BACKGROUND

The 2008 Universal Fire

1
2
3 15. As “the world’s leading music company,” “the home for music’s
4 greatest artists, innovators and entrepreneurs,” and “home to the most iconic and
5 influential labels & brands in music,” and having admittedly undertaken “to make
6 sure” that Master Recordings “are not damaged, abused, destroyed, wasted, lost or
7 stolen,” UMG knew or should have known industry standards for storing and
8 preserving Master Recordings. These include the manner in which discs and reels
9 are situated on shelves, the security and stability of the facility, the proper
10 temperature and humidity for storage in the facility, reducing risk of exposure to
11 bright light and strong magnetic fields in the facility, reducing risk of exposure to
12 water damage in the facility, and other standards including, most significantly, that
13 the facility is firesafe.

14 16. At all relevant times until 2004, UMG was a sister company to
15 Universal City Studios Productions, formerly known as Vivendi Universal
16 Entertainment LLP (“VUE”), and Universal City Studios LLC, formerly known as
17 Universal City Studios LLP (“UCS”). In 2004, VUE and UCS were sold by
18 Vivendi SA, to General Electric, and are now owned by NBC Universal Media,
19 LLC (“NBC”). At or shortly after the sale, or about May 4, 2004, after years of co-
20 existing as sister companies, UMG and VUE entered into an “Office Lease” which
21 included the warehouse on the Universal Studios lot where UMG stored the Master
22 Recordings that were destroyed in the Fire.

23 17. On December 23, 2009 UMG sued NBC, VUE and UCS (collectively,
24 the “Fire Defendants”) in Los Angeles County Superior Court, Case No. SC106213,
25 to recover damages for its fire loss (the “Fire Lawsuit”). Numerous filings in that
26 action remain redacted and under seal, at the request of UMG. UMG alleged in its
27 Second Amended Complaint that the Fire Defendants “failed to maintain several
28 deluge sprinkler systems in working condition, failed to maintain in working

1 condition several fire hydrants thereby hampering the ability of the firefighters who
2 responded to the Fire to prevent its spread, failed to implement proper sprinkler
3 systems, failed to follow “hot work” guidelines, and persistently ignored the
4 recommendations of their fire prevention and risk assessment expert and their own
5 experiences after a similar fire in 1990 destroyed a similar area on the back lot (the
6 “1990 Fire”).” UMG further alleged that “[i]n 1990, Defendants suffered a similar
7 fire in the facades that destroyed virtually the same area as the June 1 Fire.
8 Defendants reconstructed the facades after the 1990 Fire. Defendants knew that the
9 facades were constructed using untreated, flammable, highly combustible materials,
10 creating a significant fire risk. Defendants knew that these aging, wood facades
11 were so closely clustered, that when they ignited, the result would not merely be a
12 fire but a conflagration. In light of the construction of the facades and their
13 placement, Defendants knew that there was a significant fire load on the back lot.
14 Defendants chose to ignore this hazard.”

15 18. UMG further alleged that “after the 1990 Fire, Defendants
16 reconstructed the facades, but incorporated only an exterior deluge sprinkler system
17 in the facades. Defendants were repeatedly told by fire experts that they must
18 change the deluge sprinkler system to avoid a fire and prevent its spread. These fire
19 experts walked through and inspected the back lot, inspected the facades, held
20 meetings with Defendants, and issued specific warnings regarding failures of
21 Defendants’ deluge sprinklers and the corresponding significant risk of catastrophic
22 fire. Defendants were told that they must install interior, automatic sprinklers in
23 order to prevent and contain a fire and could do so at minimal expense. Defendants
24 repeatedly refused to do so.” UMG alleges that such warnings were issued in 1992,
25 1993 and 2004, as well as thereafter. Of course, the 1990 Fire, the grossly negligent
26 conduct and the ignored warnings alleged above, *all occurred while UMG was part*
27 *of the Universal Studios family of companies and imputed with this knowledge.* At a
28 minimum, these alleged dire conditions were observable to UMG on even the most

1 cursory inspection of the warehouse and its location.

2 19. On the evening of May 31, 2008, maintenance workers employed by
3 one of the Fire Defendants used blowtorches to heat asphalt shingles to repair a roof
4 on a set in the backlot of Universal Studios. The blazing hot shingles ignited in the
5 early morning hours of June 1, 2008, and a fire quickly swept through the backlot to
6 the warehouse in which UMG stored the Master Recordings, destroying them all.
7 According to recent press reports, and contrary to UMG's public statements at the
8 time, this was UMG's "main West Coast storehouse of its most [prized] masters."
9 By the time the fire was extinguished the next day, the metal storage shelves and
10 Master Recordings were "reduced to heaps of ash and twisted steel."

11 20. According to an investigative expose by journalist Jody Rosen in the
12 June 2019 *New York Times Magazine*, irreplaceable Master Recordings owned by
13 class members destroyed in the fire "included the masters of artists who recorded for
14 Decca such as Louis Armstrong, Duke Ellington, Al Jolson, Bing Crosby, Ella
15 Fitzgerald, Judy Garland. The tape masters for Billie Holiday's Decca catalog were
16 most likely lost in total. The Decca masters also included recordings by such greats
17 as Louis Jordan and His Tympany Five and Patsy Cline." The fire "most likely
18 claimed most of Chuck Berry's Chess masters and multitrack masters, a body of
19 work that constitutes Berry's greatest recordings. The destroyed Chess masters
20 encompassed nearly everything else recorded for the label and its subsidiaries,
21 including most of the Chess output of Muddy Waters, Howlin' Wolf, Willie Dixon,
22 Bo Diddley, Etta James, John Lee Hooker, Buddy Guy and Little Walter." "Also
23 very likely lost were master tapes of the first commercially released material by
24 Aretha Franklin, recorded when she was a young teenager performing in the church
25 services of her father, the Rev. C.L. Franklin, who made dozens of albums for Chess
26 and its sublabels." "Virtually all of Buddy Holly's masters were lost in the fire.
27 Most of John Coltrane's Impulse masters were lost, as were masters for treasured
28 Impulse releases by Duke Ellington, Count Basie, Coleman Hawkins, Dizzy

1 Gillespie, Max Roach, Art Blakey, Sonny Rollins, Charles Mingus, Ornette
2 Coleman, Alice Coltrane, Sun Ra, Albert Ayler, Pharoah Sanders and other jazz
3 greats.” “Also apparently destroyed were the masters for dozens of hit singles,
4 including Bill Haley and His Comets’ “Rock Around the Clock,” Jackie Brenston
5 and His Delta Cats’ “Rocket 88,” Bo Diddley’s “Bo Diddley/I’m A Man,” Etta
6 James’s “At Last,” the Kingsmen’s “Louie Louie” and the Impressions’ “People Get
7 Ready.” UMG, in fact, claims to have created what it internally called a “God List”
8 that purports to identify with “reasonable certainty” an inventory of all Master
9 Recordings destroyed in the Fire.

10 21. “The list of destroyed single and album masters takes in titles by
11 dozens of legendary artists, a genre-spanning who’s who of 20th- and 21st-century
12 popular music.” Based on this reporting, the list includes Master Recordings
13 embodying the Plaintiffs’ recorded musical works by Soundgarden, Tupac, Petty,
14 Hole, and Earle, and those of putative class members that include Benny Goodman,
15 Cab Calloway, the Andrews Sisters, the Ink Spots, the Mills Brothers, Lionel
16 Hampton, Ray Charles, Sister Rosetta Tharpe, Clara Ward, Sammy Davis Jr., Les
17 Paul, Fats Domino, Big Mama Thornton, Burl Ives, the Weavers, Kitty Wells,
18 Ernest Tubb, Lefty Frizzell, Loretta Lynn, George Jones, Merle Haggard, Bobby
19 (Blue) Bland, B.B. King, Ike Turner, the Four Tops, Quincy Jones, Burt Bacharach,
20 Joan Baez, Neil Diamond, Sonny and Cher, the Mamas and the Papas, Joni Mitchell,
21 Captain Beefheart, Cat Stevens, the Carpenters, Gladys Knight and the Pips, Al
22 Green, the Flying Burrito Brothers, Elton John, Lynyrd Skynyrd, Eric Clapton,
23 Jimmy Buffett, the Eagles, Don Henley, Aerosmith, Steely Dan, Iggy Pop, Rufus
24 and Chaka Khan, Barry White, Patti LaBelle, Yoko Ono, the Police, Sting, George
25 Strait, R.E.M., Janet Jackson, Eric B. and Rakim, New Edition, Bobby Brown, Guns
26 N’ Roses, Queen Latifah, Mary J. Blige, Sonic Youth, No Doubt, Nine Inch Nails,
27 Snoop Dogg, Nirvana, Hole, Beck, Sheryl Crow, Eminem, 50 Cent and the Roots.

28

1 *UMG's Coverup*

2 22. Immediately after the Fire, UMG embarked on a systematic and
3 fraudulent scheme of misrepresentation and misdirection designed to conceal the
4 loss of the Master recordings destroyed in the Fire. Press accounts at the time,
5 based on statements by UMG representatives, included the following:

- 6 a. *Billboard*: “We had no loss, thankfully. We moved most of what was
7 formerly stored there earlier this year to our other facilities. Of the
8 small amount that was still there and awaiting to be moved, it had
9 already been digitized so the music will still be around for many years.”
- 10 b. *New York Daily News*: “In one sense it was a loss. In another, we
11 were covered,” said Peter LoFrumento of UMG. “It had already been
12 digitized, so the music will still be around for many years.”
13 LoFrumento said master recordings from major artists, including Judy
14 Garland and the Carpenters were not harmed, as was reported
15 elsewhere. “We had no loss, thankfully,” he said.
- 16 c. *New York Times*: A spokesman for a company that was storing
17 material in the studio vault, said that a small number of tapes and other
18 material by “obscure artists from the 1940s and ‘50s,” including the
19 pop singers Lenny Dee and Georgie Shaw, had been damaged. The
20 spokesman added that all recording tapes had been duplicated digitally.
- 21 d. *Los Angeles Times*: “At this point, it appears that the fire consumed
22 no irreplaceable master recordings, just copies. The studio and the
23 record company both are fortunate enough to have the resources to
24 preserve multiple copies of their source materials around the country.
25 They’ve also been duplicating their recordings in high-quality digital
26 formats, creating additional backups in the event the originals are lost.”
- 27 e. *UMG Response to journalist Nikki Finke*: “Of the small amount that
28 was still there and waiting to be moved, it had already been digitized so

1 the music will still be around for many years to come. And in addition
2 to being digitized, physical backup copies of what was still left at that
3 location were made and stored elsewhere.”

4 23. But as a *Washington Post* editorial recently stated: “The gulf between
5 what the media reported and what the fire destroyed couldn’t be wider; it’s the
6 difference between ‘no loss’ and what Rosen [the author of the *New York Times*
7 *Magazine* expose] terms a ‘catastrophe.’” That expose blazed through the industry
8 in June 2019 just as fiercely as the fire which swept through the Universal backlot,
9 and was the first notice to Plaintiffs and the putative class that Master Recordings
10 embodying their musical works were destroyed in the fire.

11 24. In fact, to this day, UMG has not informed Plaintiffs that any Master
12 Recordings embodying musical works owned by them were destroyed in the fire,
13 and has refused to disclose or account to Plaintiffs for settlement proceeds and
14 insurance payments received by UMG for the loss of the Master Recordings.
15 UMG’s provided pretextual, incomplete or materially false and misleading
16 explanations for the damages caused by the Fire and money received by it thereafter
17 served only to cover up its misconduct. UMG’s breaches are also continuing
18 violations in which UMG repeatedly issues royalty statements that do not identify
19 any revenues shared or payments made to Plaintiffs or members of the class as a
20 result of funds received by UMG as a result of its monetization of the Master
21 Recordings.

22 25. During the relevant statute of limitations period, Plaintiffs had neither
23 actual nor constructive knowledge of the pertinent facts constituting their claims for
24 relief asserted herein. Plaintiffs and members of the Class did not discover, and
25 could not have discovered through the exercise of reasonable diligence, the
26 existence of any conspiracy. In addition, UMG is estopped to raise the statute of
27 limitations as a result of its fraudulent concealment of the loss of the Master
28 Recordings.

1 class, and will vigorously pursue those claims. Plaintiffs are represented by
2 experienced, qualified and competent counsel who are committed to prosecuting this
3 action.

4 32. Common questions of fact and law exist as to all members of the class
5 that predominate over any questions affecting only individual members of the class.
6 These common legal and factual questions that are capable of class-wide resolution
7 that predominate over any questions affecting only individual class members
8 include:

9 a. The amounts received by UMG in settlement of the Fire Lawsuit
10 for loss of the Master Recordings in the warehouse fire of June 1, 2008.

11 b. The amounts received by UMG from its insurers for loss of the
12 Master Recordings in the warehouse fire of June 1, 2008.

13 c. Whether UMG is obligated to pay any of the settlement proceeds
14 and insurance payments it received for loss of the Master Recordings in the
15 warehouse fire of June 1, 2008, to class members.

16 d. Whether UMG breached its contractual obligations by storing the
17 Master Recordings in an inadequate, substandard storage warehouse located
18 on the backlot of Universal Studios that was a known firetrap.

19 e. Whether UMG fraudulently concealed its conduct.

20 f. Whether Plaintiffs and the other class members suffered injury as
21 a result of UMG's misconduct.

22 g. The measure of damages suffered by Plaintiffs and the class.

23 33. A class action is superior to other available methods for the fair and
24 efficient adjudication of this controversy since individual litigation of the claims of
25 all class members is impracticable. The claims of the individual members of the
26 Class may range from smaller sums to larger sums. Thus, for those class members
27 with smaller claims, the expense and burden of individual litigation may not justify
28 pursuing the claims individually. And even if every member of the class could

1 afford to pursue individual litigation, the Court system could not. It would be
2 unduly burdensome to the courts in which individual litigation of numerous cases
3 would proceed. Individualized litigation would also present the potential for
4 varying, inconsistent, or contradictory judgments and would magnify the delay and
5 expense to all parties and to the court system resulting from multiple trials of the
6 same factual issues. By contrast, the maintenance of this action as a class action
7 presents few management difficulties, conserves the resources of the parties and of
8 the court system, and protects the rights of each member of the class. There will be
9 no material difficulty in the management of this action as a class action.

10 **FIRST CLAIM FOR RELIEF**

11 (Breach of Contract – UMG’s Failure to Share Revenues Derived from Master
12 Recordings)

13 34. Plaintiffs hereby incorporate each of the allegations set forth above, as
14 though fully set forth herein.

15 35. The written recording agreements Plaintiffs and all other class members
16 entered into with UMG, or its predecessors, provide for a 50/50 sharing of revenues
17 derived from furnishing, licensing or authorizing the use by others of Master
18 Recordings embodying their musical works.

19 36. Plaintiffs are informed and believe, and allege thereon, that UMG
20 confidentially settled the Fire Lawsuit in 2013, and received \$150 million for the
21 loss of the Master Recordings embodying the musical works of members of the
22 class.

23 37. Plaintiffs are further informed and believe, and allege thereon, that
24 UMG received tens of millions of dollars of additional compensation from its
25 insurers for the loss of the Master Recordings embodying the musical works of said
26 recording artists.

27 38. These settlement proceeds and insurance payments were paid on
28 account of the Master Recordings as a lump sum replacement for the revenues

1 which could no longer be derived from furnishing them, authorizing their use or
2 licensing them to third parties because they were destroyed in the fire. Under the
3 recording agreements, it was incumbent upon UMG to account for and pay 50% of
4 these revenues to the Plaintiffs and class members.

5 39. UMG failed to account for and pay Plaintiffs and members of the class
6 50% of the settlement proceeds and insurance payments it received, and thereby
7 breached the recording agreements.

8 40. As a direct and proximate consequence of Defendants' breach of the
9 recording agreements, Plaintiffs and class members have been damaged in an
10 amount which is not yet fully ascertained, but which Plaintiffs are informed and
11 believe, and allege thereon, equals (exclusive of interest) 50% of the settlement and
12 insurance proceeds paid to UMG, according to proof at trial.

13 **SECOND CLAIM FOR RELIEF**

14 (Breach of Contract - Bailment)

15 41. Plaintiffs hereby incorporate each of the allegations set forth above, as
16 though fully set forth herein.

17 42. In every contract, including the recording agreements, there is an
18 implied obligation of good faith and fair dealing that neither party to the contract
19 will undertake actions to deprive the other party of the expected fruits and benefits
20 of the contractual relationship. Plaintiffs and the putative class members have an
21 expectation that under their recording agreements with UMG there will be a 50/50
22 sharing of revenues derived from furnishing, licensing or authorizing the use by
23 others of Master Recordings embodying their musical works. Moreover, U.S.
24 copyright termination rights would not be meaningful if the Master Recordings
25 embodying their musical works were not preserved and maintained since they are
26 the most complete expression of the copyrighted musical work. Thus it would
27 breach the obligation of good faith and fair dealing for UMG to fail to take
28 reasonable measures to preserve and maintain the Master Recordings.

1 43. In addition to the covenant of good faith and fair dealing implying that
2 UMG will take reasonable measures to preserve and maintain the Master
3 Recordings for the mutual benefit of the parties, UMG has also confirmed its
4 understanding of that obligation and made that promise express in public statements
5 and representations on its website. UMG lists the “original studio master
6 recordings” as among UMG’s “most prized and valuable assets.” It promises to
7 maintain and store them “only by secure, company-approved methods.” It promises
8 to “use them responsibly so that we deliver the best possible service to our artists.”
9 It confirms that “we are all responsible for protecting them” and promises to “tak[e]
10 all reasonable steps to make sure they are not damaged, abused, destroyed, wasted,
11 lost or stolen.” Finally, UMG represents that it will “[s]peak[] up immediately if we
12 see abuse or misuse of company assets.”

13 44. Under California law, a “voluntary bailment is made by one giving to
14 another, with his consent, the possession of personal property to keep for the benefit
15 of the former, or of a third party.” (Civ. Code, § 1814). “Defined broadly, bailment
16 is ‘the delivery of a thing in trust for some special object or purpose, upon a
17 contract, express or implied’” on terms “as various as the transactions of men.”
18 (*Greenberg Bros. v. Ernest W. Hahn, Inc.*, 246 Cal. App. 2d 529, 531 (1966)).
19 UMG’s express promises made in conjunction with its implied obligation of good
20 faith and fair dealing in the recording agreements establish its voluntary bailment in
21 connection with the Master Recordings.

22 45. The bailee “must use at least ordinary care for the preservation of the
23 thing deposited.” (Civ. Code § 1852). If the bailment is for the benefit of the bailee,
24 such as borrowing the property “for use” the bailee “must use great care for the
25 preservation in safety and in good condition of the thing lent.” (Civ. Code, § 1886).
26 Finally, with respect to UMG’s concealment of the loss of the Master Recordings
27 for eleven years, Civ. Code § 1838 provides:
28

1 If a thing is lost or injured during its deposit, and the depositary
2 refuses to inform the depositor of the circumstances under which the
3 loss or injury occurred, so far as he has information concerning
4 them, or willfully misrepresents the circumstances to him, the
5 depositary is presumed to have willfully, or by gross negligence,
6 permitted the loss or injury to occur.
7

8 46. Whatever duty of care is required of UMG to preserve and maintain the
9 Master Recordings, it is plain that as alleged above, UMG breached its duty of care
10 through its negligence in storing the Master Recordings in the firetrap that was the
11 Universal Studios backlot warehouse. And given UMG's concealment of the loss of
12 the Master Recordings for eleven years, it should be "presumed to have willfully, or
13 by gross negligence, permitted the loss or injury to occur." (Civ. Code § 1838).

14 47. As a direct and proximate consequence of UMG's breach of the
15 implied covenant of good faith and fair dealing and its voluntary bailment in
16 connection with the Master Recordings, Plaintiffs and the putative class have been
17 damaged in an amount which is not yet fully ascertained, but which Plaintiffs are
18 informed and believe, and allege thereon, equals 50% of the value of the Master
19 Recordings less whatever damages Plaintiffs and the putative class recover under
20 their First Claim for Relief, according to proof at trial.

21 **PRAYER**

22 WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of all other
23 members of the class, pray for Judgment against UMG Recordings, Inc. and the Doe
24 Defendants, and each of them, as follows:

25 A. For a determination that this is a proper class action maintainable
26 pursuant to Rule 23 of the Federal Rules Civil Procedure, certifying Plaintiffs as
27 class representatives and Plaintiffs' counsel as class counsel;
28

1 B. For compensatory damages in an amount in excess of \$100 million,
2 according to proof at trial;

3 C. For pre- and post-judgment interest;

4 E. For such fees and costs (including reasonable attorneys' fees) incurred
5 herein as permitted by law.

6 F. For such other and further relief as the Court deems just and proper,
7 and that Plaintiffs and the class may be entitled at law or in equity.

8

9 DATED: June 21, 2019

10

11

Howard E. King
Henry D. Gradstein
Andres Monserrate
KING, HOLMES, PATERNO &
SORIANO, LLP

12

13

Edwin F. McPherson
Pierre B. Pine
McPHERSON LLP

14

15

Steven G. Sklaver
Kalpana D. Srinivasan
SUSMAN GODFREY L.L.P.

16

17

18

19

Stephen E. Morrissey (187865)
SUSMAN GODFREY L.L.P.
smorrissey@susmangodfrey.com
1201 3rd Avenue, Suite 3800
Seattle, WA 98101
Telephone: (206) 373-7380

20

By: /s/ Henry D. Gradstein

21

Attorneys for Plaintiffs

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury on all issues so triable.

DATED: June 21, 2019

Howard E. King
Henry D. Gradstein
Andres Monserrate
KING, HOLMES, PATERNO &
SORIANO, LLP

Edwin F. McPherson
Pierre B. Pine
McPHERSON LLP

Steven G. Sklaver
Kalpana D. Srinivasan
SUSMAN GODFREY L.L.P.

Stephen E. Morrissey (187865)
smorrissey@susmangodfrey.com
1201 3rd Avenue, Suite 3800
Seattle, WA 98101
Telephone: (206) 373-7380

By: /s/ Henry D. Gradstein

Attorneys for Plaintiffs