

1 HENRY GRADSTEIN (89747)
hgradstein@gradstein.com
2 MARYANN R. MARZANO (96867)
mmarzano@gradstein.com
3 DANIEL B. LIFSCHITZ (285068)
dlifschitz@gradstein.com
4 GRADSTEIN & MARZANO, P.C.
6310 San Vicente Blvd., Suite 510
Los Angeles, California 90048
5 Telephone: (323) 776-3100

6 MARC M. SELTZER (54534)
mseltzer@susmangodfrey.com
7 STEVEN G. SKLAVER (237612)
ssklaver@susmangodfrey.com
8 KALPANA D. SRINIVASAN (237460)
ksrinivasan@susmangodfrey.com
9 KRYSTA KAUBLE PACHMAN (280951)
kpachman@susmangodfrey.com
10 SUSMAN GODFREY L.L.P.
1901 Avenue of the Stars, Suite 950
11 Los Angeles, CA 90067-6029
Telephone: (310) 789-3100
12 Facsimile: (310) 789-3150

13 STEPHEN E. MORRISSEY (187865)
smorrissey@susmangodfrey.com
14 SUSMAN GODFREY L.L.P.
1201 3rd Avenue, Suite 3800
15 Seattle, WA 98101
Telephone: (206) 373-7383
16 Facsimile: (206) 516-3883

17 Interim Co-Lead Class Counsel

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**
20 **WESTERN DIVISION**

21 DAVID LOWERY, individually and on
22 behalf of himself and all others
23 similarly situated,
24 Plaintiffs,
25 vs.
26 SPOTIFY USA INC., a Delaware
corporation,
27 Defendants.

Case No. 2:15-cv-09929-BRO-RAOx

Judge: Hon. Beverly Reid O’Connell

**CONSOLIDATED CLASS ACTION
COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

DEMAND FOR TRIAL BY JURY

28

1 MELISSA FERRICK, individually and
2 doing business as Nine Two One Music
and Right On Records/Publishing;
3 JACO PASTORIUS, INC.; and
GERENCIA 360 PUBLISHING, INC.,
4 individually and on behalf of all others
similarly situated,

5 Plaintiffs,

6 v.

7 SPOTIFY USA INC., a Delaware
8 corporation, and DOES 1 through 10,

9 Defendants.

Case No. 16-CV-180-BRO-RAOx

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Plaintiffs Melissa Ferrick individually and doing business as Nine Two One
2 Music and Right On Records/Publishing (“Ferrick”), Jaco Pastorius, Inc.
3 (“Pastorius”), and Gerencia 360 Publishing, Inc. (collectively, “Plaintiffs”) on
4 behalf of themselves and all other similarly situated owners of federal copyrights in
5 nondramatic musical works (“musical compositions” or “songs”) that were
6 reproduced and distributed without a license by Defendant Spotify USA Inc.
7 (“Spotify” or “Defendant”) and DOES 1-10 (collectively “Defendants”) during the
8 last three years, allege as follows.

9 **NATURE OF THE ACTION**

10 1. Under the Copyright Act, there are two separate copyrights in every
11 recorded song: one in the sound recording (“phonorecord”) itself, 17 U.S.C.
12 §102(7), and one in the musical composition embodied in that phonorecord, 17
13 U.S.C. §102(2). This case is brought to vindicate the rights of the owners of the
14 copyrights in the musical compositions embodied in phonorecords that Spotify has
15 reproduced and distributed – without a license – as part of its extraordinarily popular
16 interactive online subscription music streaming service (the “Service”).

17 2. Spotify launched the Service in the United States on or about July 14,
18 2011. Since that time, the Service has grown to over 70 million subscribers, raised
19 close to \$1 billion in private equity, and obtained a valuation in excess of \$8 billion.
20 To achieve that success, Spotify promised its subscribers that it would provide them
21 with “[a]ll the music you’ll ever need...for every moment.” But Spotify knew that
22 in order to fulfill its promise, it would either have to delay the launch of the Service
23 (and its process for immediately ingesting and offering new music) until such time
24 as it had obtained all necessary licenses, or it would have to employ a now familiar
25 strategy for many digital music services – infringe now, apologize later.

26 3. Spotify chose expediency over licenses. Thus, while Spotify has
27 profited handsomely from the music that it sells to its subscribers, the owners of
28

1 that music (in particular, songwriters and their music publishers) have not been able
2 to share in that success because Spotify is using their music for free.

3 4. The path that Spotify should have chosen is set forth in the Copyright
4 Act. A service like Spotify that is interested in reproducing and distributing musical
5 compositions in phonorecords has two choices: it can negotiate direct licenses with
6 the copyright owners of those musical compositions or it can pursue compulsory
7 licenses under 17 U.S.C. §115. Either a direct license or a compulsory license
8 would have permitted Spotify to make and distribute phonorecords embodying the
9 musical compositions as part of the Service, including by means of digital
10 phonorecord deliveries (“DPDs”), interactive streaming, and limited downloads.

11 5. While a license under 17 U.S.C. §115 is compulsory, it is not
12 automatic. To obtain such a license, it was Spotify’s obligation to send a notice to
13 each copyright owner “before or within thirty days after making, and before
14 distributing any phonorecords of the work” of its “intention” use the work. 17
15 U.S.C. §115(b)(1). This notice of intent (or, as it is commonly referred to, an
16 “NOI”) is not merely a ministerial formality; it is a critical first step in the
17 compulsory licensing process that alerts the copyright owner to the use of its
18 musical composition and, in turn, the right to be compensated for that use. Because
19 of its significance, the failure to timely serve or file an NOI “forecloses the
20 possibility of a compulsory license and, in the absence of a negotiated license,
21 renders the making and distribution of phonorecords actionable as acts of
22 infringement.” 17 U.S.C. §115(b)(2). Even after sending an NOI, Spotify was then
23 required to timely account to the copyright owner and pay royalties accordingly. 17
24 U.S.C. §115(c).

25 6. For the musical compositions that are at issue in this litigation, Spotify
26 did not negotiate direct licenses and did not avail itself of the compulsory licensing
27 procedures in the Copyright Act. Instead, Spotify chose a third path: it outsourced
28 its licensing and accounting obligations to the Harry Fox Agency (“HFA”), a music

1 publishing rights organization that was ill-equipped to obtain licenses for all of the
2 songs embodied in the phonorecords distributed by Spotify. As a result, neither
3 Spotify nor HFA directly licensed or timely issued NOIs for many of the musical
4 compositions embodied in phonorecords that Spotify was reproducing and
5 distributing on a daily basis as part of the Service.

6 7. The known failure by Spotify to obtain licenses for all of the musical
7 compositions that it is exploiting caused it to recently announce that it “will invest in
8 the resources and technical expertise to build a comprehensive publishing
9 administration system to solve this problem.” See Ed Christman, “Spotify
10 Announces Database To Properly Manage Royalties,” *Billboard* (Dec. 23, 2015),
11 *available at* [http://www.billboard.com/articles/business/6820925/spotify-publishing-](http://www.billboard.com/articles/business/6820925/spotify-publishing-database-royalties)
12 [database-royalties](http://www.billboard.com/articles/business/6820925/spotify-publishing-database-royalties). That is an investment and process that Spotify should have
13 undertaken *before* it decided to reproduce and distribute phonorecords embodying
14 unlicensed musical compositions to the Service’s millions of users, not over four
15 years after Spotify launched the Service in the United States. At this point,
16 Spotify’s failure to properly obtain licenses is much more than what it
17 euphemistically describes as an “administration system” problem; it is systemic and
18 willful copyright infringement for which actual and statutory damages are the
19 remedy. Therefore, Plaintiffs bring this class action for copyright infringement on
20 behalf of themselves and all similarly situated owners of musical compositions that
21 were reproduced and distributed by Defendants without a license during the last
22 three years.

23 THE PARTIES

24 8. Plaintiff Melissa Ferrick, a resident of Newburyport, Massachusetts, is
25 a nationally recognized singer-songwriter who has released seventeen albums over
26 the past two decades, with a catalog of over one hundred and fifty copyrighted
27 musical compositions. Ferrick is an eight-time Boston Music Award winner and is
28 regarded as one of the most prolific songwriters of her generation. She tours

1 regularly throughout North America and has shared the stage with Morrissey, Marc
2 Cohn, Paul Westerberg, Dwight Yoakam, John Hiatt, Weezer, Tegan and Sara, Bob
3 Dylan, Ani DiFranco, k.d. Lang, Suzanne Vega, Joan Armatrading, and many
4 others. Ferrick signed in the early 1990s with Atlantic Records, and in 1993
5 released her debut album, “Massive Blur,” which was then followed by “Willing to
6 Wait” in 1995. Critical acclaim for Ferrick’s music has continued to this day.
7 Ferrick’s 2011 album “Still Right Here” debuted on Billboard’s Heat-Seekers
8 Album Chart, won an 8th annual International Acoustic Music Award, and garnered
9 two Independent Music Award nominations. Her 2013 album, “The Truth Is,” won
10 the 2014 Independent Music Award for Alt-Country Album of the Year and her
11 2015 self-titled album was referred to by the Boston Globe as “one of the year’s
12 most singular albums.” Ferrick has been a part time Associate Professor in the
13 Songwriting Department at Berklee College of Music since 2013, and the Artistic
14 Director for Berklee’s Five Week Summer Program since 2009. Her songs have
15 been streamed approximately one million times by Spotify without a license.

16 9. Plaintiff Jaco Pastorius, Inc. (“Pastorius”) is a Florida corporation with
17 its principal place of business in Melbourne, Florida. It was formed on or about
18 January 3, 1995, subsequent to the untimely death of John Francis Anthony
19 Pastorius III, known professionally as Jaco Pastorius (“Jaco”) to own Jaco’s songs.
20 Jaco was a highly acclaimed American jazz musician, composer, big band leader
21 and electric bass player, considered by many to be the best and most influential bass
22 guitarist in history. Over his career, Jaco released fifteen solo albums, appeared on
23 eight Weather Report albums, and collaborated and performed on many others from
24 1974-1986. He has collaborated and guested on albums with legendary artists
25 including Joni Mitchell, Pat Metheny, Ian Hunter, and Al Di Meola, and had
26 numerous jazz greats perform with him on his solos projects. He taught bass at the
27 University of Miami in 1973 at the age 22, and went on to release his debut album in
28 1976, the eponymous *Jaco Pastorius*, which was considered a breakthrough album

1 for the electric bass. It met with critical acclaim and is still viewed as the best bass
2 album ever recorded. Performing on the album was a veritable “Who’s Who” of
3 jazz, including Herbie Hancock, Wayne Shorter, David Sanborn, Lenny White,
4 Hubert Laws, Don Alias, and Michael Brecker, many of whom Jaco continued to
5 work with on future projects. In 1976, Jaco joined Weather Report, one of the pre-
6 eminent jazz fusion bands in the 1970s and 1980s. Jaco was featured on
7 the Grammy Award-nominated *Heavy Weather* in 1977, an album which showcased
8 his bass playing and songwriting skills. After leaving Weather Report in late 1981,
9 he went on to pursue a big band solo project, resulting in his second solo
10 release, *Word of Mouth*, which reunited him with Herbie Hancock, Wayne
11 Shorter and Hubert Laws. He died on September 21, 1987 at the age of 35. Jaco
12 received two Grammy Award nominations in 1977 for his debut album, including
13 Best Jazz Performance by a Group and Best Jazz Performance by a Soloist for
14 “Donna Lee,” and received another nomination in 1978, Best Jazz Performance by a
15 Soloist, for his work on Weather Report’s *Heavy Weather*. Jaco was inducted into
16 the Down Beat Jazz Hall of Fame posthumously in 1988, one of only seven bassists
17 ever to be so honored, and the only electric bass guitarist among the inductees. He
18 has been called “arguably the most important and ground-breaking electric bassist in
19 history” (Adrian Belew, *New Directions in Modern Guitar*, Hal Leonard
20 Publications (1986)), and described by William C. Banfield, director of Africana
21 Studies, Music and Society at Berklee College, as one of the few original American
22 virtuosos who defined a musical movement, along with Jimi Hendrix, Louis
23 Armstrong, Thelonious Monk, Charlie Christian, Bud Powell, Charlie Parker, Dizzy
24 Gillespie, Sarah Vaughan, Bill Evans, Charles Mingus and Wes Montgomery
25 (William C. Banfield, *Cultural Codes: Makings of a Black Music Philosophy*
26 (2009), p. 161). Jaco’s songs have been streamed millions of times by Spotify
27 without a license.

28

1 10. Gerencia 360 Publishing, Inc. (“Gerencia 360 Publishing”) is part of a
2 group of music entertainment based companies started by Luis Del Villar in 2013.
3 Gerencia 360 Publishing has a principal place of business in Downey, California.
4 Mr. Del Villar incorporated Gerencia 360 Publishing in the State of California in
5 2014, together with Gerencia 360 Music, Inc., Gerencia 360 Management, Inc., and
6 Gerencia 360 Entertainment, Inc. (collectively, “Gerencia 360 Companies”). The
7 word “gerencia” translates from Spanish to “management” and in conjunction with
8 “360,” it defines the full scope of management provided by the Gerencia 360
9 Companies for its artists. The Gerencia 360 Companies consist of a record label,
10 music publishing company, and talent management company. The Gerencia 360
11 Companies occupy a significant position in the regional Mexican music industry.
12 Gerencia 360 Publishing owns copyrights to the songs of artists on the Gerencia 360
13 Music, Inc. (“Gerencia 360 Music”) record label. Gerencia 360 Music covers all
14 genres, with a specialty in regional Mexican music. Gerencia 360 Publishing also
15 owns copyrights to the songs of other successful artists who do not record on the
16 Gerencia 360 Music label.

17 11. Songs owned by Gerencia 360 Publishing have been streamed multiple
18 millions of times by Spotify without a license. A small sampling of those songs
19 include:

- 20 • “Adivina” – streamed over 4 million times – written by Luciano Luna
21 Diaz and performed by Noel Torres, an internationally acclaimed
22 singer/songwriter who is recognized as one of the leading male
23 recording artists of the regional Mexican music genre
- 24 • “Me Interesas” – streamed over 6 million times – written by Luciano
25 Luna Diaz and performed by Noel Torres
- 26 • “Para Que Tantos Besos” – streamed over 5 million times – written by
27 Luciano Luna Diaz and performed by Noel Torres

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

- “Amaneci Con Ganas” – streamed over 4.2 million times combined, over 2.7 million on the album and over 1.5 million times as a single – written by Maria Luisa Inzunza Favela and Jose Alberto Inzunza Favela, and performed by Noel Torres
- “Mujeres de Tu Tipo” – streamed over 3.7 million times – written by Jose Luis Del Villar and performed by Adriel Favela, a Mexican singer, songwriter and multi-instrumentalist specializing in norteño and corridos
- “Te Acuertas De Tu Amiga” – streamed over 1.4 million times – written by Jose Alberto Inzunza Favela and Luciano Luna Diaz, and performed by Adriel Favela
- “Tomen Nota” – streamed over 1.8 million times – written by Jesus Jimenez Carrillo and performed by Adriel Favela
- “Es Tiempo De Guerra” – streamed over 1.5 million times – written by Ricardo Orrantia Martinez and Maria Luisa Inzunza Favela, and performed by Adriel Favela
- “Mi Primera Vez” – streamed over 920,000 times – written by Jose Alberto Inzunza Favela and Jose Luis Del Villar, and performed by Jonatan Sanchez, a captivating 17 year old singer and guitar player with a rapidly rising fan base
- “Mis Gustos, Mis Placeres” – streamed over 1.3 million times – written by Adriel Guadalupe Apodaca and Jose Luis Del Villar, and performed by Adriel Favela, featuring Jonatan Sanchez
- “Perfecta” – two different version streamed over a combined 580,000 times – written by Luciano Luna Diaz and Maria luisa Inzunza Favela, and peformed by Jonatan Sanchez
- “Me He Dado Cuenta” – streamed over 440,000 times – written by Jose Luis Del Villar and Omar Valenzuela, and performed by Martin

1 Castillo, an American-born alternative corrido singer, songwriter,
2 drummer, and producer, whose solo recordings have been hits on the
3 Mexican Regional charts, and who is widely known by fans as “the
4 King of Corrido” (king of the ballads) and “El Toron” (the eminence)

- 5 • “Asi Sera” – streamed over 500,000 times – written by Jose Luis Del
6 Villar and performed by Martin Castillo

7 12. In 2014, SESAC, the second oldest performing rights organization in
8 the United States, gave Latina Radio Performance Awards to the songs “Adivina”
9 performed by Noel Torres, written by Luciano Luna, and co-published by Del New
10 Music and Gerencia 360; “Me Interesas” performed by Noel Torres, written by
11 Luciano Luna, and published by Gerencia 360; and “Me He Dado Cuenta”
12 performed by Martín Castillo, written by Luis Del Villar and Omar Valenzuela, and
13 published by Gerencia 360. Gerencia 360 is clearly a major force in the Latina
14 market, owning songs with huge popularity and dominating the charts in the
15 Mexican regional music arena. Spotify is a Delaware corporation with its principal
16 place of business in New York, New York. Spotify owns and operates the Service –
17 an online interactive music streaming service, which can be principally accessed at
18 www.spotify.com. The Service consists of both an advertisement-supported service
19 that is free to subscribers and a premium service that costs \$9.99 per month and is
20 advertisement-free. Spotify is qualified to do business in State of California and has
21 registered as a foreign corporation with the California Secretary of State. Spotify
22 also has a designated agent for service of process in Los Angeles, National
23 Registered Agents, Inc., with an address of 818 W. Seventh St., Ste 930, Los
24 Angeles, CA 90017.

25 13. It is actively doing business in California with offices in Los Angeles
26 and San Francisco. Spotify operates the Service in California, has millions of
27 subscribers and end users in California, has entered into contracts and other
28

1 transactions in California (including with record labels, publishers and developers),
2 and generates millions of dollars in revenue from California residents.

3 14. Spotify has previously admitted in other federal filings that personal
4 jurisdiction is proper in California. *PacketVideo Corp v. Spotify USA Inc., et. al*,
5 Case No. CV 11-1659-IEG-WMCx (S.D. Cal. 2011), Dkt. 14 at ¶ 9 (“Defendants do
6 not dispute that this Court has personal jurisdiction over Spotify USA, Inc. and
7 Spotify Limited.”).

8 15. Spotify’s User’s Terms of Use specify California as the choice of law
9 for all disputes with its users in the United States and requires any dispute, claim, or
10 controversy to be resolved in state or federal courts in one of two states – California
11 being one of them.

12 16. Spotify Developer’s Terms of Use specify California as the choice of
13 law for all disputes with its third-party developers worldwide and require any
14 dispute, claim, or controversy to be resolved in state or federal courts in only one
15 state – California.

16 17. In 2013, in an attempt to invoke the provisions of the Class Action
17 Fairness Act (CAFA) for the removal of an action filed against it in California, Spotify
18 relied on its extensive contacts with California and its residents, including
19 a declaration that those residents in 2013 had spent more than \$15 million for
20 subscriptions to Spotify’s paid Premium service. (*Bleak v. Spotify USA, Inc.*, Case
21 No. CV 13-5653-CRB (N.D. Cal. 2013), Dkt. 2 at ¶ 7(d) (Declaration of Göran
22 Sander, analyst in Spotify’s Analytics teams).

23 18. By its own admissions, Spotify maintains two offices in California,
24 including one in this District.

25 19. Spotify routinely seeks to employ, and does employ senior level
26 employees in California. Spotify currently employs the head of artist services and
27 the head of original content licensing in its Los Angeles office. It is also currently
28

1 seeking a Director of Publishing and Songwriter Relations in Los Angeles and a
2 Strategic Partnership Manager for Software and Technology in San Francisco.

3 20. On October 10, 2014, in collaboration with the Music Managers’
4 Forum (MMF) and the Featured Artists Coalition (FAC), Spotify specifically hosted
5 a meeting in Los Angeles to discuss streaming with artists as part of its artist
6 outreach campaign.

7 21. On February 13, 2016, Spotify threw a “Creators party” at Cicada in
8 Los Angeles to appeal to artists, producers, and songwriters.

9 22. Spotify has sought to transfer cases to California on the grounds that it
10 is a more convenient forum. *iMTX Strategic, LLC, v. Spotify USA, Inc.*, Case No.
11 CV 15-325-GMS (D. Del. 2014) Dkt. 12 (Spotify’s motion to transfer venue to the
12 Northern District of California).

13 23. In 2009, Spotify’s music content team entered into a licensing deal with
14 InGrooves, which is based in San Francisco, California. The InGrooves catalogue
15 includes artists like Dolly Parton, The Crystal Method, Andrew Bird, Too \$hort, and
16 Thievery Corporation.

17 24. The true names and capacities (whether individual, corporate, associate
18 or otherwise) of the defendants named herein as Does 1 through 10, inclusive, are
19 unknown to Plaintiffs, who therefore sue said defendants by such fictitious names.
20 Plaintiffs will amend this Complaint to allege their true names and capacities when
21 such have been ascertained. Upon information and belief, each of the Doe
22 defendants herein is responsible in some manner for the occurrences herein alleged,
23 and Plaintiffs’ and class members’ injuries as herein alleged were proximately
24 caused by such defendants’ acts or omissions.

25 25. Plaintiffs are informed and believe, and on that basis allege, that at all
26 times mentioned in this Complaint, Spotify and each of the Doe defendants were the
27 agent of each other and, in doing the things alleged in this Complaint, were acting
28 within the course and scope of such agency.

1 **JURISDICTION AND VENUE**

2 26. This is a civil action seeking damages and injunctive relief for
3 copyright infringement under the Copyright Act, 17 U.S.C. §101 *et seq.*

4 27. This Court has original subject matter jurisdiction of this action
5 pursuant to 28 U.S.C. §§1331 and 1338(a).

6 28. This Court has personal jurisdiction over Defendants because, among
7 other things, they do continuous and systematic business in California and in this
8 District and maintain one or more offices and employ personnel in California.
9 Additionally, as described above, Defendants have conceded they are subject to
10 personal jurisdiction in California and have directed their business conduct to
11 California. Defendants have also committed acts of copyright infringement in
12 California and have performed acts directed at and causing harm in California.

13 29. Venue is proper in this District pursuant to 28 U.S.C. §§1391(b) and (c)
14 and 1400(a) because Spotify is subject to personal jurisdiction in this District and
15 because a substantial part of the events or omissions by Spotify giving rise to the
16 claims occurred in this District.

17 **CLASS ALLEGATIONS**

18 30. Plaintiffs bring this action as a class action pursuant to Fed. R. Civ.
19 Proc. 23 on behalf of themselves and on behalf of a class of similarly situated
20 copyright owners of musical compositions defined as:

21 All persons or entities who own the copyright in a musical
22 composition: (a) for which a certificate of registration has been
23 issued or applied for; and (b) that was reproduced and distributed
24 through interactive streaming and/or limited downloads by
25 Defendants without a license during the last three years.

26 31. This action has been brought and may be properly maintained as a class
27 action because there is a well-defined community of interest in the litigation and the
28 members of the proposed class are readily and easily ascertainable and identifiable.

1 32. The members of the class are so numerous that joinder of all members
2 is impracticable. Plaintiffs are informed and believe, and on that basis allege, that
3 there are thousands of members in the class who can be readily located, identified
4 from various databases and records (including those maintained by Spotify, the
5 United States Copyright Office, and HFA) and through discovery, and notified of
6 this action.

7 33. Plaintiffs' claim for copyright infringement is typical of the claims of
8 the members of the class, and Plaintiffs' interests are consistent with and not
9 antagonistic to those of the other members of the class they seek to represent.
10 Plaintiffs and all members of the class have sustained damages and face irreparable
11 harm arising out of Defendants' continued infringement as alleged herein and, thus,
12 are entitled to recover actual damages and/or statutory damages and obtain
13 injunctive relief to prevent further wrongful conduct by Defendants.

14 34. Plaintiffs have no interests that are adverse to, or which conflict with,
15 the interests of the absent members of the class and they are able to fairly and
16 adequately represent and protect the interests of such a class. Plaintiffs believe
17 strongly in the protection of the copyrights of songwriters and music publishers.
18 Plaintiffs have raised a viable claim for copyright infringement of the type
19 reasonably expected to be raised by members of the class, and will diligently and
20 vigorously pursue that claim. If necessary, Plaintiffs may seek leave of the Court to
21 amend this Complaint to include additional class representatives to represent the
22 class or additional claims as may be appropriate. Plaintiffs are represented by
23 experienced, qualified, and competent counsel who are committed to prosecuting
24 this action.

25 35. Common questions of fact and law exist as to all members of the class
26 that plainly predominate over any questions affecting only individual members of
27 the class. These common legal and factual questions, which do not vary from class
28 member to class member, and which may be determined without reference to the

1 individual circumstances of any class member, include (without limitation) the
2 following:

3 (A) Whether Defendants reproduced and distributed musical
4 compositions through interactive streaming and/or limited downloads without
5 a license during the last three years;

6 (B) Whether Defendants' reproduction and distribution of musical
7 compositions through interactive streaming and/or limited downloads without
8 a license constitutes direct infringement in violation of the Copyright Act, 17
9 U.S.C. §101 *et seq.*;

10 (C) Whether Defendants' acted willfully with respect to the acts
11 complained of herein;

12 (D) The basis and method for determining and computing damages,
13 including statutory damages; and

14 (E) Whether Defendants' infringing conduct is continuing, thereby
15 entitling the members of the class to injunctive or other relief.

16 36. A class action is superior to other available methods for the fair and
17 efficient adjudication of this controversy because individual litigation of the claims
18 of all class members is impracticable. The claims of the individual members of the
19 class may range from smaller sums to larger sums. Thus, for those class members
20 with smaller claims, the expense and burden of individual litigation may not justify
21 pursuing the claims individually. And even if every member of the class could
22 afford to pursue individual litigation, the court system could not be so encumbered.
23 It would be unduly burdensome to those courts in which individual litigation of
24 numerous cases would otherwise proceed. Individualized litigation would also
25 present the potential for varying, inconsistent, or contradictory judgments and would
26 magnify the delay and expense to all parties and to the court system resulting from
27 multiple trials of the same factual issues. By contrast, the maintenance of this action
28 as a class action presents few management difficulties, conserves the resources of

1 the parties and court system, and protects the rights of each member of the class.
2 Plaintiffs anticipate no difficulty in the management of this action as a class action.

3 **CLAIM FOR RELIEF**

4 **(Copyright Infringement – Against All Defendants)**

5 37. Plaintiffs hereby incorporate the allegations set forth above in
6 paragraphs 1 through 20 above, as though fully set forth herein.

7 38. Under §106 of the Copyright Act, the copyright owner of a musical
8 composition has the exclusive rights to reproduce and distribute the compositions in
9 phonorecords. 17 U.S.C. §106(1) and (3). This includes the exclusive rights to
10 make or authorize DPDs, interactive streams, and limited downloads of the musical
11 compositions through subscription or non-subscription online digital music services.
12 *See* 17 U.S.C. §115(d), 37 C.F.R. §§385.10, 385.11.

13 39. Spotify’s online interactive music streaming service, www.spotify.com,
14 is offered to end users in the United States on an advertising-free paid subscription
15 basis or an advertiser-supported no-subscription basis. Spotify distributes
16 phonorecords embodying musical compositions to its end users through interactive
17 streaming and limited downloads available on their computers and mobile devices.
18 Plaintiff is further informed and believes, and on that basis alleges, that Spotify also
19 makes server copies in the United States of phonorecords embodying the musical
20 compositions at issue in this litigation.

21 40. In order to lawfully make and distribute phonorecords embodying the
22 musical compositions as set forth above, Spotify must have first obtained not only a
23 license for each individual phonorecord from its owner(s), but also a separate
24 license for the underlying musical composition that is embodied in each separate
25 phonorecord from the copyright owner of such composition. Spotify can either
26 license musical compositions directly or by obtaining a compulsory license in
27 accordance with the terms of 17 U.S.C. §115 by serving a timely NOI. Failure to
28 serve or file the requisite NOI “within thirty days after making, and before

1 distributing any phonorecords of the work...forecloses the possibility of a
2 compulsory license and, in the absence of a voluntary license, renders the making
3 and distribution of phonorecords actionable as acts of copyright infringement.” 17
4 U.S.C. §115(b)(1) and (2).

5 41. Spotify did not have and does not have a comprehensive system of
6 music publishing administration in place necessary to license all of the songs
7 embodied in phonorecords which it ingests and distributes by means of interactive
8 streaming and temporary downloads. Rather than decline to distribute phonorecords
9 embodying musical compositions that are unlicensed, however, Spotify elected
10 instead to engage in wholesale copyright infringement.

11 42. Ferrick is the registered copyright owner of all of the musical
12 compositions listed on Exhibit A attached hereto and incorporated herein by this
13 reference (“Ferrick’s musical compositions”). Ferrick’s musical compositions have
14 been distributed through interactive streaming and temporary downloads by Spotify
15 approximately one million times within the last three years. Ferrick is further
16 informed and believes, and on that basis alleges, that server copies thereof have also
17 been made by Spotify within the last three years. Ferrick’s musical compositions
18 have not been licensed by Spotify either directly or by a compulsory license in
19 accordance with 17 U.S.C. §115.

20 43. Pastorius owns all interests in Jaco’s registered copyrighted musical
21 compositions that he owned at the time of his death, including any interests that
22 were owned by his first wife (“Pastorius’ musical compositions”). A representative
23 sampling of the Pastorius musical compositions are listed on Exhibit B attached
24 hereto and incorporated herein by this reference.

25 44. Pastorius’ musical compositions have been distributed through
26 interactive streaming and temporary downloads by Spotify millions of times within
27 the last three years. Pastorius is further informed and believes, and on that basis
28 alleges, that server copies thereof have also been made by Spotify within the last

1 three years. Pastorius’ musical compositions have not been licensed by Spotify
2 either directly or by a compulsory license in accordance with 17 U.S.C. §115.

3 45. Gerencia 360 Publishing is the registered copyright owner or
4 registration pending copyright owner of all of the musical compositions listed on
5 Exhibit C attached hereto and incorporated herein by this reference (“Gerencia 360
6 Publishing’s musical compositions”). Gerencia 360 Publishing’s musical
7 compositions have been distributed through interactive streaming and temporary
8 downloads by Spotify millions of times within the last three years. Gerencia 360
9 Publishing is further informed and believes, and on that basis alleges, that server
10 copies thereof have also been made by Spotify within the last three years. Gerencia
11 360 Publishing’s musical compositions have not been licensed by Spotify either
12 directly or by a compulsory license in accordance with 17 U.S.C. §115.

13 46. Plaintiffs are further informed and believe, and on that basis allege, that
14 the musical compositions owned by the members of the class have been distributed
15 by Spotify through interactive streaming and temporary downloads and that Spotify
16 has also made server copies thereof during the last three years, all without either a
17 direct or compulsory license.

18 47. Spotify’s unlawful reproduction and distribution of the musical
19 compositions owned by Plaintiffs and the members of the class as alleged
20 hereinabove constitutes copyright infringement under the Copyright Act. 17 U.S.C.
21 §101 *et seq.*

22 48. Spotify’s acts of infringement have been willful, intentional, and
23 purposeful, in disregard of and indifference to the rights of Plaintiffs and the
24 members of the class.

25 49. As a direct and proximate result of Defendants’ infringement of
26 Plaintiffs’ copyrights and the copyrights of the members of the class, pursuant to 17
27 U.S.C. §504(c), Plaintiffs and the class members are entitled to recover up to
28 \$150,000 in statutory damages for each musical composition infringed.

1 Alternatively, at their election, pursuant to 17 U.S.C. §504(b), Plaintiffs and the
2 class members are entitled to their actual damages, including Spotify's profits from
3 infringement, as will be proven at trial.

4 50. Plaintiffs and the class members are also entitled to recover attorney's
5 fees and costs pursuant to 17 U.S.C. §505, and prejudgment interest according to
6 law.

7 51. Spotify is causing, and unless enjoined by the Court will continue to
8 cause, Plaintiffs and the class members irreparable harm for which they have no
9 adequate remedy at law. Plaintiffs and the class members are entitled to an
10 injunction under 17 U.S.C. §502 prohibiting the continued infringement of their
11 musical compositions.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of all other
14 members of the class, pray for Judgment against Spotify and the Doe Defendants,
15 and each of them, as follows:

16 A. Determining that this is a proper class action maintainable pursuant to
17 Rule 23 of the Federal Rules Civil Procedure, certifying Plaintiffs as class
18 representatives and Plaintiffs' counsel as class counsel;

19 B. For compensatory and/or statutory damages in an amount in excess of
20 \$200 million, according to proof;

21 C. A temporary, preliminary, and permanent injunction enjoining and
22 restraining Defendants, and their respective agents, servants, directors, officers,
23 principals, employees, representatives, subsidiaries and affiliated companies,
24 successors, assigns, and those acting in concert with them or at their direction, and
25 each of them, from continued unlicensed reproduction and distribution of the
26 copyrighted musical compositions owned by Plaintiffs and the members of the class;

27 D. For pre- and post-judgment interest.
28

1 E. For such fees and costs (including reasonable attorney’s fees) incurred
2 herein as permitted by law.

3 F. For such other and further relief as the Court deems just and proper.

4 Dated: June 27, 2016

HENRY GRADSTEIN
MARYANN R. MARZANO
DANIEL LIFSCHITZ
GRADSTEIN & MARZANO, P.C.

MARC M. SELTZER
STEVEN G. SKLAVER
KALPANA D. SRINIVASAN
KRYSTA KAUBLE PACHMAN
SUSMAN GODFREY L.L.P.

10 STEPHEN E. MORRISSEY (187865)
11 smorrissey@susmangodfrey.com
12 SUSMAN GODFREY L.L.P.
13 1201 3rd Avenue, Suite 3800
14 Seattle, WA 98101
15 Telephone: (206) 373-7383
16 Facsimile: (206) 516-3883

17 By: /s/ Maryann R. Marzano
18 Maryann R. Marzano
19 *Interim Co-Lead Class Counsel*

20
21
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

Plaintiffs demand a trial by jury of the claim alleged in this Complaint.

Dated: June 27, 2016

HENRY GRADSTEIN
MARYANN R. MARZANO
DANIEL LIFSCHITZ
GRADSTEIN & MARZANO, P.C.

MARC M. SELTZER
STEVEN G. SKLAVER
KALPANA D. SRINIVASAN
STEPHEN E. MORRISSEY
KRYSTA KAUBLE PACHMAN
SUSMAN GODFREY L.L.P.

By: /s/ Maryann R. Marzano
Maryann R. Marzano

Interim Co-Lead Class Counsel

EXHIBIT A

Melissa Ferrick – Copyright Registrations

<u>COMPOSITION</u>	<u>REGISTRATION NO.</u>
Aida	PA0000846013
All For Me	PA0001213408
Alone	PA0000846013
Anchor Up	SR1-2923879852 (PENDING)
Anything Anywhere	PAu002857415
Asking For Love	PA0000846013
Back In Love	PA0001213408
Bad Bad Girl	PAu002857415
Beijing	PAu002857415
Blind Side	PA0000996607
Blue Sky Night	PA0000848484
Break Up Song	PA0001213409
Breaking Vows	PA0000848484
Burn This Guitar	PA0001213408
Careful	SR1-2923879852 (PENDING)
Checking In	PAu003560073
Closer	PA0001669452
Come On Life	PA0001669452
Crack The Mirror	PA0001213409
Cracker Jack Kid	PA0000846170
Do It Over	PAu002339071
Don't Say Goodbye	PAu002323653
Drive	PA0000996607
E-Mail	PA0001213409
Easy	PA0001669452
Elephant	SR1-2923879852 (PENDING)
Every Three Words	PAu002857415
Everything I Need	PAu002323653
Everything You Get	PA0001669452
Everything You Were	PA0001861438
Faking	PA0000846170
Falling On Fists	PA0000846170
Favorite Person In The World	PA0000849237
Fear And Time	PAu002323653
Fearless	PAu002857415
Fighting Chance	PA0001213408

For Once In My Life	PA0000848484
Freedom	PA0000996607
Frog Named Freddy	PA0000846013
Go Easy On Me	PA0001861438
Gotta Go Now	PA0000846170
Happy Song	PA0000848484
Headphones On	PAu003560073
Hello Dad	PA0000848484
Heredity	PA0000849237
Hold On	PA0000996608
Home	PA0001861438
Honest Eyes	PA0000848484
I Am Done	PA0000846170
I Am Not	PA0000846170
I Don't Want You To Change	PA0001861437
I Give Up	PAu002857415
I Like it That Way	PAu002323653
I Still Love You	PA0001213409
I Will Arrive	PAu002339071
I Will Back You Up	PAu003560073
In A World Like This	PA0000848484
Inside	PA0001669452
It's Alright	PAu002323653
It's Been A Long Time	PA0001669452
Let Me Go	PA0000849237
Let's Fly	PA0001213408
Little Love	PA0000996607
Love Ain't Afraid	PA0001861438
Love Song	PA0000848484
Marie in the Middle	PA0001213408
Massive Blur	PA0000848484
Mercy	PA0001213409
Nebraska	PAu002857415
Never Give Up	PA0001669452
North Carolina	PA0000996607
One Night Stand	PA0001213409
One Of A Kind	PAu003560073
One Year	PA0001669452
Overboard	PA0001861438
Particular Place To Be	PAu002323653

Pity Song	PA0001861438
Relief	SR1-2923879852 (PENDING)
Rest Now	PA0001669452
Run Out Of Me	SR1-2923879852 (PENDING)
Say Yes	SR1-2923879852 (PENDING)
Scenic View	SR1-2923879852 (PENDING)
Seconds Like These	PAu003560073
Selfish Side	PA0001213408
Shatter Me	PA0001213408
Sideways	SR1-2923879852 (PENDING)
Singing With The Wind	PAu003560073
Sky Above	PA0001213409
Some Kinda Nerve	PA0000996607
Somebody Help Me	PA0000846013
Somehow We Get There	PA0000846170
Stand Still	PAu002339071
Stars Outnumber Our Hearts	SR1-2923879852 (PENDING)
Still Right Here	PAu003560073
Streetlight	PAu002857415
Stuck	PA0001669452
Take In All The Plants	PA0001861438
Take Me All	PA0000848484
Taken A Liking	PA0000846013
Ten Friends	PA0000848484
The Meaning Of Love	PA0000848484
The Other Side	PAu002857415
The Stranger	PA0000996607
The Truth Is	PA0001861438
Then So It Is	PA0000996608
Thinking	PA0001213408
This Is Love	PA0000996607
This Time Of Year	PAu003560073
Til You're Dead	PA0000846170
Time Flies	PA0000846170
Time To Leave	PA0001861438
To Feel Real	PA0001213409
To Let You See Me	PA0000846013
Trouble In My Head	PA0000846170
Trust It All	SR1-2923879852 (PENDING)
Weightless And Slow	PAu003560073

Welcome To My Life	PA0001213409
Westbound	PAu002857415
What Have I Got To Lose	PA0000848484
When You Left	PA0000846170
Who Knows Why	PA0001213409
Will You Be The One	PA0001213409
Willing To Wait	PA0000846170
Win 'Em Over	PA0000996608
Wonder Why	PA0000848484
Wreck Me	PA0001861438
You	PA0001213408
You Let Me Be	PAu003560073
You've Known It All Along	PA0000849237

EXHIBIT B

Jaco Pastorius – Copyright Registrations

<u>COMPOSITION</u>	<u>REGISTRATION NO.</u>
Balloon Song	Eu 509261; PA0000495308; RE0000874334
Barbary Coast	Eu 664403
Birth of an Island	PA0000646311
Come On, Come Over	Eu 641747
Continuum	Eu 509262; Eu 641758; PA0000204723; RE0000874335
Crisis	PA0000113602
Dania	PAu001134101
Dara Factor Two	PA0000136074
Eye Candy	PA0001899891
Forgotten Love	Eu 641752
Good Morning, Annya	PA0000646310
Guitarra	Eu 641751
Havona	Eu 641749; Eu 751120; PA0000006206; RE0000925657
Kuru	Eu 509260; Eu 641755; RE0000874333
Las Olas	Eu 641748; PAu000013457
Liberty City	PA0000113602
Microcosm	Eu 641750
Nativity	Eu 823592

Okonkole Y Trompa	Eu 641754; PAu001869750
Opus Pocus	Eu 641756
Portrait of Tracy	Eu 641753
Pullin' Me Back	PA0001165537
Punk Jazz	PA0000017456
Rain	PA0001004572
Rappaz R.N. Dainja	PA0000951040
Reza	PA0000204724
Reza (Reprise)	PA0000204725
River People	PA0000017456
Slang	PA0000047748
Soul Intro	PA0000204722
Teen Town	Eu 751119; PA0000006204; RE0000925656
Three Views of a Secret	PA0000091383
(Used To Be A) Cha Cha	Eu 641757
Village of the Angels	Eu 664402

EXHIBIT C

Gerencia 360 Publishing – Copyright Registrations

<u>COMPOSITION</u>	<u>REGISTRATION NO.</u>
A Que No Puedes	Registration Pending
Adivina	1-2957635731 (In Progress)
Al Estilo Pop	Registration Pending
Alcapone De La Sierra	Registration Pending
Alfredo Beltran Guzman	PA0001942572
Amaneci Con Ganas	1-2940931469 (In Progress)
Andas Mal	Registration Pending
Aqui No Seremos Tres	Registration Pending
Asi Sera	Registration Pending
Atentamente Damaso	Registration Pending
Bella Doctora	Registration Pending
Bien Loco En La Sierra	Registration Pending
Buena Vision	Registration Pending
Chelis Caro	Registration Pending
Conmigo	Registration Pending
Corrido de Bob	Registration Pending
Corrido de Bob Esponga	Registration Pending
Corrido de Capitan Campoy	Registration Pending
Corrido de Juan Carlos	Registration Pending
Corrido de Lake	Registration Pending
Corrido de Lechon	Registration Pending
Corrido de Venancio	Registration Pending
Corrido del AB	Registration Pending
Corrido del Chore Cuadras	Registration Pending
Corrido del Lechon	Registration Pending
Corrido del MC	PA 1-980-054
Corrido del Mundo	Registration Pending
Cuadras Me Apellido	Registration Pending
Curando Las Penas	Registration Pending
De Cama En Cama	Registration Pending
De Compadre A Compadre	Registration Pending
De Un Valor Muy Grande	Registration Pending
Dime	PA0001942572
Dinero Llama Dinero	Registration Pending
Dos Banderas	Registration Pending
Dos Compadres Diplomados	Registration Pending

Dueto Preguntale	Registration Pending
Duros Como Roca	Registration Pending
El 15nas	Registration Pending
El Arte De La Mentira	Registration Pending
El Barbon	Registration Pending
El Bob Oh El Compa Vasquez	Registration Pending
El Bronco de la Barba	Registration Pending
El Capitan	Registration Pending
El Chaleco de Mi Padre	Registration Pending
El Chapo Barrial	Registration Pending
El Chente	Registration Pending
El Consentido De La Palma	Registration Pending
El Corrido de Icta	Registration Pending
El De Ancia En El Brazo	Registration Pending
El de Los Brazos Fuertes	Registration Pending
El de Los Ojos Claros	Registration Pending
El Desmadroso	Registration Pending
El Equipo Codiciado	PA 1-980-054
El Gabacho	Registration Pending
El Gordo	Registration Pending
El Hijo del Guano	Registration Pending
El Hijo del Ingeniero	Registration Pending
El Karma	PA 1-981-895
El Kakaro	Registration Pending
El Leon De La Vainilla	Registration Pending
El Liebre Recargado	Registration Pending
El Mini Lic	Registration Pending
El N1 El Perfil o El Chavalon	PA 1-980-054
El Nuevo Perfil	PA 1-980-054
El Parcero	Registration Pending
El Perfil del Muchacho	Registration Pending
El Pino	Registration Pending
El Precavido	Registration Pending
El Primo	Registration Pending
El Prinsipito	Registration Pending
El Raspon	Registration Pending
El Rival Mas Fuerte	Registration Pending
El Tiempo Es Caro	PAu003790549
El Trebol	Registration Pending
Ella No Es Como Tu	Registration Pending

Es Para Ti	Registration Pending
Es Tiempo De Guerra	1-2957717785 (In Progress)
Escuadras Me Apellido	Registration Pending
Estoy Convencido	PA 1-980-054
Estoy Reprobado	Registration Pending
Fue La Ocasion	PA0001942572
Gallos Y Caballos	Registration Pending
Hombre Enamorado	Registration Pending
Humilde Y Humanitario	Registration Pending
Igual de Locos	Registration Pending
Iniciales NQ	Registration Pending
Ivan El Cegas Pobladas	Registration Pending
Joaquin Archivaldo Guzman	Registration Pending
Joaquin El de La Sierra	Registration Pending
Juan Ignacio	Registration Pending
La Cita de Jesus Maria	Registration Pending
La Corriente	Registration Pending
La Distraccion	Registration Pending
La Distribucion	Registration Pending
La Escuela De Damaso	Registration Pending
La Parranda Va A Empezar	Registration Pending
La Tentacion	Registration Pending
La Ultima Cena	Registration Pending
La Vida de Leon	PA 1-980-054
La Vida Sigue Sin Ti	Registration Pending
Licenciado Damaso	Registration Pending
Llegaste A Mi	Registration Pending
Los Herederos	PA0001942572
Los Refranes	Registration Pending
Los Tres Chapos	Registration Pending
Los Viejos Tiempos	PA0001942572
Me He Dado Cuenta	PA0001894122
Me Interesas	PA0001894123
Me Pongo De Pie	Registration Pending
Me Quisieron Hechar Tierra	Registration Pending
Me Vine De Tecomates	Registration Pending
Memo El Empresario	Registration Pending
Mi Amigo, Mi Enemigo	Registration Pending
Mi Primera Vez	1-2957718193 (In Progress)
Mis Gustos, Mis Placeres	Registration Pending

Mis Relatos	Registration Pending
Mujer Ardida	Registration Pending
Mujeres De Tu Tipo	1-2957717751 (In Progress)
Mundo De Ilusiones	Registration Pending
Murio El Amor	PA0001942572
Necesito De Ti	Registration Pending
Neto Roca	Registration Pending
No Andan Cazando Venados	1-2941129602 (In Progress)
No Pasa Nada	1-2957717955 (In Progress)
No Te Conosia Estas Mañas	Registration Pending
Noche de Estreno	Registration Pending
Paniquiado	Registration Pending
Para Que Regresas	Registration Pending
Para Que Tantos Besos	1-2940931164 (In Progress)
Pasos Firmes	Registration Pending
Pensarte	1-2957717386 (In Progress)
Perfecta	1-2957800227 (In Progress)
Pinche Amor	Registration Pending
Por Aire Tierra O Mar	PA 1-980-054
Por Haber Sido Mia	1-3058278695 (In Progress)
Por Nombre Ivan Archivaldo	PA0001942572
Por Teo Soy Apodado	PA 1-980-054
Porte De Toro Fino	Registration Pending
Quiero Saber	Registration Pending
Reaccion Sin Explicacion	Registration Pending
Recordando A Mi Padre	Registration Pending
Sabes	Registration Pending
Sangre De Valientes	Registration Pending
Sangre Sinaloense	Registration Pending
Seguimos Activos	Registration Pending
Si Nos Quisieron Matar	Registration Pending
Si Te Desperte	Registration Pending
Sobrino de La Tia Juana	PA 1-980-054
Soy De Apatzingan	Registration Pending
Soy El Cuya	Registration Pending
Soy Zambada	Registration Pending
Tan Facil y Simple	Registration Pending
Te Acuertas De Tu Amiga	1-2957717819 (In Progress)
Te Mato Otra Vez	Registration Pending
Te Va A Doler	Registration Pending

Te Voy A Olvidar	PA0001942572
Todo Contigo	Registration Pending
Todo Terreno	Registration Pending
Tomen Nota	1-2957717853 (In Progress)
Toxina Mortal	Registration Pending
Tu Perfil	Registration Pending
Unas Heladas	Registration Pending
Universidad De La Vida	Registration Pending
Va Para El Otro	Registration Pending
Viendote Dormida	1-2940931568 (In Progress)
Ya Nadie Quiere Servir	Registration Pending
Yo Soy Asi	Registration Pending
Yo Soy El Renacimiento	Registration Pending
Yo Soy Ivan	PA 1-980-054
Yo Soy Ivan (Maximo Grado Version)	PA 1-980-054