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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE COURTHOUSE

17 DARNAA, LLC, a Connecticut)
18 Limited Liability Company,)
19 Plaintiff,)
20 vs.)
21 GOOGLE, INC., a Delaware)
22 Corporation, and YOUTUBE, LLC,)
23 A Delaware Limited Liability)
24 Company,)
25 Defendants.)

Case No.: _____

**COMPLAINT SEEKING
COMPENSATORY AND
PUNITIVE DAMAGES
ARISING FROM: (1) BREACH
OF CONTRACT PER BREACH
OF COVENANT OF GOOD
FAITH AND FAIR DEALING;
(2) INTENTIONAL
INTERFERENCE WITH
PROSPECTIVE ECONOMIC
DAMAGE; (3) NEGLIGENT
INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE; AND
(4) DEFAMATION, TRADE
LIBEL AND/OR FALSE
REPRESENTATION OF FACT
IN VIOLATION OF THE
LANHAM ACT**

DEMAND FOR JURY TRIAL

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1 Plaintiff Darnaa, LLC complains and alleges as follows:

2 **JURISDICTION AND VENUE**

3 1. This Court has subject matter jurisdiction herein pursuant to 28
4 U.S.C. §1332 (Diversity of Citizenship), in that the amount in controversy is in
5 excess of \$75,000, and Plaintiff is deemed to be a citizen of Connecticut for
6 diversity of citizenship purposes because it was formed and has its principal place
7 of business in Connecticut; and defendants are deemed to be citizens of Delaware
8 and California in that they were both formed in Delaware and have their principal
9 places of business in California. This Court also has subject matter jurisdiction
10 herein pursuant to 28 U.S.C. § 1331 (Federal Question) in that one of the causes of
11 action arises under the laws of the United States, namely, 15 U.S.C. § 1125.

12 2. Both defendants are subject to personal jurisdiction in California
13 because each has its principal place of business in California.

14 3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391
15 (b) in that both defendants are deemed to reside in said judicial district because
16 each has its principal place of business in said district. Moreover, paragraph 14 of
17 the Terms of Service contract (Exhibit 1 hereto) provides that any claim arising in
18 whole or in part from the display of a video on the YouTube Website shall be
19 decided exclusively by a court of competent jurisdiction located in Santa Clara
20 County, California, the county in which this Court is located.

21 **INTRADISTRICT ASSIGNMENT**

22 4. The San Jose Courthouse is the proper Courthouse at which this case
23 should be assigned pursuant to the facts set forth in paragraph three, above, which
24 are incorporated herein by reference.

25 **THE PARTIES**

26 **Darnaa, LLC**

27 5. At all times relevant herein, Plaintiff was and is a limited liability
28 company organized and existing under the laws of the State of Connecticut, with

1 its principal place of business in the State of Connecticut.

2 6. Plaintiff is informed and believes and thereupon alleges that at all
3 times relevant herein, defendant Google, Inc. (“Google”) was and is a corporation
4 organized and existing under the laws of the State of Delaware, with its principal
5 place of business in Santa Clara County, California.

6 7. Plaintiff is informed and believes and thereupon alleges that at all
7 times relevant herein, defendant YouTube, LLC (“YouTube”) was and is a limited
8 liability company organized and existing under the laws of the State of Delaware,
9 with its principal place of business in Santa Clara County, California.

10 8. Plaintiff is informed and believes and thereupon alleges that at all
11 times relevant herein, YouTube was and is wholly owned and controlled by
12 Google and acted and presently acts as the agent of Google and in concert and
13 participation with Google, such that all acts of YouTube were and are imputable to
14 Google as the principal of YouTube.

15 9. At all times relevant herein, Plaintiff owned and operated an
16 Independent Music Label whose business was and is to enter contracts with
17 musical recording and performing artists, and share in the earning of revenues
18 with such artists by producing and promoting the musical recording and
19 performing careers of such artists, such that Plaintiff and said artists jointly earn
20 revenue by, including without limitation: the sale of recorded music and live
21 musical performances by the artists, commercial endorsements by the artists, the
22 sale of products related to the artists, and garnering advertising revenue by using
23 the artists’ musical performances, including music videos, as the entertainment to
24 attract the advertising audience.

25 **Darnaa (Non-party)**

26 10. At all times relevant herein, Darnaa was and is a professional music
27 recording and performing artist that is under contract to Plaintiff. As
28 differentiated from famous, financially successful music artists which are known

1 as established artists, although Darnaa has professionally participated in the music
2 business for a few years, she is considered to be a new or unestablished music
3 artist. Through the date of the filing of this Complaint, Darnaa has professionally
4 recorded 40 songs and released three for sale to the public, has performed in the
5 production of 11 music videos depicting her singing various of her recorded
6 songs, and has performed in more than 60 live performance engagements. Such
7 music videos were produced for display on the Internet as one of the means of
8 advertising and promoting Darnaa's professional career in the music business for
9 the purpose of increasing the revenues from her professional activities that are
10 jointly shared by Plaintiff and Darnaa. As a result of the sale of her recorded
11 music, the display of her music videos on the Internet, her live performances, and
12 a variety of promotional and advertising activities, including the use of Internet
13 social media, although Darnaa has not reached the level of being considered an
14 established artist in the music business, she does have a significant fan base that
15 knows and admires her musical talents.

16 11. During the course of the aforesaid Plaintiff-Darnaa contractual
17 relationship, in order to promote the professional career of Darnaa, Plaintiff has
18 monetarily invested in excess of \$4 million, including without limitation:
19 expenditures for singing and performing lessons, clothing, grooming, traveling,
20 advertising, promotion, production of recorded music, and production of music
21 videos.

22 **Google**

23 12. At all times relevant herein, amongst other commercial enterprises,
24 Google was and is a world-wide major advertising company, including the earning
25 of substantial advertising revenues from activities on the Internet, the most well-
26 known of which is the Google Internet search engine, such that "Googling" has
27 become a generic term for searching for information on the Internet.

28 //

1 **YouTube**

2 13. In addition to being the name of one of the defendants, YouTube is
3 the name of a popular Website on the Internet which is self-described on the
4 Website as follows:

5 “Launched in May 2005, YouTube allows billions of people to
6 discover, watch and share originally-created videos. YouTube provides a
7 forum for people to connect, inform, and inspire others across the globe and
8 acts as a distribution platform for original content creators and advertisers
9 large and small.”

10 14. The YouTube Website was originally owned and operated by
11 defendant YouTube. However, several years ago and prior to the wrongful
12 conduct of defendants described herein, Google acquired defendant YouTube and
13 the YouTube Website. Plaintiff is informed and believes and thereupon alleges
14 that since said acquisition, the YouTube Website has been operated on behalf of
15 Google, and to the extent that it is operated by defendant YouTube, YouTube so
16 operates it as an agent for Google such that all activities in that regard performed
17 by YouTube are imputable to Google as its principal.

18 **GENERAL ALLEGATIONS**

19 15. In the present-day popular music industry, in order for a new or
20 unestablished music artist to launch a professional career and have a significant
21 opportunity to achieve financial success, it is imperative that the artist display one
22 or more music videos on the Internet and that the videos obtain a large number of
23 views by the public, meaning millions of views. Garnering this quantity of views
24 on the Internet has become the single most important indicia of potential success
25 for a new or unestablished artist. Although a music video’s obtaining a large
26 number of such views is not a guarantee of financial success, in today’s music
27 industry, it is not reasonable possible for a new or unestablished music artist to
28 achieve financial success without garnering such views.

1 16. Plaintiff is informed and believes and thereupon alleges that
2 presently, approximately 75% of the music artists in the popular music industry
3 are signed to recording companies that are affiliated with either of two major
4 record industry conglomerate groups: Universal Music Group (“Universal”) and
5 Sony Music Entertainment (“Sony”).

6 17. Plaintiff is informed and believes and thereupon alleges that:

7 In or about 2009, Universal, Sony, Google and Abu Dabi Media
8 formed a joint venture that launched Vevo, a website on which is displayed
9 the music videos of artists signed to Universal, Sony or their distributed
10 labels/affiliated entities worldwide. Only the music videos of artists signed
11 to such Universal or Sony group recording companies are displayed on
12 Vevo.

13 The music videos on Vevo are syndicated across the Internet, with
14 Google managing the advertising revenue-producing activities of the Vevo
15 Website, and Google and Vevo sharing said advertising revenue.

16 18. Plaintiff is informed and believes and thereupon alleges that:

17 Recording artists that are not signed to recording companies affiliated
18 with Vevo are relegated to displaying their music videos on the Internet on
19 websites other than Vevo. Of the various websites on which a recording
20 artist can display his or her music videos, by prevailing custom in the music
21 industry, the YouTube Website has emerged as the dominant, outcome-
22 determinative website for that purpose because the companies with whom a
23 recording artist must do business in order to achieve financial success look
24 to the number of music video views obtained on YouTube, as differentiated
25 from other websites, as the indicia of the artist’s popularity and potential for
26 economic success. These companies include record companies, music
27 publishers, talent agencies, concert promoters, and merchandising,
28 sponsorship, and advertising companies.

1 19. In summary, for a non-Vevo new or unestablished recording artist,
2 such as Darnaa, to have a significant opportunity of achieving economic success in
3 the music industry, the artist must display one or more music videos on YouTube
4 and demonstrate his or her popular appeal by garnering millions of views.

5 20. YouTube does not charge diplayers of videos to display their videos
6 on the YouTube Website. Notwithstanding, defendants earn substantial
7 advertising revenue from the operation of the YouTube Website from advertisers
8 who pay for advertising displayed on the Website because of the huge volume of
9 viewer traffic drawn to the Website to view the displayed videos. Some of the
10 Website advertising is on commercials embedded at the beginning of a music
11 video similar to television program commercials. Other advertising is side
12 advertising that is available for viewing by viewer traffic on the Website as they
13 navigate the Website in search of videos displayed thereon.

14 21. In order to increase the chances of any particular music video's
15 garnering the desired millions of views on the YouTube Website, record
16 companies, such as Plaintiff, sometimes spend hundreds of thousands dollars with
17 respect to the video, including without limitation: to produce a high entertainment
18 and technical quality music video, and then to promote and advertise the existence
19 of the video on YouTube in order to promote viewer traffic to the video, and in
20 particular, to the video's URL, i.e., the Internet address at which the video may be
21 viewed. In such promotion and advertising campaigns, the key advertising fact is
22 the URL at which the particular music video may be viewed, such that any
23 potential viewer inspired by the advertising and promotion campaign to view the
24 video need only access the URL on the Internet in order to so view it. A common
25 form of advertising to promote viewer traffic to a music video is to advertise on
26 websites other than YouTube, in which the advertisement contains an embedded
27 hyperlink to the video's URL on YouTube such that a viewer of the advertisement
28 on the other website can access the video on YouTube by clicking on the

1 embedded URL link, thereby enabling the viewer to view the video without
2 officially entering the YouTube Website and navigating on that site to find the
3 display of the video in question.

4 22. At all times relevant herein, any person or entity desiring to display a
5 video on the YouTube Website was required to electronically agree to the Terms
6 of Service contract (“TOS”) found on the YouTube Website. A copy of said TOS
7 that was in effect at the time of the wrongful conduct alleged in this Complaint is
8 attached hereto as Exhibit 1 and incorporated herein by reference.

9 23. The TOS is a contract of adhesion offered to persons and entities that
10 wish to display videos on the YouTube Website on a take it or leave it basis. The
11 use of such contracts of adhesion is exceedingly wide-spread on the Internet.
12 Plaintiff is informed and believes and thereupon alleges that, typically, users of the
13 Internet electronically agree to such contracts of adhesion without reading them
14 and therefore without knowing or understanding what their terms and provisions
15 are.

16 24. Because of the substantial cost involved in producing a high quality
17 music video, and the substantial cost of promoting viewership of the video display
18 on the YouTube Website pursuant to an advertising/promotion campaign, record
19 companies, such as Plaintiff, that produce and display music videos on YouTube
20 rely on the good faith and fair dealing of defendants not to do anything that would
21 unfairly and/or unreasonably interfere with the display of their music videos on
22 YouTube.

23 25. Plaintiff is informed and believes and thereupon alleges that as the
24 owner and operator of the YouTube Website, part owner of the Vevo Website, and
25 manager of the advertising revenue-producing activities of the Vevo Website with
26 Google and Vevo sharing said advertising revenue, at all times relevant herein,
27 defendants were and are well-aware of all of the above facts alleged herein in the
28 General Allegations section of this Complaint.

1 26. Prior to in or about March 2014, Plaintiff had produced and displayed
2 on the YouTube Website two music videos, featuring the musical performance of
3 Darnaa, as to the following songs with the following official view counts on said
4 Website:

5 Title	6 Dates	7 View Count
8 “Runaway”	9 2012	10 1.9 million
11 “Already Loving You”	12 2013	13 1.1 million

14 27. The two above music videos were posted on YouTube with a
15 relatively small advertising and promotion budget, almost exclusively relying on
16 social media and an extensive campaign with ReverbNation, which during the year
17 prior to the posting on YouTube of the “Cowgirl” video, garnered Plaintiff with
18 more than 20 million ReverbNation impressions. The view count results of the
19 aforesaid two videos on modest promotion/advertising budgets emboldened
20 Plaintiff to invest large amounts with regard to the “Cowgirl” video
21 promotion/advertising campaign, as more particularly set forth below.

22 28. In or about February 2014, Plaintiff posted a third music video on the
23 YouTube Website, featuring Darnaa’s performance of a song entitled “Cowgirl”
24 (“Cowgirl’ video”). The production cost of the video was \$100,000. Plaintiff
25 mounted an economically huge promotion and advertising campaign with respect
26 to the “Cowgirl” video in order to promote viewer traffic to its display on the
27 YouTube Website, specifying in the campaign the “Cowgirl” video URL on the
28 YouTube Website as the Internet address at which the video could be viewed. The
display and promotion of the video on YouTube was coordinated with and in
anticipation of the release of the recorded song, “Cowgirl,” being offered for sale
to the public on iTunes and/or Amazon.com, commencing April 1, 2014. The
promotion and advertising of the YouTube Website display of the “Cowgirl”
video, and coordinated iTunes and/or Amazon.com release of the song for sale to
the public included the following:

1 **Promotional Events**

2 a. **South by Southwest Music Fest.** Plaintiff spent \$350,000 at
3 the South by Southwest Music Fest for promotional activities before the
4 April 1, 2014 iTunes and/or Amazon.com release date. All of those
5 promotional activities prominently indicated the URL address of the subject
6 video on the YouTube Website. These promotional activities took place on
7 March 13-16, 2014 in Austin, Texas, where over 400,000 people saw a
8 promotion of the video on a mobile video truck in a 12,000 sq. ft. event tent
9 in which Plaintiff hosted 40 bands. PR Web issued a press release
10 promoting the aforesaid Music Fest event, and the subject video picked up
11 3,950 online blogs and news sources with combined viewership of more
12 than 10 million readers.

13 Star Magazine and 10 other online magazines interviewed Darnaa
14 about the song and the new video during the event. Darnaa was also
15 interviewed for 15 minutes on the KVUE, Austin, Texas segment of the
16 Today Show on Saturday, March 15, 2014, promoting the video. At least 1
17 million people saw the interview, and the URL link was placed on that
18 station's Website which is viewed by at least a half million people.

19 b. **NBA Allstar Weekend.** This promotion took place during
20 February 14-17, 2014, focused on highlighting Darnaa and to promote
21 traffic to the "Cowgirl" video as posted on the YouTube Website at a cost of
22 \$400,000, including paying for 15 billboards throughout New Orleans; and
23 a \$300,000 concert series at the Howling Wolf Club in New Orleans.

24 **Clear Channel Internet Radio Campaign**

25 Clear Channel Communications (through iHeart Radio, the largest radio
26 group in the United States) has a program known as "massive artist integration
27 program" linked to its radio marketing program. Darnaa is only the fourth music
28 artist to be accepted into the powerful promotional engine. The cost of the

1 campaign was between \$250,000-\$300,000. The purpose of the campaign was to
2 promote traffic to the “Cowgirl” music video URL on the YouTube Website. This
3 campaign utilized iHeartRadio and its affiliates, in which millions of viewers of
4 hundreds of iHeartRadio Internet websites had access to the subject music video
5 URL link embedded in those websites. This entire Internet radio campaign was
6 centered on promoting traffic to the “Cowgirl” vido as displayed on YouTube by
7 allowing up to 25 million viewers of the iHeartRadio websites to access the video
8 by clicking on the URL hyperlink to the video embedded in the hundreds of
9 iHeartRadio websites.

10 29. Based upon the substantial promotion and advertising expenditures
11 devoted to promoting views of the “Cowgirl” video on YouTube, it was
12 reasonably anticipated that 8 to 12 million viewers would have viewed the video
13 by the April 1, 2014 iTunes and/or Amazon.com release date, the song would have
14 garnered sales of between one and two million singles on iTunes and/or
15 Amazon.com and an additional \$7-8 million in revenue rich streams, including a
16 major concert tour that would have allowed Plaintiff to recoup its aforesaid major
17 investment in the production, promotion and advertising of the video.

18 30. Within a few days after Plaintiff’s posting of the “Cowgirl” video on
19 YouTube, Plaintiff learned that defendants had removed the display of the video
20 from the YouTube Website. Immediately upon learning of said removal, Plaintiff
21 contacted YouTube and was advised that the display had been removed because
22 Plaintiff had purportedly violated paragraph 4.H. of the TOS (Exhibit 1), which
23 provides as follows:

24 “You agree not to use or launch any automated system, including
25 without limitation, ‘robots,’ ‘spiders,’ or ‘offline readers,’ that accesses the
26 Service in a manner that sends more request messages to the YouTube
27 servers in a given period of time than a human can reasonably produce in
28 the same period by using a conventional on-line web browser.”

1 31. Upon learning of the aforesaid accusation, on March 22, 2014,
2 Plaintiff immediately responded with an email to YouTube, a copy of which is
3 attached hereto as Exhibit 2, and incorporated herein by this reference as if fully
4 set forth. In the email, Plaintiff requested that YouTube immediately restore the
5 display of the video under its aforesaid original URL, stating that the aforesaid
6 accusations were unfounded, that the video's view count was legitimate and
7 earned through aggressive, heavy and expensive promotion of the video,
8 mentioning that the URL link for the video was embedded in thousands of
9 websites and blogs such that by the time the promotion was over, Plaintiff
10 anticipated 8 to 12 million legitimate views of the video. Plaintiff thereupon
11 outlined in the email the essential facets of the promotion and advertising
12 campaign to promote legitimate views to the video. Plaintiff requested that
13 YouTube restore display of the video under its original URL by the following
14 Monday (two days after the date of the email), failing which YouTube would have
15 irreparably damaged Plaintiff's reputation, business and the ultimate success of the
16 campaign to promote the music career of Darnaa, which was estimated to generate
17 tens of millions of dollars in sales of her related record product, concert tour and
18 product endorsements which, were already being negotiated.

19 32. Within a few days after sending the Exhibit 2 email to YouTube,
20 without any prior notice or communication to Plaintiff, Plaintiff ascertained that
21 defendants had restored the display of the subject video to the YouTube Website,
22 but under a different URL than the original URL, and with the view count on the
23 new URL starting at zero instead of the view count that had been garnered under
24 the original URL.

25 33. Upon learning that the display of the video had been restored, but
26 with a different URL, the management of Clear Channel magnanimously offered
27 to re-promote and advertise the video in a second advertising campaign without
28 charging Plaintiff for the second campaign because the first campaign had come to

1 naught as a result of the wrongful removal of the display of the video under its
2 original URL. However, shortly after Clear Channel began to launch the second
3 campaign, without any prior notice or warning from YouTube, the display of the
4 video under its second URL was removed from YouTube.

5 34. Upon the second removal of the display of the video from YouTube,
6 the renewed Clear Channel advertising campaign became moot and worthless,
7 despite the magnanimity of Clear Channel. Again, without any prior notice or
8 communication to Plaintiff, defendants restored the display of the video to the
9 YouTube Website, but under a third URL and with the view count reduced again
10 to zero. At that point, Plaintiff ceased all efforts and expenditures to promote
11 views of the video display on YouTube. Despite complete lack of such promotion
12 and advertising, under its third YouTube URL, the video has garnered in excess of
13 600,000 views.

14 **FIRST CAUSE OF ACTION**

15 **Breach of Contract Per Breach of Covenant of Good Faith and Fair Dealing,** 16 **Against All Defendants**

17 35. Plaintiff repeats and realleges all of the above allegations and
18 incorporates them herein by reference as if fully set forth.

19 36. In electronically agreeing to the provisions of the TOS, neither
20 Plaintiff nor any of its human agents read the provisions.

21 37. In agreeing to the provisions of the TOS, and thereupon displaying
22 the “Cowgirl” video on the YouTube Website, Plaintiff reasonably relied upon its
23 belief in defendants’ presumed good faith and fair dealing, relying upon the belief
24 that as long as a music video displayer, such as Plaintiff, placed commercially and
25 ethically acceptable content in its video and displayed the video in an ethical
26 manner without illegitimately inflating its view count, defendants would operate in
27 good faith and deal fairly with the video displayer such that defendants would do
28 nothing to interfere with the display of the video on the YouTube Website, but

1 would permit it to continue to be displayed and to garner the legitimate view count
2 to which it was entitled in response to its true public popularity. Based upon this
3 belief and reliance, Plaintiff planned and executed the above-described promotion
4 and advertising campaign, including the expenditure of the aforesaid hundreds of
5 thousands of dollars in furtherance of that campaign.

6 38. Plaintiff duly performed all of the covenants and conditions on its
7 part to be performed under the TOS. Furthermore, Plaintiff categorically denies
8 that it failed to comply with and/or violated any of said terms, including without
9 limitation, the above-quoted paragraph 4.H. Moreover, Plaintiff did not engage in
10 any activities to create an illegitimate view count with respect to the “Cowgirl”
11 video, but rather expended large sums of money to generate a large, legitimate
12 view count of an anticipated 8 to 12 million views of the video on YouTube.

13 39. Defendants breached the TOS contract in that they violated the
14 implied covenant of good faith and fair dealing in twice removing the display of
15 the subject video from the YouTube Website in bad faith, because each of said
16 removals was perpetrated without any legitimate factual basis upon which to
17 premise the same. Furthermore, in sending the Exhibit 2 email to defendants,
18 Plaintiff described in detail the promotion and advertising activities and
19 expenditures it had made in order to support its contention that it had not
20 illegitimately inflated the view count; and thereupon requested that defendants
21 promptly restore the display of the video to the YouTube Website under its
22 original URL. Defendants further breached the TOS contract because they
23 wrongfully ignored Plaintiff’s aforesaid Exhibit 2 request.

24 40. In breaching said contract, amongst other things, defendants’
25 restoration of the display of the video on the YouTube Website on two separate
26 occasions, after accusing Plaintiff of engaging in violation of the TOS by
27 artificially inflating the view count, demonstrates the falsity of the accusation, as it
28 is against common sense to, in essence, permit a thief to re-enter the site of his

1 theft after he has previously been caught committing a theft there. This is
2 especially true when one lets the alleged thief back into the site not just once after
3 the first theft, but a second time after the second theft! The bad faith of defendants
4 conduct is further underscored by the fact that each time they restored the display
5 of the video to the YouTube Website, they did so under a different URL with the
6 view count reduced to zero. If they were claiming to restore the display of the
7 video to remedy a mistake on their part in previously removing the display, the
8 good faith and proper remedy would have been to promptly restore the display
9 with the same URL and resume the view count at the number of views it had
10 previously achieved prior to removal of the display.

11 41. Defendants' aforesaid conduct demonstrates a motive to punish
12 Plaintiff for purported wrongdoing in allegedly manufacturing a falsely-inflated
13 view count, and thereafter, nonsensically allowing Plaintiff, the accused rule-
14 violator, the opportunity to commit the same purported wrongful conduct again ...
15 and again. Defendants' bad faith is further underscored by their second removal
16 of the display of the video after being advised by Plaintiff in its Exhibit 2 email as
17 to the specifics of its huge expenditure in advertising and promotion money to
18 promote legitimate views of the video, to achieve a true view count through honest
19 and good faith means.

20 42. As a direct and proximate result of defendants' aforesaid bad faith
21 breach of contract by reason of their breach of the implied covenant of good faith
22 and fair dealing, Plaintiff has been damaged in several respects, including without
23 limitation:

24 a. Loss of its out-of-pocket investment in the production of the
25 video and the advertising and promotion campaign to promote a legitimate
26 view count, in the amount of at least \$1,150,000.

27 b. Revenue from the estimated sale of between one and two
28 million singles recordings of the "Cowgirl" song, and an additional \$7-8

1 million in revenue rich streams generated from, without limitation, concert
2 tours and product endorsements; and further related damages in an amount
3 according to proof, but not less than \$25 million.

4 c. Injury to the business reputation of Plaintiff in an amount
5 according to proof, but not less than \$25 million.

6 **SECOND CAUSE OF ACTION**

7 **Intentional Interference with Prospective Economic Advantage,**
8 **Against All Defendants**

9 43. Plaintiff repeats and realleges each of the above paragraphs and
10 incorporates them herein as if fully set forth.

11 44. At times relevant herein, Plaintiff had a past, present and prospective
12 future beneficial economic relationship with:

13 a. The music fans of Darnaa in that during the period that Darnaa
14 has been a party to a music artist contract with Plaintiff, Darnaa and
15 Plaintiff have shared revenues from monies paid by Darnaa's fans for her
16 recorded and/or live musical performances.

17 b. Clear Channel Communications ("Clear Channel") by reason of
18 Plaintiffs' participation with Clear Channel in the aforesaid promotion and
19 advertising campaign constructed and executed for the purpose of
20 promoting millions of legitimate views of the display of the "Cowgirl"
21 video on the YouTube Website.

22 45. As is the case with defendant Google, amongst other things, Clear
23 Channel is a very large, successful advertising company. Plaintiff is informed and
24 believes and thereupon alleges that by reason of its market share in the advertising
25 industry, Clear Channel constitutes a major advertising industry competitor of
26 Google.

27 //

28 //

1 46. Plaintiff is informed and believes and thereupon alleges as follows:

2 In garnering advertisers to buy advertising on the YouTube Website,
3 amongst other things, defendants promote the value of such advertisement
4 in relation to the viewer traffic that accesses the Website for the purpose of
5 locating and viewing the videos displayed thereon. Such volume of Website
6 traffic creates the opportunity for the viewing of side advertisements on the
7 site. Therefore, when a viewer accesses a video from a Website other than
8 YouTube by way of clicking on a URL link to the video embedded in the
9 other website, such access decreases the navigational traffic that otherwise
10 would be present on the YouTube Website, and thereupon decreases the
11 audience for side advertisements.

12 Through use of sophisticated tracking software, defendants are able to
13 ascertain whether the viewers of any particular video displayed on the
14 YouTube Website arrive at the video by navigating through the YouTube
15 Website, or alternatively, by clicking on a link embedded in a non-YouTube
16 Website. Defendants are also able to track the origin site of the incoming
17 viewer to ascertain where the viewer clicked on the URL of any particular
18 video displayed on YouTube.

19 As a result of this technological capability, defendants were able to
20 ascertain that the large majority of the viewers accessing the “Cowgirl”
21 video on YouTube came to the video by clicking links embedded in various
22 of the hundreds of Clear Channel Internet radio websites.

23 From the point of view of defendants, that meant Clear Channel was
24 profiting from garnering advertising revenue on its websites at the expense
25 of defendants’ not garnering advertising revenue on the YouTube Website.
26 Thus, the simple remedy from the point of view of defendants was to
27 remove the display of the “Cowgirl” video from the YouTube Website,
28 thereby vitiating the value of the advertising dollars paid by Plaintiff to

1 Clear Channel. In doing so, defendants only had to make the minimum
2 adjustment of removing the display of the “Cowgirl” video temporarily,
3 rather than permanently, and when they restored its display on YouTube, to
4 restore it with a different URL which vitiated the money spent by Plaintiff
5 in promoting the original URL; and then further punishing Plaintiff by
6 wiping out the previous view count obtained by the video by reason of
7 starting the view count at zero at the new URL.

8 It is the practice of the YouTube Website to display the view count
9 of each video at its display site when the video is accessed by a viewer so
10 that each viewer can assess the popularity of the video by how many
11 previous views it has garnered. Thus, in starting the view count at zero each
12 time the subject video display was restored on YouTube with a different
13 URL, not only was Plaintiff penalized by not receiving the overall view
14 count credit which the video had earned, but Plaintiff was further penalized
15 by having the success of the video downplayed by each new viewer’s being
16 told, in essence, that the video was less popular than it was in actuality.

17 There was no need for defendants to remove the display of the video
18 from the YouTube Website under its restored third URL, because by that
19 juncture, Plaintiff’s enthusiasm to execute any further promotion and
20 advertising campaign to promote views of the video had been eliminated;
21 and defendants were able to ascertain through their aforesaid tracking
22 technology that access to the video was substantially coming through
23 viewers that were navigating through the YouTube Website.

24 47. With respect to the removal of the display of the “Cowgirl “ video
25 from YouTube as described above, Plaintiff’s position was comparable to a mouse
26 in the grass under the feet of two elephants (Google and Clear Channel) engaged
27 in battle above the hapless mouse. Further, Plaintiff is informed and believes and
28 thereupon alleges that in addition to the anti-competition motivation of defendants

1 with regard to Clear Channel, there was another motivation for the removal as
2 well:

3 One of the options available to a video displayer on YouTube is to
4 permit defendants to embed advertisements with one's displayed video such
5 that viewers of the video are given direct access to the advertisement,
6 similar to advertisements on a television program. In posting the "Cowgirl"
7 video to the YouTube Website, Plaintiff declined YouTube's invitation to
8 permit advertising to be embedded with the display of said video.
9 Notwithstanding Plaintiff's declination to permit such advertising, without
10 Plaintiff's permission, defendants embeded advertisement with the display
11 of the "Cowgirl" video.

12 Plaintiff is informed and believes and thereupon alleges that in
13 addition to their anti-competitive motivation as against Clear Channel,
14 defendants were motivated to directly suppress the business success of
15 Plaintiff, especially as pertains to the music career of Darnaa. There is only
16 a finite amount of money available for advertising pertaining to music
17 videos. Defendant Google already controls the vast majority of that money
18 in regard to popular music videos by virtue of its management of the
19 advertising on the Vevo music videos (which constitute approximately 75%
20 of the world-wide popular music videos displayed), and controls the
21 majority of the remaining 25% by virtue of its ownership and management
22 control of the YouTube Website which displays the lion's share of the
23 remaining 25% of the world-wide popular music videos displayed.

24 Therefore, when a company, such as Plaintiff, declines to cooperate in
25 permitting advertising to be embeded with its music video display on
26 YouTube, Google's control of the display of music videos on the Internet
27 makes it simple for it to squelch the ambitions of a small record company
28 such as Plaintiff and/or an unestablished, non-Vevo artist such as Darnaa.

1 The is especially so, when a ticket to becoming an established, economically
2 successful music artist must be acquired by success in garnering substantial
3 numbers of views to one's music videos on YouTube.

4 Thus, not only did Plaintiff and its aforesaid artist find themselves
5 under the feet of the fight picked by Google against Clear Channel, but
6 found themselves directly attacked by defendants because Plaintiff would
7 not play "advertising ball" with the YouTube Website; and since there was
8 no advertising revenue to be lawfully gained form Plaintiff, in the economy
9 of defendants, Plaintiff was subject to squelching.

10 48. Defendants' aforesaid dastardly removal of the display of the subject
11 video, and the feigned repentance of restoring its display (but uselessly so, with a
12 different URL) was done with knowledge of both of Plaintiff's above then-
13 existing economic relationships, and was designed to disrupt the future economic
14 advantage of those relationships.

15 49. Said conduct on the part of the defendants in fact disrupted those
16 relationships, essentially making worthless the money and time spent on
17 formulating and executing the aforesaid promotion and advertising campaign with
18 respect to the video; and obviously disrupting the relationship of Plaintiff with
19 Darnaa's fan base who were thwarted in their attempt to view the "Cowgirl" video
20 on YouTube. Instead of being greeted with the pleasure of watching the subject
21 music video, the positive anticipation of the expectant viewer when clicking on
22 the videos URL was interrupted by a pejorative message to the effect that the
23 video had been removed for violation of the YouTube Terms of Service.
24 Therefore, rather than the expectant viewer's being entertained a by a high quality
25 music video, the viewer was greeted with a cold message that disparaged the
26 integrity of Plaintiff. Being advised that the video had been removed because the
27 displayer had violated the YouTube Terms of Service impugned the integrity of
28 Plaintiff, portraying it as a company which did not perform its promises, which is

1 the type of company with which a reasonable person would shun doing business.

2 50. The aforesaid wrongful conduct proximately caused the special and
3 general compensatory damages mentioned above.

4 51. Based upon the allegations of wrongdoing set forth above, which are
5 specifically incorporated into this paragraph by reference, defendants' behavior
6 constituted despicable conduct perpetrated with willful and conscious disregard of
7 the rights of Plaintiff and subjected it to unjust economic hardship. Thus, in
8 addition to an award of compensatory damages, Plaintiff is eligible to be awarded
9 damages for the sake of example and by way of punishing defendants in an
10 amount to be determined at the discretion of the trier of fact, but in no event less
11 than \$100 million.

12 **THIRD CAUSE OF ACTION**

13 **Negligent Interference with Prospective Economic Advantage,**

14 **Against All Defendants**

15 52. Plaintiff repeats and realleges each of the above paragraphs and
16 incorporates them herein as if fully set forth.

17 53. Assuming that the trier of fact finds that defendants did not
18 intentionally and in bad faith remove the display of the "Cowgirl" video from
19 YouTube, and then refuse to properly restore it with its original URL and its
20 legitimately-promoted view count, Plaintiff is informed and believes and
21 thereupon alleges that defendants were negligent in so removing the display of the
22 video and refusing to restore the display with its original URL and its legitimately-
23 achieved view count.

24 54. The aforesaid wrongful conduct proximately caused the special and
25 general compensatory damages mentioned above.

26 //

27 //

28 //

FOURTH CAUSE OF ACTION

**Defamation and/or False Representation of Fact in Violation of Lanham Act,
Against All Defendants**

55. Plaintiff repeats and realleges each of the above paragraphs and incorporates them herein as if fully set forth.

56. After each of the two removals of the display of the video from the YouTube Website, defendants published the aforesaid pejorative message, accessed by each expectant viewer that arrived at the subject URL to watch the video, that the video had been removed for violation of the YouTube Terms of Service:

a. This message was defamatory of Plaintiff in that it impugned the integrity of Plaintiff and thus damaged its business reputation by portraying it as a company which fails to perform its contractual promises, being the type of company with which a reasonable person would shun doing business.

b. The publication of the message was in violation of the Lanham Act, 11 U.S.C. § 1125(a), because in connection with goods or services in commerce, it constituted defendants' use of words conveying a false or misleading representation of fact, which in commercial advertising or promotion misrepresented the nature, characteristics or qualities of Plaintiff's goods, services, or commercial activities.

57. Publication of the aforesaid message proximately caused the special and general compensatory damages mentioned above.

58. Based upon the allegations of wrongdoing set forth above, which are specifically incorporated into this paragraph by reference, defendants' behavior constituted despicable conduct perpetrated with willful and conscious disregard of the rights of Plaintiff and subjected it to unjust economic hardship. Thus, in addition to an award of compensatory damages, Plaintiff should be awarded

1 damages for the sake of example and by way of punishing defendants in an
2 amount to be determined at the discretion of the trier of fact, but in no event less
3 than \$100 million.

4 Wherefore, Plaintiff prays for judgment against defendants, and each of
5 them, as follows:

6 1. An award of compensatory damages according to proof, but in no
7 event less than \$50 million.

8 2. An award of exemplary or punitive damages in the discretion of the
9 trier of fact, but in no event less than \$100 million.

10 3. Such other and further relief as the Court deems just and proper.

11
12 Date: July 10, 2015

Law Offices of Michael R. Shapiro, APC

13 /s/ Michael R. Shapiro

14 Michael R. Shapiro
Attorney for DARNAA, LLC

15 Date: July 10, 2015

Steinhart Law Offices

16 /s/ Terran T. Steinhart

17 Terran T. Steinhart
Attorney for DARNAA, LLC

18
19 **DEMAND FOR TRIAL BY JURY**

20 Plaintiff hereby demands trial by jury.

21
22 Date: July 10, 2015

Law Offices of Michael R. Shapiro, APC

23 /s/ Michael R. Shapiro

24 Michael R. Shapiro
Attorney for DARNAA, LLC

25 Date: July 10, 2015

Steinhart Law Offices

26 /s/ Terran T. Steinhart

27 Terran T. Steinhart
Attorney for DARNAA, LLC

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