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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**
10

11 ISHANIQUE LOMAX, an individual,)
12)
Plaintiff)

13 vs.)

14)
15 THE SAIFAM GROUP, an Italian business)
entity; MEGAHIT RECORDS, a California)
16 corporation; MAURO FARINA, an)
individual; ANDREA MILANI, aka DJ)
17 PHIL TY, an individual; APPLE, INC., a)
California corporation; GOOGLE, INC., a)
18 Delaware corporation; AMAZON.COM,)
INC., a Delaware corporation, and Does 1-)
19 10, inclusive,)

20)
21 Defendants.)
22)

Case No.

COMPLAINT FOR:

- (1) **COPYRIGHT INFRINGEMENT**
- (2) **VIOLATION OF LANHAM ACT SECTION 43(A) - 15 U.S.C 1125**
- (3) **VIOLATION OF CALIFORNIA BUS.&PROF. CODE SECTION 17200**
- (4) **VIOLATION OF CALIFORNIA BUS&PROF. CODE SECTION 17500**
- (5) **MISAPPROPRIATION -Common Law**
- (6) **UNJUST ENRICHMENT**
- (7) **IMPLIED-IN-LAW CONTRACT**
- (8) **ACCOUNTING**
- (9) **PERMANENT INJUNCTION**

JURY TRIAL DEMANDED

23 Plaintiff ISHANIQUE LOMAX complains and alleges as follows:
24

25 **JURISDICTION AND VENUE**

26 1. Jurisdiction is based on federal question pursuant to 28 U.S.C. §§ 1331 and
27 1338(a) arising from the federal court’s original jurisdiction for claims arising under the 1976
28 Copyright Act and the Lanham Act, and supplemental subject matter jurisdiction over Plaintiff’s

1 state law claims pursuant to 28 U.S.C. §1367(a).

2 2. This Court has specific personal jurisdiction over all of the Defendants as each
3 either has incorporated in this state, has its principal place of business in this state, has
4 purposefully committed, within the state, the acts from which these claims arise and/or has
5 committed tortious acts outside California, knowing and intending that such acts would cause
6 injury within the state. The Court also has general personal jurisdiction over Defendants as each
7 conducts continuous, systematic, and routine business within the state of California and the
8 County of Los Angeles.

9 3. Venue is proper in the United States District Court for the Central District of
10 California pursuant to 28 U.S.C. §§ 1391(b), 1391(c), 1391(d) and 1400.

11 **PARTIES**

12 4. Plaintiff ISHANIQUE LOMAX (“Plaintiff”) is an individual who, at all relevant
13 times herein, has resided in the County of Riverside, State of California.

14 5. Defendant THE SAIFAM GROUP (“Saifam Group”) is an Italian business entity
15 which, based upon information and belief, has its principal place of business in Lugagnano,
16 Italy. Defendant Saifam Group is an international recording company that has many divisions
17 and operates throughout the world, including the United States and, in particular, Los Angeles.
18 Defendant Saifam Group is in the business of producing, recording, distributing, licensing,
19 selling, and/or otherwise exploiting music and musical content.

20 6. Defendant MEGAHIT RECORDS (“Megahit”) is a California corporation with
21 its offices and primary place of business located in Los Angeles, California. Based on
22 information and belief, Defendant Megahit is also known as “The Saifam Group/Megahit
23 Records,” and serves as the Los Angeles-based division of Defendant Saifam Group, operating
24 among other things as the company’s domestic distributor and/or domestic arm. Based on
25 information and belief, both Defendant Saifam Group and Megahit have common ownership
26 and/or management, having been founded, owned and/or operated, in whole or in part, by
27 Mauro Farina. As set forth herein, Defendant Megahit is believed to be the agent,
28 representative, division, alter ego and/or extension of Defendant Saifam Group for purposes of

1 United States/Los Angeles-based operations and distribution.

2 7. Defendant MAURO FARINA (“Farina”) is an individual who, at all relevant
3 times herein, is believed to have been an Italian citizen residing in Lugagnano, Italy. Defendant
4 Farina is the President/CEO of Defendant Saifam Group, who purportedly runs a number of
5 different companies, recording studios and record labels by, through and/or under the Saifam
6 Group name. Defendant Farina is believed to have founded, co-own and/or co-operate
7 Defendant Megahit, which is the Los Angeles-based corporate division of Defendant Saifam
8 Group.

9 8. Defendant ANDREA MILANI aka DJ PHIL TY (“Milani”) is an individual who,
10 at all relevant times herein, is believed to have been an Italian citizen residing in Reggio
11 Nell’Emilia-Romagna, Italy. Based on information and belief, Defendant Milani is a performer,
12 writer and recording artist that performs and produces records either for, on behalf of or
13 supplied to Defendant Saifam. Defendant Milani, while operating under the pseudonym DJ Phil
14 Ty, is believed to have written and performed the song “a kay a,” which is the subject of this
15 litigation.

16 9. Defendant APPLE, INC. (“Apple”) is a business entity that is incorporated in
17 California, and has its primary offices located in California. Defendant Apple maintains an
18 internet distribution division known as “ITUNES” that distributes music, movies, television
19 shows and other forms of intellectual property content over the internet. ITUNES sells music to
20 customers while charging a specific fee per song, which it splits with the owner of the sound
21 recording in an amount which, based upon information and belief, may vary as to the particular
22 song and/or record label with which it is dealing. ITUNES directly profits from every song
23 downloaded from its site. ITUNES has and currently offers for sale the subject song, “a kay a,”
24 in numerous versions and re-mixes.

25 10. Defendant GOOGLE, INC. (“Google”) is a business entity that is incorporated in
26 Delaware, and has its primary offices located in California. Defendant Google maintains an
27 internet distribution division known as “GOOGLE PLAY” that distributes music, movies,
28 television shows and other forms of intellectual property content over the internet. GOOGLE

1 PLAY sells music to customers while charging a specific fee per song, which it splits with the
2 owner of the sound recording in an amount which, based upon information and belief, may vary
3 as to the particular song and/or record label. GOOGLE PLAY directly profits from each and
4 every song downloaded from its site. GOOGLE PLAY has and currently offers for sale the
5 subject song, “a kay a,” in numerous versions and re-mixes.

6 11. Defendant AMAZON.COM, INC. (“Amazon”) is a business entity that is
7 incorporated in Delaware, and has its primary offices located in Seattle, Washington. Defendant
8 Amazon maintains an internet distribution division that distributes music, movies, television
9 shows and other forms of intellectual property content over the internet. Amazon sells music to
10 customers while charging a specific fee per song, as well as other charges which, based upon
11 information and belief, may vary as to the particular song and/or nature of seller. Amazon
12 directly profits from each and every song downloaded from it site. Amazon has and currently
13 offers for sale the subject song, “a kay a,” in numerous versions and re-mixes.

14 12. At all times mentioned herein, Plaintiff believes and thereon alleges that other
15 fictitious defendants, not previously identified by name but designated as Does 1 through 10,
16 may be liable or responsible in whole or in part for the allegations contained herein. Once the
17 true names and capacities of these Defendants are ascertained, Plaintiff will seek leave to amend
18 this Complaint and substitute said true names and capacities.

19 13. Plaintiff is informed and believes and thereon alleges that each of the Defendants
20 named herein as Does 1 through 10, inclusive, is intentionally, negligently or otherwise legally
21 responsible in some manner, either vicariously or by virtue of his, her or it’s agents,
22 representatives, servants or employees, for the acts and occurrences herein referred to, and has
23 proximately caused injury or damages thereby to Plaintiff as a result of their conduct hereinafter
24 described.

25 14. Plaintiff is informed and believes and thereon alleges that at all times herein
26 mentioned, the Defendants, and each of them, were the agents, partners, alter egos, joint
27 venturers and/or employees of each other, and at all times were acting within the scope and
28 course of said agency, partnership, joint venture, alter ego relationship and/or employment, and

1 with full knowledge and consent of each other. In so doing, the Defendants, and each of them,
2 acted within the scope of such relationship or ratified the acts of the others, and is jointly and
3 severally liable as such. Plaintiffs further believe and allege that Defendants, and each of them,
4 are the alter egos of the other, and that there is such a unity of interest and ownership between
5 and among Defendants, that such interests have become intertwined and non-separable.

6 NATURE OF THE CASE

7 15. Plaintiff is the author and copyright owner of the musical composition entitled
8 “freaknique or geeknique,” a composition that begins with a conversational introduction, and
9 then evolves into a rap song. (A true and correct copy of Plaintiff’s copyright application and
10 confirmation is attached hereto as Exhibit A.) Similarly, Plaintiff is the performer and copyright
11 owner of the sound recording which encapsulates the composition. (The recording can be
12 viewed on youtube at <https://www.youtube.com/watch?v=cCh4mQrN7ac>). The sound
13 recording was created in both audio and video formats. Plaintiff wrote the musical composition
14 and recorded the sound recording in 2008, and in that same year, created and uploaded the video
15 to Youtube. Plaintiff applied for copyright registration on June 15, 2015, as depicted on the
16 application (Exhibit A).

17 16. Sometime in 2009, Defendants Milani, Saifam Group, Farina and/or Megahit
18 (collectively “Saifam Defendants”) created and recorded a “hard-style” dance song called “a kay
19 a,” performed by Milani. The Saifam Defendant’s song not only lifts, incorporates and uses the
20 exact lyrics of Plaintiff’s composition, but also lifts, incorporates and uses her recorded voice
21 from the conversational portions of her sound recording, as well as her image on the video
22 versions of the song. In what is a surprisingly bold and brazen move, Defendants took Plaintiffs
23 own recorded words, voice and image, put a hardstyle dance-type beat to it, and then created the
24 subject song, “a kay a.” Plaintiffs voice, musical composition and sound recording constitute
25 the sole lyrics and core of Defendants song. In essence, Defendant’s song is Plaintiff’s lyrics,
26 voice, sound recording (and image on the video versions) with a hard-style type dance beat. As
27 of the time of filing, such versions could be viewed at the following websites, among many
28 others: <https://www.youtube.com/watch?v=bXXNEeU1IDg>;

1 <https://www.youtube.com/watch?v=WMvekSVpo7E>; and

2 <https://www.youtube.com/watch?v=2argKaxN6qI> .

3 17. The Saifam Defendants have released and distributed the subject song world-
4 wide since 2009, which distribution and exploitation is ongoing and continues to this day. Since
5 the release of the Saifam Defendants' recording, such has been distributed both domestically
6 and internationally on such platforms as Apple's "iTunes," Google's "Google Play,"
7 Amazon.com and other outlets of which Plaintiffs are currently investigating and determining,
8 and will subsequently amend this complaint to add those defendant-proprietors and/or move to
9 join such parties, once their identities are known. In addition, DMCA take-down notices are
10 being sent to those sites who qualify as immune online service providers, and in the event such
11 providers fail to remove this song from their websites and their immunities are lost, will be
12 added hereto as well.

13 18. Sometime in 2009, Plaintiff was locked out of her Youtube account, unable
14 to gain access. When she did gain access, she discovered, on or about February, 2015, that
15 Defendants were selling and exploiting the subject song "a kay a." Ironically, Plaintiff even
16 received a notice from Youtube advising her that a copyright claim had been placed on her
17 song/video in light of the fact Defendant's version had become so pervasive and well-known.¹
18 When she researched the source of the claim, she discovered that Defendants' song was not only
19 being actively distributed and exploited, but that different versions, re-mixes and other
20 variations were similarly created and being exploited. In essence, Plaintiff has suffered
21 continuous and ongoing infringement of her intellectual property since 2009, and which
22 continues to this day.

23 19. Defendants, and each of them, have benefitted financially and economically from
24 the continuous and ongoing distribution and exploitation of Plaintiff's intellectual property, to
25 which Plaintiff has received no money or financial benefit. In fact, and to her detriment, most
26 consumers and listeners familiar with this style of music associate her and her musical

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28 The copyright claim was shortly released thereafter.

1 composition with Defendants' song. Consequently, she has been unable to develop or otherwise
2 independently exploit her composition and sound recording on her own. As evidenced by
3 Youtube's notice to her of an adverse copyright claim, as well as random comments and remarks
4 from consumers, the public at large is confused and questions her usage and ownership of her
5 own material as infringing on that of Defendants' song. Since her intellectual property has been
6 completely monopolized and arrogated into Defendants' song, it's commercial use for her own
7 individual purposes has been destroyed.

8 **FIRST CLAIM FOR RELIEF**
9 **(COPYRIGHT INFRINGEMENT)**
10 **(As Against All Defendants)**

11 20. Plaintiff realleges and incorporates by reference each and every allegation
12 contained in paragraphs 1 through 19 as though fully set forth herein.

13 21. Plaintiff is the legal and beneficial owner of the United States copyright for the
14 musical composition and sound recording titled "freaknique or geeknique," which application
15 for registration has been filed with the United States Copyright Office. (A true and correct copy
16 of said application and confirmation is attached hereto as Exhibit A.)

17 22. Defendants, and each of them, have directly, contributorily and/or vicariously
18 infringed upon Plaintiff's copyright through their copying, reproduction, distribution,
19 performance, display, publication, creation, broadcast, selling, licensing and other exploitation
20 of Plaintiff's composition and sound recording through their incorporation of it in their song "a
21 kay a." Moreover, Defendants, and each of them, continue to copy, display, distribute,
22 reproduce, perform, publish, create, broadcast, sell, license and exploit said song, infringing
23 upon Plaintiff's intellectual property rights, to this day.

24 23. Defendants' infringement have allowed them to collect profits directly from the
25 unauthorized usage and incorporation of Plaintiff's song and corresponding intellectual property.
26 In addition, Defendants' actions have prevented Plaintiff from exploiting her own song and
27 copyrighted material as Defendants' have completely monopolized and arrogated Plaintiff's
28 material as their own leaving no marketplace to which she could do so independently.

24. Defendants, at least with respect to the Saifam Defendants, did so wilfully,

1 intentionally or, at the very least, recklessly, in disregard of Plaintiff's rights. The Saifam
2 Defendants were specifically aware that Plaintiff owned the rights to her composition and sound
3 recording, viewed it on Youtube, and intentionally usurped and appropriated it without
4 obtaining her authorization.

5 25. As a result of Defendants' infringement of Plaintiff's copyright, Plaintiff is
6 entitled to an election of damages in the form of either actual damages and any profits of
7 Defendants or, in the alternative, statutory damages, including attorneys' fees, for any future
8 infringements which continue and occur after Plaintiff secures her copyright registration.

9 26. In addition, monetary relief is not adequate to address fully the irreparable injury
10 that Defendants' illegal actions have caused and will continue to cause Plaintiff if not enjoined.
11 Plaintiff is therefore entitled to preliminary and permanent injunctive relief to stop Defendants'
12 ongoing infringement of Plaintiff's copyright.

13 27. Finally, as a result of Defendants' willful, malicious and oppressive conduct,
14 performed intentionally and/or in conscious disregard of Plaintiff's rights and interests, Plaintiff
15 seeks punitive and/or exemplary damages against Defendants, and each of them to which such
16 conduct is attributed, in an amount to be determined at trial.

17 **SECOND CLAIM FOR RELIEF**
18 **(LANHAM ACT- 15 U.S.C 1125)**
19 **(As Against All Defendants)**

20 28. Plaintiff realleges and incorporates by reference each and every allegation
21 contained in paragraphs 1 through 27 as though fully set forth herein.

22 29. Plaintiff is a musician, songwriter and performer. The attributes to her current
23 and aspiring career are her distinctive voice, image and name, as well as her talent, performing
24 abilities and songwriting. Plaintiff's voice, image and name are her cache into the music world.

25 30. By virtue of Defendants' usage of Plaintiff's voice (and image in the video
26 versions) in the subject song "a kay a," and the elevation and success of Defendant's song, the
27 consumer public has acquainted Plaintiff's voice and image with their song. This is exacerbated
28 by the fact that Plaintiff's voice constitutes ALL of the lyrics sung in Defendant's song, as the
song is comprised of Plaintiff's voice against a backdrop of dance-style music. Defendants have

1 sold, licensed, and marketed Plaintiff’s lyrics and song as their own. In addition, Plaintiff’s
2 purported cooperation, affiliation, involvement, authorization and association of her voice and
3 image in connection with the subject song is false and misleading to the public, and is likely to
4 cause confusion, deception or mistake with respect to Plaintiffs’ affiliation, connection, approval
5 and origin of her voice and image.

6 31. The likelihood of confusion discussed above has already been evidenced when
7 Youtube sent her a copyright infringement notice that her song (and voice) were infringing upon
8 another work. In addition, fans of the subject “a kay a” song in particular, and of the “dance
9 style” music world in general, recognize her voice and lyrics in the context of Defendants’ song.
10 Plaintiff’s song, voice and image have become so affiliated with Defendants’ song, that even
11 when she tries to broadcast, distribute, display or exploit her own intellectual property, third
12 parties think she is doing so on behalf of Defendants, even to the point where she is believed to
13 be infringing upon Defendants’ works. Further, her purported affiliation with Defendants has
14 eliminated her ability to independently market not only the subject song, but herself. This
15 confusion in the marketplace has destroyed Plaintiff’s commercial potential in this instance.

16 32. Plaintiff has and will continue to suffer actual damages in the form of
17 lost revenue from future sales and development of Plaintiffs’ song and her voice, damage to her
18 career as a singer through her association with the subject song, lost profits from the exploitation
19 of the current song, and other damages to be proven at the time of trial.

20 33. Defendant’s conduct, at least with respect to the Saifam Defendants, has been
21 intentional, willful, fraudulent, malicious, deliberate and/or in reckless disregard to Plaintiffs’
22 rights. As a result, Plaintiffs are additionally entitled to punitive damages, as well as statutory
23 damages and/or attorneys’ fees, from each such defendant to whom such conduct is attributed,
24 to be determined at the time of trial.

25 34. Moreover, Plaintiff is entitled to injunctive relief against Defendants’ usage of
26 her voice and/or other branding aspects pertaining to Plaintiff.

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1 **FIFTH CLAIM FOR RELIEF**
2 **(MISAPPROPRIATION - Common Law)**
3 **(As Against All Defendants)**

4 42. Plaintiff realleges and incorporates by reference each and every allegation
5 contained in paragraphs 1 through 41 as though fully set forth herein.

6 43. Defendants, and each of them, misappropriated Plaintiff's voice, image and/or
7 likeness for their own commercial purposes and benefits. At no time did Plaintiff ever impliedly
8 or expressly consent to such appropriation.

9 44. As a direct and proximate result of Defendants' misappropriation of Plaintiff's
10 voice, image and/or likeness, Plaintiff has suffered and continues to suffer actual damages in the
11 form of lost profits, lost compensation, lost employment and lost opportunities for employment,
12 and other foreseeable and consequential damages.

13 45. In addition, as a result of Defendants', and each of their, willful, malicious and
14 oppressive conduct, performed intentionally and/or in conscious disregard of Plaintiff's rights
15 and interests, Plaintiff seeks punitive and/or exemplary damages against Defendants, and each
16 of them, in an amount to be determined at trial.

17 **SIXTH CLAIM FOR RELIEF**
18 **(UNJUST ENRICHMENT)**
19 **(As Against All Defendants)**

20 46. Plaintiff realleges and incorporates by reference each and every allegation
21 contained in paragraphs 1 through 45 as though fully set forth herein.

22 47. Defendants, and each of them, have used Plaintiff's lyrics, sound recording,
23 image and/or voice to their benefit, receiving revenue and economic gain at Plaintiff's cost and
24 effort, without any compensation paid to Plaintiff. Moreover, Defendants will continue to reap
25 the economic benefits of Plaintiff's intellectual property and performance from hence forward by
26 the continued broadcast, publication, distribution, dissemination, sale, licensing and exploitation
27 of the subject song "a kay a," and it's derivative forms and re-mixes.

28 48. Consequently, Plaintiff is entitled to receive the economic benefits of the usage
of the subject song in the form of current and future profits obtained and received by

1 Defendants, and each of them, from its continued exploitation.

2 **SEVENTH CLAIM FOR RELIEF**
3 **(IMPLIED-IN-LAW CONTRACT)**
4 **(As Against All Defendants)**

4 49. Plaintiff realleges and incorporates by reference each and every allegation
5 contained in paragraphs 1 through 48 as though fully set forth herein..

6 50. Defendants have acquired, taken, developed and exploited Plaintiffs' voice,
7 image, likeness and/or intellectual property without any form of compensation or consideration
8 to Plaintiffs.

9 51. As a result of Defendants' conduct, law and equity require that a contract be
10 imposed upon the parties requiring that Defendants, and each of them, compensate Plaintiff for
11 their actions, in an amount to be determined at the time of trial.

12 **EIGHTH CLAIM FOR RELIEF**
13 **(ACCOUNTING)**
14 **(As Against All Defendants)**

14 52. Plaintiff realleges and incorporates by reference each and every allegation
15 contained in paragraphs 1 through 51 as though fully set forth herein.

16 53. Plaintiff is entitled to an accounting into each Defendant's business dealings,
17 business transactions, books of operations and business operations pertaining to the sale,
18 licensing, distribution, public performance, broadcast and/or other exploitation of the subject
19 song "a kay a," as well as any remix, remastering, sampling and/or other derivation of Plaintiff's
20 intellectual property, in order to trace and recover the money that Defendants have improperly
21 taken from Plaintiff.

22 54. Plaintiff is entitled to an accounting of these Defendants to determine the
23 extent, amount, association, and nature of exploitation of Plaintiff's intellectual property to
24 adequately understand the scope of the harm perpetrated by all Defendants against Plaintiff.

25 **NINTH CLAIM FOR RELIEF**
26 **(PERMANENT INJUNCTION)**
27 **(As Against All Defendants)**

27 55. Plaintiff realleges and incorporates by reference each and every allegation
28 contained in paragraphs 1 through 54 as though fully set forth herein

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broadcasting and/or participating in the infringement of Plaintiff's rights protected by the Copyright Act;

- 9. Damages in the form of restitution and the disgorgement of all earnings, profits, compensation and benefits obtained by Defendants as a result of Defendants' conduct that violated California Business & Professions Code §17200 and/or §17500, as well as injunctive relief, an accounting, the imposition of a constructive trust over all such amounts, reasonable attorneys fees and costs, and any other remedies available under these respective statutes.
- 10. Prejudgment interest at the maxim legal rate;
- 11. Cost of suit;
- 12. Cost of the proceedings herein;
- 13. Reasonable attorneys' fees under 17 U.S.C. 505, 15 U.S.C. 1117, any other applicable statute and/or as otherwise permitted by law;
- 14. All other further relief as the Court may deem appropriate in the interests of justice.

DATED: August 6, 2015

THE LOVELL FIRM, P.C

BY: _____/s/Tre Lovell_____
TRE LOVELL
Attorney for Plaintiff ISHANIQUE LOMAX

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b) and otherwise, Plaintiff hereby demands trial by jury of her claims raised herein.

DATED: August 6, 2015

THE LOVELL FIRM, P.C.

By _____/s/Tre Lovell_____
TRE LOVELL
Attorney for Plaintiff ISHANIQUE LOMAX