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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

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14 SA MUSIC, LLC and WILLIAM
KOLBERT, AS TRUSTEE OF THE
15 HAROLD ARLEN TRUST,

16 Plaintiffs,

17 v.

18 GOOGLE LLC, VALLEYARM DIGITAL
LIMITED, LENANDES LTD,
19 GIACOMO VERANI, and
20 LIMITLESS INT. RECORDINGS,

21 Defendants.

**COMPLAINT FOR
COPYRIGHT INFRINGEMENT
AND DEMAND FOR
JURY TRIAL**

22
23 **Jurisdiction**

24 1. The Court has jurisdiction over the subject matter of this action against
25 Defendants Google LLC, Valleyarm Digital Limited, Lenandes Ltd, Giacomo Verani,
26 and Limitless Int. Recordings pursuant to 28 U.S.C. § 1338(a) because this is an action
27 for copyright infringement arising under the Copyright Act of 1976, 17 U.S.C. §§
28 101, 106, 115, 501, 602 *et seq.*

Introduction

2. Plaintiffs are the legal and/or beneficial copyright owners of musical works authored by Harold Arlen one of the premier composers of American music.

3. Harold Arlen wrote or co-wrote some of the most popular modern songs, including *Over the Rainbow* from *The Wizard of Oz* and many other seminal works in the American songbook, including *I've Got the World on a String*, *Stormy Weather*, *The Devil and the Deep Blue Sea*, *Come Rain or Come Shine*, *Get Happy*, *Ill Wind* and *It's Only A Paper Moon*.

4. The Composition Chart annexed as Exhibit A provides a list of Plaintiffs' copyrighted compositions at issue in this case (the "Subject Compositions").

5. The works of Arlen have been recorded by the most prominent jazz and popular artists of all time, including Art Tatum, Benny Goodman, Billie Holliday, Cab Calloway, Charlie Parker, Coleman Hawkins, Count Basie, Dean Martin, Dizzy Gillespie, Duke Ellington, Ella Fitzgerald, Etta James, Frank Sinatra, Fred Astaire, John Coltrane, Judy Garland, Lena Horne, Louis Armstrong, Miles Davis, Ray Charles, and Sarah Vaughan to name only a few. These monumental works of art are, quite literally, national treasures.

6. These and other recordings of Plaintiffs' copyrighted musical works have been pirated by the Defendants in this case. Defendants are all players in the digital music business that participate in, and jointly profit from, making digital phonorecord deliveries (*i.e.*, downloads) of pirated recordings of the Subject Compositions.

7. Digital phonorecord deliveries of musical recordings constitute a reproduction and distribution of the musical work embodied in the digital recording and require a license from the copyright owner of the musical composition, sometimes referred to as a "mechanical license."

8. Defendants have failed to obtain any license that would authorize them to reproduce, distribute, or sell the recordings of the Subject Compositions identified

1 on Exhibit B and, as a result, Defendants have infringed Plaintiffs' exclusive rights of
2 reproduction and distribution of the Subject Compositions, under 17 U.S.C. §§ 106(1)
3 and 106(3).

4 9. Further, the activity of making digital phonorecord deliveries of pirated
5 recordings of the Subject Compositions does not qualify for a compulsory license or
6 as a covered activity under Section 115 of the Copyright Act.

7 10. A list of the pirated recordings of the Subject Compositions that
8 Defendants have reproduced and distributed without authorization, including by
9 making digital phonorecord deliveries, thus far identified, is set forth in the
10 Infringement Chart annexed as Exhibit B.

11 11. All the recordings identified on Exhibit B are pirated. Plaintiffs have thus
12 far identified over 200 pirated recordings of the Subject Compositions that have been
13 separately reproduced and distributed as digital phonorecord deliveries by Defendants
14 in the Google Play store as set forth in the Infringement Chart annexed as Exhibit B.
15 Defendants have infringed these works in a concerted and distinct distribution chain.

16 **Defendants' Piracy is Massive and Flagrant**

17 12. The scope and flagrant nature of Defendants' piracy cannot be
18 understated. It is obvious that the recordings listed in Exhibit B are pirated by virtue
19 of the scope of the Limitless catalog, the replication of the original album artwork
20 (while removing the original label logos), and the continued distribution of legitimate
21 versions of the recordings by the rightful record label owners on Google Play.

22 13. Limitless, which has no web presence and no listing on Discogs.com, is
23 selling recordings by virtually every well-known recording artist from the 1930s
24 through the 1960s, including Frank Sinatra, Ella Fitzgerald, Miles Davis, Louis
25 Armstrong, Billie Holiday, Mel Torme, Ray Charles, Tony Bennett, and Judy
26 Garland.

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1 14. In addition, strong evidence of the piracy can be gleaned directly from
2 the Google Play store from the comparison of the bootlegged Limitless catalog entries
3 side-by-side with legal recordings being sold by legitimate record labels.

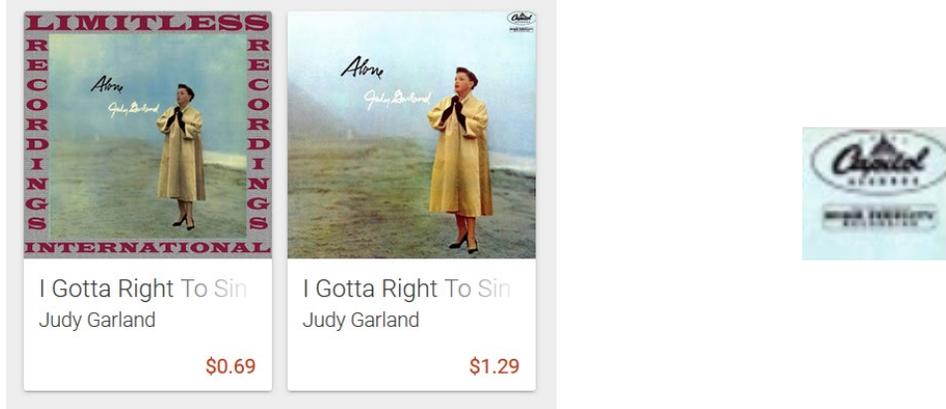
4 15. For example, album cover art has been an essential part of the packaging
5 and marketing and labels have taken great care to create album artwork commensurate
6 with the music it accompanied. Not so with Limitless, which has often either stolen
7 the album art and music wholesale or employed stock artwork for its bootlegged
8 albums.

9 16. Invariably, Limitless has simply applied a silver border with its name
10 written around the original release artwork and obscuring the original label logo as
11 exemplified by the following screenshots comparing the Limitless release with the
12 original:



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23 17. In many instances, Google Play is selling the legitimate release by the
24 original label side by side with Limitless' bootlegged copy. For example, in 1957,
25 Capitol Records released the album Alone, by Judy Garland, which included her
26 recording of the Arlen composition *I Gotta Right To Sing The Blues*. Capitol sells the
27 recording on Google Play in direct competition with Defendants, who sell their pirated
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1 copy for about half the price. In addition, Defendants have appropriated album
2 artwork (eliminating the Capitol logo) as evidenced by the following Google Play
3 screenshot:



11 <https://play.google.com/store/search?q=alone%20judy%20garland%20right%20to%20sing%20the%20blues&c=music> (11/19/2019)

12 18. Similarly, in 1956, Verve released Ella Fitzgerald and Louis
13 Armstrong's recording of the Arlen work *Ill Wind* on their album Ella and Louis
14 Again. Verve sells the recording on Google Play in direct competition with
15 Defendants. Once again, Defendants have pirated the original recording and artwork,
16 obscured the original label logo, and sell the pirated copy at about half the price, as
17 evidenced by the following Google Play screenshot:



26 <https://play.google.com/store/search?q=Ella%20and%20Louis%20Again%20ill%20wind%20ella%20fitzgerald&c=music> (11/19/2019)

27 19. Included on the Infringement Chart are no less than three Capitol
28 Records releases of Arlen works recorded by Frank Sinatra: *It's Only A Paper Moon*,

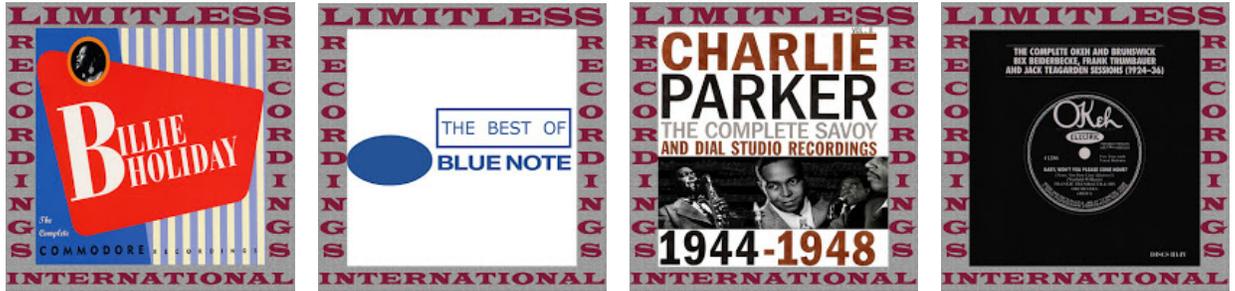
1 *Get Happy*, and the iconic Sinatra version of *I've Got The World On A String*. In each
 2 case, Capitol is selling the original album release in direct competition with the
 3 Defendants' bootlegged version:¹



20. Defendants have, on occasion, flagrantly bootlegged entire artist/label
 22 catalogs. For example, as shown in the following screenshots, Defendants claim to
 23 have compiled: (a) The Complete Commodore Recordings of Billie Holiday; (b) The
 24 Best of Blue Note (Art Blakey, Miles Davis, Thelonious Monk, and others); (c) The
 25 Complete Savoy and Dial Studio Recordings of Charlie Parker; and (d) The Complete

27 ¹ Defendants have enhanced their version of the 1954 Capitol album Songs for Young
 28 Lovers by adding *I've Got The World On A String*. The song was one of the first recorded by
 Sinatra for Capitol Records in 1953, but was originally released as a single and was not part of
Songs for Young Lovers.

1 Okeh & Brunswick recordings of the Bix Beiderbecke, Frank Trumbauer & Jack
2 Teagarden Sessions:

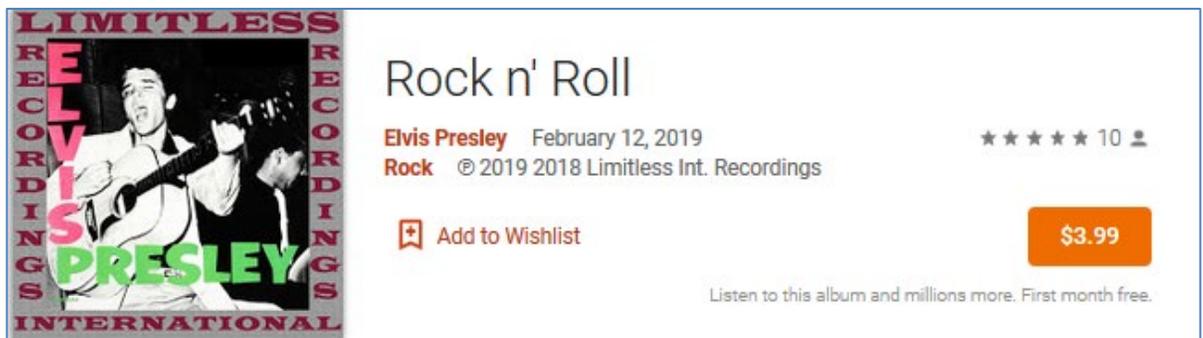


8 21. In addition, for older recordings originally released before albums were
9 popular, Defendants have simply compiled the singles and applied the Limitless
10 border around a simple background or a stock photograph of the artist, as illustrated
11 by the following screenshots:



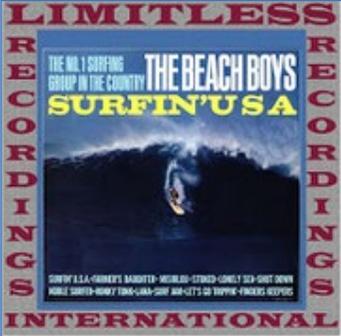
17 22. In addition to the pirated recordings of Plaintiffs' compositions,
18 Defendants have distributed a broad and deep catalog of thousands of other pirated
19 recordings through the Google Play store, including many entire albums of seminal
20 musical works. For example, the Limitless catalog available in the Google Play store
21 includes the following seminal albums:

22 a. Elvis Presley's debut album, Elvis Presley:



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b. Surfin' USA, by The Beach Boys:



Surfin' USA

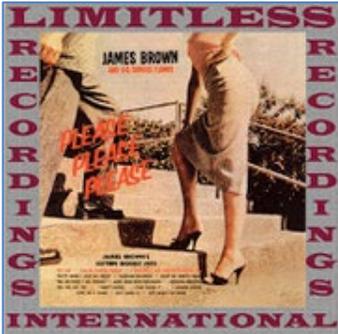
The Beach Boys May 23, 2018
Pop © 2019 2018 Limitless Int. Recordings

★★★★★ 3

Add to Wishlist **\$3.99**

Listen to this album and millions more. First month free.

c. James Brown's debut album, Please, Please, Please:



Please Please Please

James Brown & his Famous Flames December 1, 1958
R&B/Soul © 2019 2018 Limitless Int. Recordings

Add to Wishlist **\$3.99**

Listen to this album and millions more. First month free.

d. Bob Dylan's debut studio album, Bob Dylan:



Bob Dylan

Bob Dylan March 10, 2019
Rock © 2019 2018 Limitless Int. Recordings

Add to Wishlist **\$3.99**

Listen to this album and millions more. First month free.

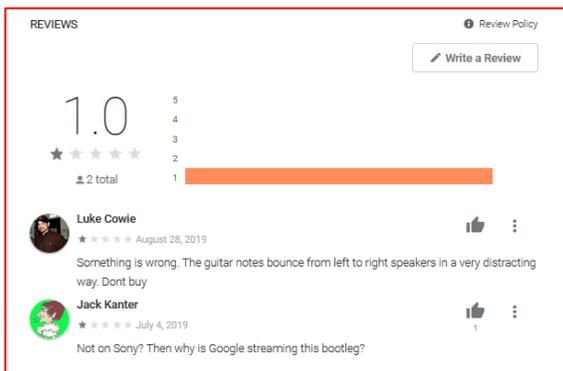
e. Roy Orbison's Crying:



23. Google's own customers have noticed that the Limitless albums are pirated and have alerted Google to the piracy, but Google has not taken any action. For example, Google is selling a legitimate version of the Bob Dylan album The Freewheelin' Bob Dylan, released by Sony side by side with the Limitless bootleg:



24. The Limitless bootleg catalog page on Google Play has elicited comments from Google users noting the poor quality of the recording and asking, "Not on Sony? Then why is Google streaming this bootleg?":



1 25. All of this should have made it obvious that Limitless is operating a huge
2 music piracy operation. Valleyarm and Google chose to ignore the evidence of piracy
3 and to participate in the infringement on a massive scale.

4 26. To put this case in context, in 2007, Jammie Thomas-Rasset, a single
5 mother of four in Brainerd, Minnesota, was found liable, after three separate jury
6 trials, for copyright infringement for using file sharing software that enabled the
7 unauthorized downloading and distribution of 24 recordings by the Goo Goo Dolls
8 and Def Leppard, among others. The juries awarded statutory damages in all three
9 trials of up to \$80,000 per infringement. The Eighth Circuit Court of Appeals
10 ultimately affirmed statutory damages in the amount of \$9,250 for each infringed
11 recording, for a total award of \$222,000. Ms. Thomas-Rasset declared bankruptcy as
12 she had “no other option.”

13 27. In 2009, Joel Tenenbaum, a Massachusetts college student, who also
14 used file-sharing software that permitted others to download 30 recordings by Limp
15 Bizkit and Blink-182, was found liable and the jury awarded statutory damages of
16 \$22,500 per recording, for a judgment that totaled \$675,000 forcing Mr. Tenenbaum
17 to file for Chapter 7 bankruptcy.

18 28. Unlike Ms. Thomas-Rasset and Mr. Tenenbaum who were not alleged
19 to have sold their infringing recordings or profited from their conduct, Defendants in
20 this case have engaged in massive music piracy operation for the purpose of
21 generating profits from their sales of pirated recordings and by other means.

22 29. The copyright infringement operation detailed in this Complaint is only
23 the latest in a long line of piracy schemes that have plagued composers, publishers,
24 and record labels since the inception of the music industry over 100 years ago, when
25 the perforated rolls used by player pianos to perform musical works were pirated. See
26 *Aeolian Co. v. Royal Music Co.*, 196 F. 926 (W.D.N.Y. 1912).

27 30. As the technology employed by the music industry to reproduce musical
28 works advanced, bootlegging efforts by music pirates kept pace. In the 1960s and

1 1970s, organized criminal enterprises engaged in record and tape piracy operations
2 on a scale that is dwarfed by the infringing conduct explained herein. Like the
3 Defendants in this case, the “tape pirates” and “record pirates” of years past
4 unlawfully duplicated popular pre-existing recordings, and then claimed their liability
5 was limited by the compulsory license provision of the 1909 Copyright Act, § 1(e).

6 31. The landmark case *Duchess Music Corp. v. Stern*, 458 F.2d 1305 (9th Cir.
7 1972) settled the issue as to whether tape pirates could limit their liability for piracy
8 under the compulsory license provision of the 1909 Copyright Act. In *Duchess*, the
9 defendant tape pirate engaged in the same conduct identified in this Complaint, and
10 claimed her conduct was lawful because the compulsory license provision of the
11 Copyright Act authorized the reproduction and distribution of the musical works
12 embodied on the recordings she pirated. The Ninth Circuit rejected the argument,
13 stating, “She may not continue her piracy under the flag of compulsory licensing.”
14 The *Duchess* court concluded that the tape pirates’ activity was ineligible for a
15 compulsory license and that reproduction of a musical composition on a pirated
16 recording infringed the copyright in the composition, even when a compulsory license
17 was claimed.²

18 32. The holding in *Duchess* was codified when the Copyright Act was
19 revised in 1976. The statutory bar against compulsory licensing of pirated recordings
20 continues in the recent amendments to Section 115 of the Copyright Act, which
21 provides that reproduction and distribution of pirated sound recordings is not a
22 covered activity under Section 115 and is ineligible for a compulsory license.

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25 ² The criminal conduct of “tape pirates” became a priority of the Attorney General of the
26 United States, Edward H. Levi, in 1975 when the Justice Department determined that decisions
27 reached by four Circuit Courts of Appeals, including the Ninth Circuit in *Duchess*, rendered tape
28 pirates criminally liable even where the statutory royalty was tendered. See *Heilman v. Levi*, 391
F.Supp. 1106 (E.D.Wisc. 1975). Criminal copyright infringement sentences continue to this day.
See *Matter of Zaragoza-Vaquero*, 26 I&N Dec. 814 (BIA 2016)(defendant sentenced to 33 months
in prison and ordered to be removed from the United States for selling bootleg copies of music
CDs at a Florida flea market, as a crime involving moral turpitude).

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Valleyarm

40. Upon information and belief, Defendant Valleyarm Digital Limited (“Valleyarm”) is a business entity organized under the laws of Australia with a place of business at Suite 1.09, 838 Collins Street, Docklands, VIC 3008, Australia.

41. Valleyarm has distributed, and continues to distribute, digital music to the Google Play store and has delivered thousands of recordings to Google Play for sale throughout the U.S.

42. Valleyarm specifically selected and contracted with Limitless to provide the Limitless digital music catalog to be sold in the Google Play store on negotiated financial terms.

43. At Limitless’ direction, Valleyarm unlawfully reproduced all of the pirated recordings of the Subject Compositions identified on Exhibit B, distributed them to Google, and unlawfully authorized Google to make digital phonorecord deliveries in the Google Play store, as specifically set forth in Exhibit B.

Limitless

44. Upon information and belief, Defendant Lenandes Ltd (“Lenandes”) is a company organized under the laws of the United Kingdom with a registered office address at 10 Philpot Lane, London, England, EC3M 8AA.

45. Upon information and belief, Defendant Giacomo Verani (“Verani”) is the sole director and shareholder of Lenandes and controls its operations.

46. Upon information and belief, Defendant Limitless Int. Recordings is a business entity whose country of origin and business address are unknown to Plaintiffs and is controlled by Verani and/or is the trade name under which Verani and/or Lenandes are operating. Lenandes, Verani, and Limitless Int. Recordings are united in interest and shall be referred to, collectively, as “Limitless”.

47. Upon information and belief, Limitless directly pirated pre-existing recordings embodying the Subject Compositions identified on Exhibit B, distributed them to Valleyarm and/or Google, unlawfully authorized Valleyarm’s distribution

1 and delivery of the pirated recordings to Google for sale in its Google Play store, and
2 unlawfully authorized Valleyarm and Google's making of digital phonorecord
3 deliveries in Google's Google Play store as specifically set forth in the annexed
4 Exhibit B.

5 48. Upon information and belief, Limitless and/or Valleyarm are simply
6 duplicating recordings of the Subject Compositions made by others without
7 permission and authorizing Valleyarm and Google to sell reproductions of the pirated
8 copies for profit in Google Play.

9 **Jurisdiction, Venue and Joinder**

10 49. This Court has personal jurisdiction over Defendants. Google has its
11 principal place of business in this district in California and all Defendants have
12 purposefully availed or directed their infringing activities in California.

13 50. Further, Plaintiffs' copyright infringement claims arise out of (a) the
14 reproduction and distribution of pirated recordings of the Subject Compositions listed
15 in Exhibit B, occurring in California, directly by Defendants and/or at their purposeful
16 direction and availment, including the sale of pirated recordings of Subject
17 Compositions to California residents; or (b) transactions consummated within
18 California between Valleyarm and Google, concerning reproduction, distribution and
19 delivery of the pirated recordings of the Subject Compositions.

20 51. Limitless intentionally directed its distributor, Valleyarm, to distribute
21 the pirated recordings to Google in California for sale in its Google Play store.

22 52. Valleyarm and Limitless intentionally distributed and delivered the
23 pirated recordings of the Subject Compositions identified in Exhibit B to Google, and
24 unlawfully authorized Google to reproduce these pirated recordings of the Subject
25 Compositions in its Google Play store and to sell permanent downloads to California
26 consumers.

27 53. Venue is proper in this District pursuant to 28 U.S.C §§ 1391(b), 1391(c)
28 and 1400(a) because Google has its principal place of business here. In addition,

1 Defendants are subject to personal jurisdiction in this Judicial District and have
2 committed unlawful acts of infringement in this Judicial District.

3 54. Joinder of Limitless, Valleyarm and Google is proper under Fed. R. Civ.
4 P. 20 because Defendants are jointly and severally liable as members of a distinct
5 distribution chain for the acts of copyright infringement identified herein.

6 **Harold Arlen**

7 55. Harold Arlen (1905–1986) was a master composer and a highly regarded
8 contributor to the Great American Songbook. The son of a synagogue cantor, Arlen
9 was born in Buffalo, New York and emerged as one of the greatest American
10 composers and songwriters, writing extraordinarily complex melodies and harmonies
11 that remained accessible to a broad popular audience.

12 56. Early in his career, Arlen wrote songs for musicals, including the entire
13 scores for Broadway shows such as Cotton Club Parade, Life Begins at 8:40, Bloomer
14 Girl, St. Louis Woman, Jamaica, and Saratoga, among others.

15 57. Arlen was also active in Hollywood and composed the music for some
16 of the greatest film musicals of all time, most notably all the music in the 1939 motion
17 picture classic “The Wizard of Oz,” including *Ding, Dong! The Witch Is Dead, We’re*
18 *Off To See The Wizard*, and *Over The Rainbow*.

19 58. *Over The Rainbow*, performed by Judy Garland in the film, won the
20 Academy Award for Best Original Song. The song is one of the most enduring
21 standards of the 20th century and was voted number one on the "Songs of the Century"
22 list compiled by the Recording Industry Association of America and the National
23 Endowment for the Arts. The American Film Institute also ranked *Over The Rainbow*
24 the greatest movie song of all time.

25 59. Arlen successfully collaborated with the greatest Tin Pan Alley lyricists,
26 including “Yip” Harburg, Ira Gershwin, Johnny Mercer, Leo Robin and Ted Koehler.

27 60. Arlen’s partnership with Harburg extended over many decades. With
28 Billy Rose, they wrote *It’s Only A Paper Moon* in 1933. They followed up with a

1 successful revue, *Life Begins at 8:40*, which included lyric collaborations with his old
2 friend, Ira Gershwin, including *Fun to Be Fooled*, *You're A Builder Upper*, and *Let's*
3 *Take A Walk Around The Block*.

4 61. Arlen was inducted into the Songwriters Hall of Fame in 1971 and was
5 honored with its highest accolade, the Johnny Mercer Award, in 1982. In 1996, Arlen
6 was honored and memorialized by the U.S. Postal Service with his own stamp:



15 **SA Music LLC and the Harold Arlen Trust**

16 62. Harold Arlen's son, Sam Arlen, acquired the U.S. copyrights in the
17 Subject Compositions between 1989 and 2015, by termination notices that he, as sole
18 statutory heir under Section 304 of the Copyright Act of 1976, served and filed with
19 Copyright Office.

20 63. In 2018, Sam Arlen assigned the U.S. copyrights in the Subject
21 Compositions, as set forth in the Composition Chart annexed as Exhibit A, along with
22 all accrued causes of action, to his company, SA Music, LLC. SA Music, LLC is the
23 legal and/or beneficial owner of the U.S. copyright in certain of the Subject
24 Compositions as identified in Exhibit A, along with all accrued causes of action.

25 64. Plaintiff Harold Arlen Trust acquired the U.S. copyrights identified in
26 the Composition Chart annexed as Exhibit A by operation of will and through
27 termination notices served and filed by Harold Arlen during his lifetime with the U.S.
28 Copyright Office under Section 304 of the Copyright Act of 1976.

1 million recordings in the Google Play store) and a complete willingness by the digital
2 music stores to seek popular and iconic recordings from any source, legitimate or not,
3 provided they participate in sharing the proceeds.

4 73. The iconic status of the pirated recordings of the Subject Compositions
5 at issue in this case cannot be overstated. Any list of the most popular singers and
6 musicians of any period between 1930 and 1970 would be replete with the artists who
7 have recorded Plaintiffs' musical works, some of them multiple times.

8 74. All the recordings on the Infringement Chart (Exh. B) embodying the
9 Subject Compositions are pirated copies, or "bootlegs." Defendants' digital
10 phonorecord deliveries of these pirated copies were all made without authorization
11 from the copyright owners of the sound recordings or those who originally "fixed"
12 them as required by Section 115 (discussed below), and the copyright owners of the
13 Subject Compositions.

14 75. Defendants all generate illicit revenue for themselves when these and
15 other pirated copies are sold or distributed. Plaintiffs have not authorized any
16 reproduction or distribution of these pirate recordings of the Subject Compositions
17 (or any identified on Exhibit B) and it is an infringement for which all the Defendants
18 are jointly and severally liable.

19 **The Pirated Recordings**

20 76. All of the recordings identified in Exhibit B are pirated. Defendants have
21 taken recordings of the Subject Compositions – in which they hold no rights – and
22 reproduced and distributed pirated copies of them to the public, for profit, without
23 authorization.

24 77. Virtually all of the recordings at issue in this case were originally made
25 between 1930 and 1972.

26 78. Since Limitless did not originally "fix" any of the relevant recordings,
27 the only way for it to acquire the rights to duplicate and distribute them would be to
28 purchase or license rights in these recordings.

1 79. Upon information and belief, Limitless never acquired permission or the
2 rights to reproduce or distribute any of these recordings from any person who lawfully
3 fixed them or from the owner of the copyright in the sound recording. Limitless is
4 simply duplicating previously released recordings and selling them as if they were the
5 rightful owner. Valleyarm and Google are duplicating Limitless's pirated sound
6 recordings of the Subject Compositions and selling the pirated copies for profit.

7 **Defendants Have Infringed the Subject Compositions**

8 80. Section 115 of the Copyright Act expressly excludes Defendants'
9 reproduction and distribution of pirated recordings of the Subject Compositions as a
10 covered activity eligible for a compulsory license under Section 115 and Defendants
11 have failed to obtain any licenses for the Subject Compositions that authorize such
12 activity.

13 81. The Infringement Chart annexed as Exhibit B sets forth each pirated
14 recording of the Subject Compositions within the Limitless, Valleyarm, Google
15 distribution chain thus far identified by Plaintiffs that these Defendants have
16 reproduced, distributed, and/or made available for digital phonorecord deliveries in
17 Google's Google Play store without authorization.

18 82. The various types of unauthorized reproductions, distributions, and/or
19 digital phonorecord delivery configurations of each of the pirated recordings of the
20 Subject Compositions made and/or authorized by Defendants are discussed briefly
21 below.

22 ***Permanent Downloads***

23 83. Permanent download means a digital transmission of a sound recording
24 of a musical work in the form of a download, where such sound recording is accessible
25 for listening without restriction as to the amount of time or number of times it may be
26 accessed.

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1 84. Google has made available, reproduced, and distributed permanent
2 downloads of the recordings of the Subject Compositions listed on Exhibit B to its
3 customers.

4 85. Google was unlawfully authorized and directed to do so by Limitless
5 and/or Valleyarm.

6 86. Reproducing or distributing permanent downloads of recordings of the
7 Subject Compositions require licenses from the copyright owners of the Subject
8 Compositions and all of the Defendants failed to obtain such licenses for each entry
9 on the Infringement Chart at Exhibit B.

10 87. The reproduction and distribution of permanent downloads of
11 recordings of the Subject Compositions by Google, and the authorization of this
12 activity by Limitless and Valleyarm, infringes Plaintiffs' exclusive reproduction and
13 distribution rights under 17 U.S.C. § 106(1) and (3).

14 *Server Copies*

15 88. Google has reproduced at least one copy of each recording of the Subject
16 Compositions identified on Exhibit B on its servers for sale of permanent downloads
17 in its Google Play store as server copies.

18 89. Google was unlawfully authorized to engage in this activity by Limitless
19 and/or Valleyarm.

20 90. Making server copies of any of the recordings embodying the Subject
21 Compositions identified on Exhibit B requires a license from the copyright owners of
22 the Subject Compositions.

23 91. All Defendants failed to obtain such licenses for each of the recordings
24 embodying the Subject Compositions identified on Exhibit B.

25 92. Google's reproduction of server copies of pirated recordings of the
26 Subject Compositions for sale of permanent downloads in its Google Play store, and
27 authorization of this activity by Limitless and Valleyarm, as well the distribution of
28 the server copies of pirated recordings of Subject Composition to Google, by

1 Limitless and/or Valleyarm, infringes Plaintiffs’ exclusive reproduction and
2 distribution rights under 17 U.S.C. § 106(1) and (3).

3 ***Making Available***

4 93. Defendants have made and continue to make available, or authorize
5 making available, permanent downloads of the recordings of the Subject
6 Compositions identified on Exhibit B to the public by delivering, uploading and/or
7 offering them as permanent downloads in Google Play.

8 94. The Defendants’ making available recordings of the Subject
9 Compositions identified on Exhibit B for permanent downloads, and authorization of
10 this activity, by Limitless and/or Valleyarm, requires a license from the copyright
11 owners of the Subject Compositions

12 95. Defendants failed to obtain such licenses for each recording of the
13 Subject Compositions identified on Exhibit B and have thereby infringed Plaintiffs’
14 exclusive distribution rights under 17 U.S.C. § 106(3) as a “deemed distribution.”
15 *A&M Records v. Napster*, 239 F.3d 1004, 1014 (9th Cir. 2001); *Perfect 10, Inc. v.*
16 *Amazon.com, Inc.*, 487 F.3d 701 718–19 (9th Cir. 2007).

17 ***Importation***

18 96. Importation of phonorecords of a musical composition acquired outside
19 the U.S. requires authorization of the owner of the copyright of the musical
20 composition under Section 602 of the Copyright Act. Importation without the
21 authority of the owner of the copyright in that composition is an infringement of the
22 exclusive distribution rights under 17 U.S.C. § 106(3).

23 97. Defendants have engaged in the unauthorized importation of
24 phonorecords of the Subject Compositions, acquired outside the U.S., by digital
25 phonorecord deliveries, or other means.

26 98. Limitless and Valleyarm are located outside the United States.
27 Valleyarm, at the direction of Limitless, and Google have engaged in the importation
28 of phonorecords of each recording embodying the Subject Compositions listed on

1 Exhibit B into the United States by digital phonorecord delivery, or other delivery of
2 phonorecords.

3 99. None of the Defendants obtained importation authorization from the U.S.
4 copyright owners of the Subject Compositions.

5 100. Defendants' respective importations of phonorecords embodying the
6 Subject Compositions identified on Exhibit B infringe Plaintiffs' exclusive
7 importation rights under 17 U.S.C. § 602 and distribution rights under 17 U.S.C. §
8 106(3).

9 **Willfulness**

10 101. The infringing conduct of all of the Defendants is willful. Limitless
11 knows that it does not have authority to reproduce, distribute or for importation of the
12 recordings of the Subject Compositions listed on Exhibit B, or to authorize these
13 actions by Valleyarm and Google. Limitless has pirated thousands of recordings and
14 sold them in the United States through Google Play.

15 102. Similarly, Valleyarm did not perform any investigation or due diligence
16 to confirm that Limitless had authorization to reproduce, distribute, make, or
17 authorize the making of digital phonorecord deliveries, or the importation, of the
18 recordings of the Subject Compositions identified on Exhibit B.

19 103. In fact, Valleyarm has had knowledge of the infringing conduct of
20 Limitless and has nevertheless continued to make digital phonorecord deliveries and
21 other reproductions and distributions of the pirated recordings of the Subject
22 Compositions that Limitless provides without any licenses, and/or were recklessly
23 indifferent or willfully blind to their own infringing conduct.

24 104. Further, Google has had knowledge of its own infringing conduct and
25 that of Limitless and Valleyarm and has continued to work with them and make digital
26 phonorecord deliveries and other reproductions and distributions of the pirated
27 recordings of the Subject Compositions that Limitless and Valleyarm provide and/or
28 were recklessly indifferent or willfully blind to their own infringing conduct.

1 105. Finally, Google has willfully failed to employ adequate human
2 resources, screening mechanisms, or use of digital fingerprinting technology to detect
3 unlawfully duplicated recordings in their stores that it routinely uses for other
4 services, for example, YouTube, or Google Play’s “scan and match” service.

5 106. In addition to the recordings identified on Exhibit B, there are believed
6 to be many other pirated recordings of the Subject Compositions that Defendants have
7 reproduced and distributed without authorization that Plaintiffs have not yet identified
8 or that are no longer available on Google Play.

9 107. The infringement by Defendants of each Subject Composition on each
10 pirated recording identified in the Infringement Chart at Exhibit B began as of the
11 date of upload, receipt, delivery to and/or reproduction by Google of server copies of
12 the pirated recordings of the Subject Compositions designated for reproduction and
13 distribution by Limitless and/or Valleyarm in Google Play and continues to the
14 present. The infringements identified in Exhibit B all occurred within three years of
15 filing this Complaint.

16 108. By their conduct described above, Defendants have infringed and are
17 continuing to infringe Plaintiffs’ copyrights on a regular basis in violation of 17
18 U.S.C. §§ 101, 106, 115, 501, 602 *et seq.*

19 109. As a direct and proximate result of Defendants’ infringement, Plaintiffs
20 are entitled to elect either an award of actual damages, including Defendants’ profits,
21 or statutory damages under 17 U.S.C. § 504(c).

22 110. Defendants’ infringement is and has been willful, intentional, purposeful
23 and with willful disregard of the rights of Plaintiffs. Anything less than maximum
24 statutory damage awards would encourage infringement, amount to a slap on the
25 wrist, and reward Defendants for their willful infringement on a grand scale.

26 111. Plaintiffs are also entitled to their costs, including reasonable attorneys’
27 fees, pursuant to 17 U.S.C. § 505.

28

1 112. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a permanent
2 injunction prohibiting Defendants from reproducing, distributing, importing and
3 selling the pirated recordings of the Subject Compositions without license or
4 authorization in violation of the Copyright Act.

5 **Claim for Copyright Infringement Against**
6 **Google, Valleyarm, and Limitless**

7 113. Plaintiffs repeat each and every allegation of the Complaint.

8 114. Plaintiffs SA Music LLC and William Kolbert as Trustee of the Harold
9 Harlen Trust claim that Defendants Google, Valleyarm, and Limitless have
10 unlawfully reproduced, distributed, and imported unauthorized recordings embodying
11 the Subject Compositions including, but not limited to, the recordings identified in
12 Exhibit B by the methods identified herein, and/or have unlawfully directed or
13 authorized this activity.

14 115. Defendants have thereby willfully infringed, and are continuing to
15 infringe, Plaintiffs' copyrights in the Subject Compositions in violation of the
16 Copyright Act.

17 **Prayer for Relief**

18 WHEREFORE, Plaintiffs respectfully request that judgment be entered against
19 Defendants, jointly and severally, as follows:

- 20 1. A declaration that Defendants have infringed Plaintiffs' copyrights in the
21 Subject Compositions in violation of the Copyright Act;
22 2. A declaration that each of Defendants' infringements was willful;
23 3. At Plaintiffs' election, an award of Plaintiffs' actual damages, including
24 Defendants' profits, or a separate award of statutory damages in amounts
25 to be determined by the jury for all infringements involved in the action,
26 with respect to any one work, for which any one infringer is liable
27 individually, or for which any two or more infringers are liable jointly
28 and severally;

