

1 Allen Hyman (California State Bar No. 73371)  
LAW OFFICES OF ALLEN HYMAN  
2 10737 Riverside Drive  
North Hollywood, CA 91602  
3 Phone: (818) 763-6289  
Fax: (818) 763-4676  
4 E-mail: lawoffah@aol.com

5 Brian S. Levenson \* *Pro Hac Vice Pending*  
SCHWARTZ, PONTERIO & LEVENSON, PLLC  
6 134 West 29<sup>th</sup> Street, Suite 1006  
New York, New York 10001  
7 Phone: (212) 714-1200  
Fax: (212) 714-1264  
8 E-mail: blevenson@splaw.us

9 Attorneys for Plaintiff

10  
11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 RAY HENDERSON MUSIC CO., INC.,

14  
15 Plaintiff,

16 v.

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

20 Defendants.

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

21  
22 **Jurisdiction**

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

**Introduction**

1  
2       2. Plaintiff is the legal and/or beneficial copyright owner of musical works  
3 authored by Ray Henderson one of the premier composers of American music.

4       3. Ray Henderson wrote or co-wrote some of the most popular modern  
5 songs, including many seminal works in the American songbook, including *Bye Bye*  
6 *Blackbird*, *Has Anybody Seen My Girl?* (a/k/a "*Five Foot Two, Eyes of Blue*"), *I'm*  
7 *Sitting on Top of the World*, *Life Is Just a Bowl of Cherries*, *Varsity Drag*, *The Best*  
8 *Things in Life Are Free*, *Button Up Your Overcoat* and *Animal Crackers in My Soup*.

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

11       5. The works of Henderson have been recorded by the most prominent jazz  
12 and popular artists of all time, including Aretha Franklin, Frank Sinatra, Ray Charles,  
13 Bing Crosby, Judy Garland, Dean Martin, Fred Astaire, John Coltrane, Louis  
14 Armstrong, Miles Davis, and Sarah Vaughan to name only a few. These monumental  
15 works of art are, quite literally, national treasures.

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

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

25       8. Defendants have failed to obtain any license that would authorize them  
26 to reproduce, distribute, or sell the recordings of the Subject Compositions identified  
27 on Exhibit B and, as a result, Defendants have infringed Plaintiff's exclusive rights of  
28

1 reproduction and distribution of the Subject Compositions, under 17 U.S.C. §§ 106(1)  
2 and 106(3).

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

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

10 11. All the recordings identified on Exhibit B are pirated. Plaintiff has thus  
11 far identified over 50 pirated recordings of the Subject Compositions that have been  
12 separately reproduced and distributed as digital phonorecord deliveries by Defendants  
13 as set forth in the Infringement Chart annexed as Exhibit B. Defendants have infringed  
14 these works in a concerted and distinct distribution chain.

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

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

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

25  
26  
27  
28

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. Album cover art has been an essential part of the packaging and  
 5 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:



13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24 17. In many instances, Google Play is selling the legitimate release by the  
 25 original label side by side with Limitless’s bootlegged copy. For example, in 1957,  
 26 Columbia released a Miles Davis recording of *Bye Bye Blackbird* on his album, Round  
 27 Midnight, widely recognized by jazz critics as “a landmark album in hard bop and  
 28 one of the greatest jazz albums of all time.” Columbia continues to sell the album on

1 Google Play, but now in direct competition with Defendants who have pirated the  
2 original recording and artwork, obscured the Columbia logo, and are selling their  
3 pirated copy at about half the price, as evidenced by the following Google Play  
4 screenshots:



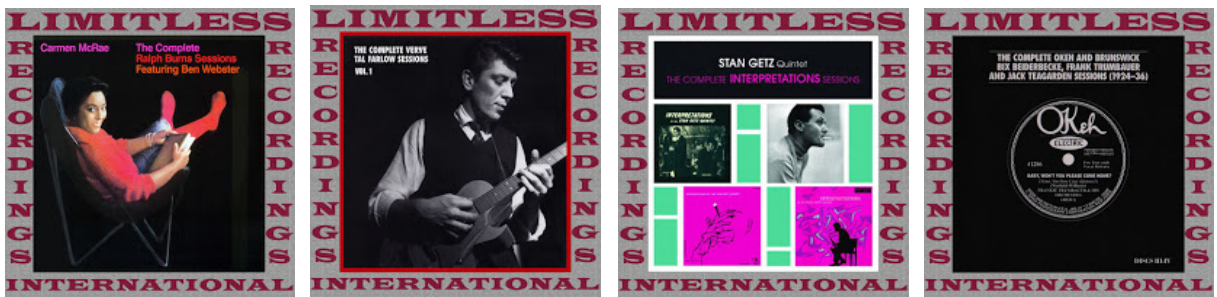
13 <https://play.google.com/store/search?q=miles%20davis%20bye%20bye%20blackbird%20%27Round%20About%20Midnight&c=music> (11/20/2019)

14 18. Similarly, in 1957, Capitol Records released the album Alone, by Judy  
15 Garland, which included her recording of the Henderson composition *Just A Memory*.  
16 Capitol sells the recording on Google Play in direct competition with Defendants who,  
17 again, have appropriated album artwork (eliminating the Capitol logo) and are selling  
18 the bootleg for half the price as evidenced by the following Google Play screenshot:



28 <https://play.google.com/store/search?q=alone%20just%20a%20memory%20judy%20garland&c=music> (12/4/2019)

1  
2  
3  
4  
5  
6  
7  
8  
19. The scope and scale of Defendants’ piracy operation cannot be understated. Defendants have, on occasion, flagrantly bootlegged entire artist or label catalogs. For example, as shown in the following screenshots, Defendants claim to have compiled: (a) The Complete R. Burns Sessions of Carmen McRae; (b) The Complete Verve Tal Farlow Sessions; (c) The Complete Interpretations Sessions by the Stan Getz Quintet; and (d) The Complete Okeh & Brunswick recordings of the Bix Beiderbecke, Frank Trumbauer & Jack Teagarden Sessions:



14  
15  
16  
17  
20. In addition, for older recordings originally released before albums were popular, Defendants have simply compiled the singles and applied the Limitless border around a simple background or a stock photograph of the artist, as illustrated by the following screenshots:

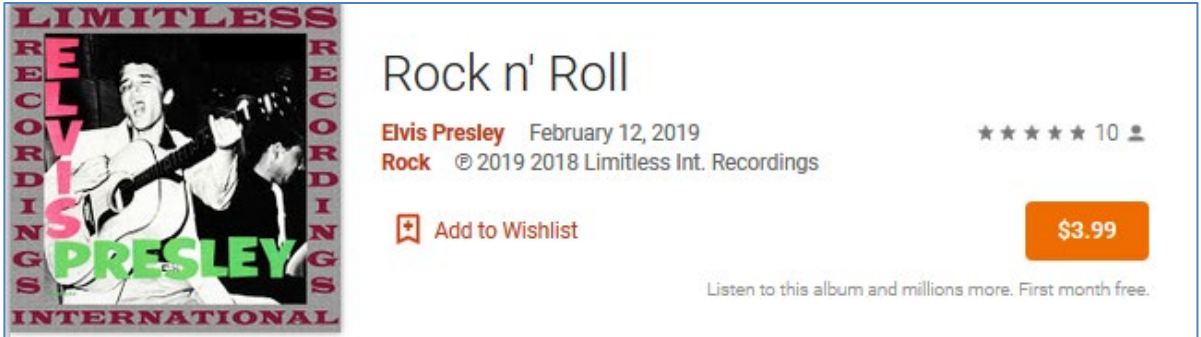


23  
24  
25  
26  
27  
28  
21. In addition to the pirated recordings of Plaintiffs’ compositions, Defendants have distributed a broad and deep catalog of thousands of other pirated recordings through the Google Play store, including many entire albums of seminal musical works.

1 22. For example, the Limitless catalog available in the Google Play store  
2 includes the following seminal albums:

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

4  
5  
6  
7  
8  
9



**LIMITLESS**  
RECORDINGS INTERNATIONAL

### Rock n' Roll

Elvis Presley February 12, 2019  
Rock © 2019 2018 Limitless Int. Recordings

★★★★★ 10

Add to Wishlist

\$3.99

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

10 b. Surfin' USA, by The Beach Boys:

11  
12  
13  
14  
15  
16



**LIMITLESS**  
RECORDINGS INTERNATIONAL

### Surfin' USA

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

★★★★★ 3

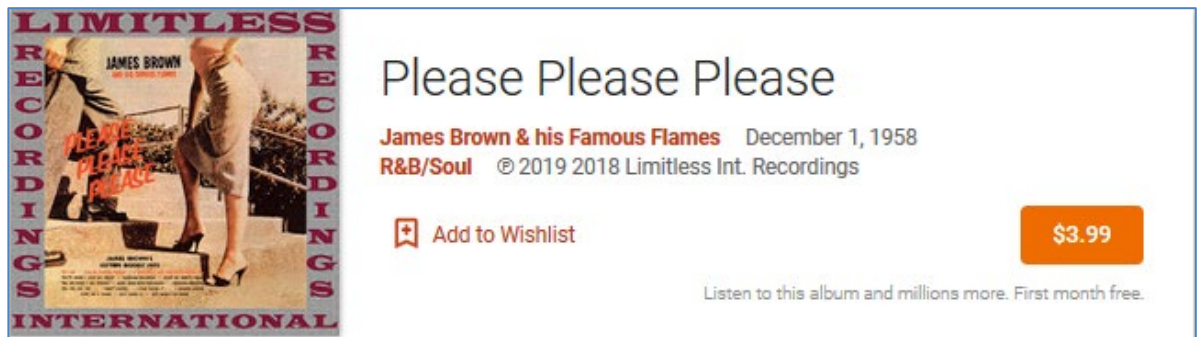
Add to Wishlist

\$3.99

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

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

18  
19  
20  
21  
22  
23



**LIMITLESS**  
RECORDINGS INTERNATIONAL

### 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:

**Crying (Expanded, HQ Remastered Version)**  
 Roy Orbison January 1, 1962  
 Rock © 2019 2018 Limitless Int. Recordings  
 Add to Wishlist  
 \$3.99

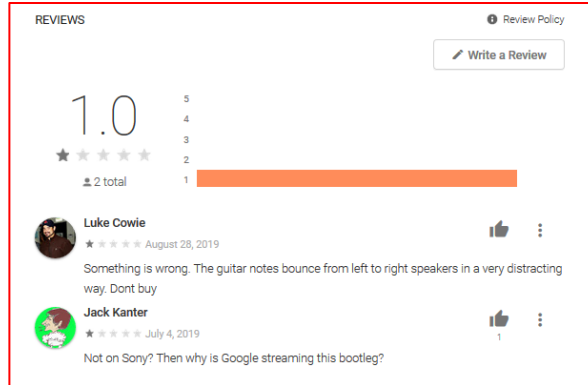
23. Google’s own customers have noticed that the Limitless albums are pirated and have alerted Google to the piracy, but Google has not taken any action. For example, Google is selling a legitimate version of the Bob Dylan album The Freewheelin’ Bob Dylan, released by Sony side by side with the Limitless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

**The Freewheelin’ Bob Dylan**  
 Bob Dylan  
 ★★★★★

**The Freewheelin’ Bob Dylan**  
 Bob Dylan  
 ★★★★★ \$9.49



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



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

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

23           27. In 2009, Joel Tenenbaum, a Massachusetts college student, who also  
24 used file-sharing software that permitted others to download 30 recordings by Limp  
25 Bizkit and Blink-182, was found liable and the jury awarded statutory damages of  
26 \$22,500 per recording, for a judgment that totaled \$675,000 forcing Mr. Tenenbaum  
27 to file for Chapter 7 bankruptcy.

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

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

10           30. As the technology employed by the music industry to reproduce musical  
11 works advanced, bootlegging efforts by music pirates kept pace. In the 1960s and  
12 1970s, organized criminal enterprises engaged in record and tape piracy operations  
13 on a scale that is dwarfed by the infringing conduct explained herein. Like the  
14 Defendants in this case, the “tape pirates” and “record pirates” of years past  
15 unlawfully duplicated popular pre-existing recordings, and then claimed their liability  
16 was limited by the compulsory license provision of the 1909 Copyright Act, § 1(e).

17           31. The landmark case *Duchess Music Corp. v. Stern*, 458 F.2d 1305 (9<sup>th</sup> Cir.  
18 1972) settled the issue as to whether tape pirates could limit their liability for piracy  
19 under the compulsory license provision of the 1909 Copyright Act. In *Duchess*, the  
20 defendant tape pirate engaged in the same conduct identified in this Complaint, and  
21 claimed her conduct was lawful because the compulsory license provision of the  
22 Copyright Act authorized the reproduction and distribution of the musical works  
23 embodied on the recordings she pirated. The Ninth Circuit rejected the argument,  
24 stating, “She may not continue her piracy under the flag of compulsory licensing.”  
25 The *Duchess* court concluded that the tape pirates’ activity was ineligible for a  
26 compulsory license and that reproduction of a musical composition on a pirated  
27  
28

1 recording infringed the copyright in the composition, even when a compulsory license  
2 was claimed.<sup>1</sup>

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

8 33. Defendants are nothing more than modern tape and their conduct  
9 constitutes willful copyright infringement of the Subject Compositions in violation of  
10 the United States Copyright Act [17 U.S.C. §§ 101, 106, 115, 501, 602 *et seq.*] (the  
11 “Copyright Act”).

12 ***Ray Henderson Music Co. Inc.***

13 34. Plaintiff Ray Henderson Music Co. Inc. is a Delaware corporation with  
14 a principal place of business in Maryland.

15 ***Google***

16 35. Defendant Google LLC (“Google”) is a limited liability company  
17 organized under the laws of the State of Delaware with a place of business at 1600  
18 Amphitheatre Parkway, Mountain View, California.

19 36. Google has owned and operated a digital music store under various  
20 names since 2011, including “Google Music” at launch, and currently, “Google Play”  
21 that sells permanent downloads. Google Play currently has a catalog of over 40  
22 million tracks for sale as permanent downloads in the U.S.

23  
24 \_\_\_\_\_  
25 <sup>1</sup> 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).

1 37. Google specifically selected and contracted with Valleyarm and/or  
2 Limitless to provide the Limitless digital music catalog to be sold in its Google Play  
3 store on negotiated financial terms.

4 38. Google received all of the recordings of the Subject Compositions  
5 identified on Exhibit B from Limitless and/or Valleyarm. Google then reproduced,  
6 distributed and sold these pirated recordings of the Subject Compositions in Google  
7 Play, without any licenses, as permanent downloads among other types of digital  
8 phonorecord deliveries identified herein.

9 *Valleyarm*

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

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

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

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

23 *Limitless*

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

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



1 50. Limitless intentionally directed its distributor, Valleyarm, to distribute  
2 the pirated recordings to Google in California for sale in its Google Play store.

3 51. Valleyarm and Limitless intentionally distributed and delivered the  
4 pirated recordings of the Subject Compositions identified in Exhibit B to Google, and  
5 unlawfully authorized Google to reproduce these pirated recordings of the Subject  
6 Compositions in its Google Play store and to sell permanent downloads to California  
7 consumers.

8 52. Venue is proper in this District pursuant to 28 U.S.C §§ 1391(b), 1391(c)  
9 and 1400(a) because Google has its principal place of business here. In addition,  
10 Defendants are subject to personal jurisdiction in this Judicial District and have  
11 committed unlawful acts of infringement in this Judicial District.

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

15 **Ray Henderson**

16 54. Ray Henderson (1896-1970) was born in Buffalo, New York and studied  
17 piano and composition at the Chicago Conservatory where he cultivated a melodic  
18 style that helped him write enduring American standards, such as *Life Is Just A Bowl*  
19 *of Cherries*, *Bye Bye Blackbird*, and *Five Foot Two Eyes Of Blue*.

20 55. Henderson was part of the most successful songwriting team of the late  
21 1920s and 1930s, Henderson, Brown and DeSylva. The threesome created several  
22 memorable hits from the era including *It All Depends On You*, *Broken Hearted*, and  
23 *If I Had A Talking Picture of You*.

24 56. Henderson contributed to several Broadway shows throughout his career  
25 including *Manhattan Mary*, *George White's Scandals*, *Good News*, *Hold Everything*,  
26 *Three Cheers*, *Follow Through*, *Flying High*, *Hot-Cha*, *Strike Me Pink*, *Ziegfeld*  
27 *Follies of 1943* and *Say When*. In 1956, Henderson's songwriting life was the subject  
28 of a film called "The Best Things In Life Are Free" starring Gordon MacRae, Dan

1 Dailey and Ernest Borgnine as the real-life songwriting team of Buddy DeSylva, Lew  
2 Brown and Ray Henderson.



10 57. Henderson was among those selected for the inaugural induction into the  
11 Songwriters Hall of Fame in 1970.

12 **Ray Henderson Music Co. Inc.**

13 58. Ray Henderson Music Co. Inc. is a Delaware corporation formed by Ray  
14 Henderson's children. Ray Henderson Music Co. Inc. acquired the copyrights in the  
15 respective Subject Compositions by assignment from his children who acquired the  
16 copyrights by termination notices timely served and filed with U.S. Copyright Office  
17 under Section 304 of the Copyright Act of 1976.

18 59. Plaintiff Ray Henderson Music Co. Inc. is the legal owner of the U.S.  
19 copyright in certain of the Subject Compositions as identified in Exhibit A, along with  
20 all causes of action.

21 **The Subject Compositions**

22 60. Plaintiff is the owner of the musical compositions listed in the  
23 Composition Chart annexed as Exhibit A (collectively, the "Subject Compositions")  
24 that are the subject of this action.

25 61. The copyrights for all the Subject Compositions have been registered and  
26 renewed with the U.S. Copyright Office, and each Subject Composition is the subject  
27

1 of a valid U.S. copyright. The Composition Chart annexed as Exhibit A identifies the  
2 copyright registration numbers for each of the Subject Compositions.

3 62. Plaintiff is the owner of a share in each of the Subject Compositions in  
4 the percentages listed on Exhibit A.

5 63. As discussed more fully below, the Defendants have infringed, and are  
6 continuing to infringe, the copyright in each of the Subject Compositions by willfully  
7 reproducing and distributing them without a license.

### 8 **Background**

9 64. Before digital music distribution, recorded music was physically  
10 distributed through brick-and-mortar stores that were confined by the limitations of  
11 shelf space. Recording artists signed exclusive recording contracts with record labels  
12 in order to have their records pressed and distributed in national record stores.

13 65. It is hard to imagine that a person walking into Tower Records, off the  
14 street, with arms full of CDs and vinyl records and claiming to be the record label for  
15 Frank Sinatra, Louis Armstrong and Ella Fitzgerald, could succeed in having that  
16 store sell their pirated copies directly next to the same albums released by legendary  
17 record labels, Capitol, RCA and Columbia, and at a lower price.

18 66. Yet, this exact practice occurs every day in the digital music business,  
19 where there is unlimited digital shelf space (for example, there are more than 40  
20 million recordings in the Google Play store) and a complete willingness by the digital  
21 music stores to seek popular and iconic recordings from any source, legitimate or not,  
22 provided they participate in sharing the proceeds.

23 67. The iconic status of the pirated recordings of the Subject Compositions  
24 at issue in this case cannot be overstated. Any list of the most popular singers and  
25 musicians of any period between 1930 and 1970 would be replete with the artists who  
26 have recorded Plaintiff's musical works, some of them multiple times.

27 68. All the recordings on the Infringement Chart (Exh. B) embodying the  
28 Subject Compositions are pirated copies, or "bootlegs." Defendants' digital



1 phonorecord deliveries of these pirated copies were all made without authorization  
2 from the copyright owners of the sound recordings or those who originally “fixed”  
3 them as required by Section 115 (discussed below), and the copyright owners of the  
4 Subject Compositions.

5 69. Defendants all generate illicit revenue for themselves when these and  
6 other pirated copies are sold or distributed. Plaintiff has not authorized any  
7 reproduction or distribution of these pirate recordings of the Subject Compositions  
8 (or any identified on Exhibit B) and it is an infringement for which all the Defendants  
9 are jointly and severally liable.

### 10 **The Pirated Recordings**

11 70. All of the recordings identified in Exhibit B are pirated. Defendants have  
12 taken recordings of the Subject Compositions – in which they hold no rights – and  
13 reproduced and distributed pirated copies of them to the public, for profit, without  
14 authorization.

15 71. Virtually all of the recordings at issue in this case were originally made  
16 between 1923 and 1972.

17 72. Since Limitless did not originally “fix” any of the relevant recordings,  
18 the only way for it to acquire the rights to duplicate and distribute them would be to  
19 purchase or license rights in these recordings.

20 73. Upon information and belief, Limitless never acquired permission or the  
21 rights to reproduce or distribute any of these recordings from any person who lawfully  
22 fixed them or from the owner of the copyright in the sound recording. Limitless is  
23 simply duplicating previously released recordings and selling them as if they were the  
24 rightful owner. Valleyarm and Google are duplicating Limitless’s pirated sound  
25 recordings of the Subject Compositions and selling the pirated copies for profit.

### 26 **Defendants Have Infringed the Subject Compositions**

27 74. Section 115 of the Copyright Act expressly excludes Defendants’  
28 reproduction and distribution of pirated recordings of the Subject Compositions as a

1 covered activity eligible for a compulsory license under Section 115 and Defendants  
2 have failed to obtain any licenses for the Subject Compositions that authorize such  
3 activity.

4 75. The Infringement Chart annexed as Exhibit B sets forth (1) each pirated  
5 recording of the Subject Compositions within the Limitless, Valleyarm, Google  
6 distribution chain thus far identified by Plaintiff that these Defendants have  
7 reproduced, distributed, and/or made available for digital phonorecord deliveries in  
8 Google's Google Play store without authorization.

9 76. The various types of unauthorized reproductions, distributions, and/or  
10 digital phonorecord delivery configurations of each of the pirated recordings of the  
11 Subject Compositions made and/or authorized by Defendants are discussed briefly  
12 below.

13 ***Permanent Downloads***

14 77. Permanent download means a digital transmission of a sound recording  
15 of a musical work in the form of a download, where such sound recording is accessible  
16 for listening without restriction as to the amount of time or number of times it may be  
17 accessed.

18 78. Google has made available, reproduced, and distributed permanent  
19 downloads of the recordings of the Subject Compositions listed on Exhibit B to its  
20 customers.

21 79. Google was unlawfully authorized and directed to do so by Limitless  
22 and/or Valleyarm.

23 80. Reproducing or distributing permanent downloads of recordings of the  
24 Subject Compositions require licenses from the copyright owners of the Subject  
25 Compositions and all of the Defendants failed to obtain such licenses for each entry  
26 on the Infringement Chart at Exhibit B.

27 81. The reproduction and distribution of permanent downloads of  
28 recordings of the Subject Compositions by Google, and the authorization of this

1 activity by Limitless and Valleyarm, infringes Plaintiff's exclusive reproduction and  
2 distribution rights under 17 U.S.C. § 106(1) and (3).

3 ***Server Copies***

4 82. Google has reproduced at least one copy of each recording of the Subject  
5 Compositions identified on Exhibit B on its servers for sale of permanent downloads  
6 in its Google Play store as server copies.

7 83. Google was unlawfully authorized to engage in this activity by Limitless  
8 and/or Valleyarm.

9 84. Making server copies of any of the recordings embodying the Subject  
10 Compositions identified on Exhibit B requires a license from the copyright owners of  
11 the Subject Compositions.

12 85. All Defendants failed to obtain such licenses for each of the recordings  
13 embodying the Subject Compositions identified on Exhibit B.

14 86. Google's reproduction of server copies of pirated recordings of the  
15 Subject Compositions for sale of permanent downloads in its Google Play store, and  
16 authorization of this activity by Limitless and Valleyarm, as well the distribution of  
17 the server copies of pirated recordings of Subject Composition to Google, by  
18 Limitless and/or Valleyarm, infringes Plaintiff's exclusive reproduction and  
19 distribution rights under 17 U.S.C. § 106(1) and (3).

20 ***Making Available***

21 87. Defendants have made and continue to make available, or authorize  
22 making available, permanent downloads of the recordings of the Subject  
23 Compositions identified on Exhibit B to the public by delivering, uploading and/or  
24 offering them as permanent downloads in Google Play.

25 88. The Defendants' making available recordings of the Subject  
26 Compositions identified on Exhibit B for permanent downloads, and authorization of  
27 this activity, by Limitless and/or Valleyarm, requires a license from the copyright  
28 owners of the Subject Compositions

1 89. Defendants failed to obtain such licenses for each recording of the  
2 Subject Compositions identified on Exhibit B and have thereby infringed Plaintiff’s  
3 exclusive distribution rights under 17 U.S.C. § 106(3) as a “deemed distribution.”  
4 *A&M Records v. Napster*, 239 F.3d 1004, 1014 (9<sup>th</sup> Cir. 2001); *Perfect 10, Inc. v.*  
5 *Amazon.com, Inc.*, 487 F.3d 701 718–19 (9<sup>th</sup> Cir. 2007).

6 ***Importation***

7 90. Importation of phonorecords of a musical composition acquired outside  
8 the U.S. requires authorization of the owner of the copyright of the musical  
9 composition under Section 602 of the Copyright Act. Importation without the  
10 authority of the owner of the copyright in that composition is an infringement of the  
11 exclusive distribution rights under 17 U.S.C. § 106(3).

12 91. Defendants have engaged in the unauthorized importation of  
13 phonorecords of the Subject Compositions, acquired outside the U.S., by digital  
14 phonorecord deliveries, or other means.

15 92. Limitless and Valleyarm are located outside the United States.  
16 Valleyarm, at the direction of Limitless, and Google have engaged in the importation  
17 of phonorecords of recording embodying the Subject Compositions listed on Exhibit  
18 B into the United States by digital phonorecord delivery, or other delivery of  
19 phonorecords.

20 93. None of the Defendants obtained importation authorization from the U.S.  
21 copyright owners of the Subject Compositions.

22 94. Defendants’ respective importations of phonorecords embodying the  
23 Subject Compositions identified on Exhibit B infringe Plaintiff’s exclusive  
24 importation rights under 17 U.S.C. § 602 and distribution rights under 17 U.S.C. §  
25 106(3).

26 ***Willfulness***

27 95. The infringing conduct of all of the Defendants is willful. Limitless  
28 knows that it does not have authority to reproduce, distribute or for importation of the

1 recordings of the Subject Compositions listed on Exhibit B, or to authorize these  
2 actions by Valleyarm and Google. Limitless has pirated thousands of recordings and  
3 sold them in the United States through Google Play.

4 96. Similarly, Valleyarm did not perform any investigation or due diligence  
5 to confirm that Limitless had authorization to reproduce, distribute, make, or  
6 authorize the making of digital phonorecord deliveries, or the importation, of the  
7 recordings of the Subject Compositions identified on Exhibit B.

8 97. In fact, Valleyarm has had knowledge of the infringing conduct of  
9 Limitless and has nevertheless continued to make digital phonorecord deliveries and  
10 other reproductions and distributions of the pirated recordings of the Subject  
11 Compositions that Limitless provides without any licenses, and/or were recklessly  
12 indifferent or willfully blind to their own infringing conduct.

13 98. Further, Google has had knowledge of its own infringing conduct and  
14 that of Limitless and Valleyarm and has continued to work with them and make digital  
15 phonorecord deliveries and other reproductions and distributions of the pirated  
16 recordings of the Subject Compositions that Limitless and Valleyarm provide and/or  
17 were recklessly indifferent or willfully blind to their own infringing conduct.

18 99. Finally, Google has willfully failed to employ adequate human  
19 resources, screening mechanisms, or use of digital fingerprinting technology to detect  
20 unlawfully duplicated recordings in their stores that it routinely uses for other  
21 services, for example, YouTube, or Google Play's "scan and match" service.

22 100. In addition to the recordings identified on Exhibit B, there are believed  
23 to be many other pirated recordings of the Subject Compositions that Defendants have  
24 reproduced and distributed without authorization that Plaintiff has not yet identified  
25 or that are no longer available on Google Play.

26 101. The infringement by Defendants of each Subject Composition on each  
27 pirated recording identified in the Infringement Chart at Exhibit B began as of the  
28 date of upload, receipt, delivery to and/or reproduction by Google of server copies of

1 the pirated recordings of the Subject Compositions designated for reproduction and  
2 distribution by Limitless and/or Valleyarm in Google Play and continues to the  
3 present. The infringements identified in Exhibit B all occurred within three years of  
4 filing this Complaint.

5 102. By their conduct described above, Defendants have infringed and are  
6 continuing to infringe Plaintiff's copyrights on a regular basis in violation of 17  
7 U.S.C. §§ 101, 106, 115, 501, 602 *et seq.*

8 103. As a direct and proximate result of Defendants' infringement, Plaintiff  
9 is entitled to elect either an award of actual damages, including Defendants' profits,  
10 or statutory damages under 17 U.S.C. § 504(c).

11 104. Defendants' infringement is and has been willful, intentional, purposeful  
12 and with willful disregard of Plaintiff's rights. Anything less than maximum statutory  
13 damage awards would encourage infringement, amount to a slap on the wrist, and  
14 reward Defendants for their willful infringement on a grand scale.

15 105. Plaintiff is also entitled to its costs, including reasonable attorneys' fees,  
16 pursuant to 17 U.S.C. § 505.

17 106. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a permanent  
18 injunction prohibiting Defendants from reproducing, distributing, importing and  
19 selling the pirated recordings of the Subject Compositions without license or  
20 authorization in violation of the Copyright Act.

21 **Claim for Copyright Infringement Against**  
22 **Google, Valleyarm, and Limitless**

23 107. Plaintiff repeats each and every allegation of the Complaint.

24 108. Plaintiff Ray Henderson Music Co., Inc. claims that Defendants Google,  
25 Valleyarm, and Limitless have unlawfully reproduced, distributed, and imported  
26 unauthorized recordings embodying the Subject Compositions including, but not  
27 limited to, the recordings identified in Exhibit B by the methods identified herein,  
28 and/or have unlawfully directed or authorized this activity.

1 109. Defendants have thereby willfully infringed, and are continuing to  
2 infringe, Plaintiff's copyrights in the Subject Compositions in violation of the  
3 Copyright Act.

4 **Prayer for Relief**

5 WHEREFORE, Plaintiff respectfully requests that judgment be entered against  
6 Defendants, jointly and severally, as follows:

- 7 1. A declaration that Defendants have infringed Plaintiff's copyrights in the  
8 Subject Compositions in violation of the Copyright Act;
- 9 2. A declaration that each of Defendants' infringements was willful;
- 10 3. At Plaintiff's election, an award of Plaintiff's actual damages, including  
11 Defendants' profits, or a separate award of statutory damages in amounts  
12 to be determined by the jury for all infringements involved in the action,  
13 with respect to any one work, for which any one infringer is liable  
14 individually, or for which any two or more infringers are liable jointly  
15 and severally;
- 16 4. A permanent injunction barring the Defendants from continued  
17 infringement of Plaintiff's copyrights in the Subject Compositions  
18 pursuant to 17 U.S.C. § 502; and
- 19 5. Reasonable attorneys' fees and costs of this action, statutory pre-  
20 judgment interest, and such other relief as this Court may deem just and  
21 proper.

22  
23 **DEMAND FOR JURY TRIAL**

24 Pursuant to Fed. R. Civ. P. 38(b), Local Civil Rule 38, and otherwise, Plaintiff  
25 respectfully demands a trial by jury on all issues so triable.

1 DATED: January 22, 2020

2 Respectfully submitted,

3  
4 By: /s/ Allen Hyman  
5 Allen Hyman (California State Bar No. 73371)  
6 LAW OFFICES OF ALLEN HYMAN  
7 10737 Riverside Drive  
8 North Hollywood, CA 91602  
9 Phone: (818) 763-6289  
10 E-mail: lawoffah@aol.com

11 Brian S. Levenson \* *Pro Hac Vice Pending*  
12 SCHWARTZ, PONTERIO & LEVENSON, PLLC  
13 134 West 29<sup>th</sup> Street, Suite 1006  
14 New York, New York 10001  
15 Phone: (212) 714-1200  
16 Fax: (212) 714-1264  
17 E-mail: blevenson@splaw.us

18 *Attorneys for Plaintiff*

19  
20  
21  
22  
23  
24  
25  
26  
27  
28