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DANIEL C. MAROTTA (DM 2581)
DOWD & MAROTTA, PC
277 Broadway, Suite 1310
New York, NY 10007
Tel: (212) 349-1200

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL TISI, :

Plaintiff, :

-against- :

RICHARD PATRICK, FILTER, WARNER :
BROTHERS RECORDS INC. d/b/a :
REPRISE RECORDS, WEA INTERNATIONAL :
INC., EMI APRIL MUSIC INC., EMI MUSIC :
INC. d/b/a EMI RECORDS and EMI RECORDS :
GROUP, :

Defendants. :

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COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, MICHAEL TISI, by his attorneys, DOWD & MAROTTA, PC complaining of
the Defendants, alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1338(a) and
28 U.S.C. § 1331. This action involves claims of copyright infringement arising under the
Copyright Act of 1976, 17 U.S.C. § 101 et seq. (1994).

2. Defendants are subject to personal jurisdiction in this State pursuant to New York
Civil Practice Law and Rules § 302(a)(1) because Defendants transact business within the State
of New York or contract elsewhere to supply goods and services in the State of New York. This
Court also has personal jurisdiction over each of the Defendants because each conducts

systematic and continuous business in the State of New York. This Court also has personal jurisdiction over each of the Defendants because the claims against them arise out of the tortious acts alleged herein occurred in the State of New York.

3. Venue in this District is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to this action arose within this Judicial District. In the alternative, Plaintiff relies on 28 U.S.C. §§ 1391(b)(3) and 1391(c) because Defendants reside in this Judicial District and are subject to personal jurisdiction in this Judicial District.

PARTIES

4. Plaintiff, MICHAEL TISI, is an individual residing in the State of New York at 59 Annefield Court, in the Borough of Staten Island, County of Richmond, City and State of New York.

5. Upon information and belief, Defendant RICHARD PATRICK is an individual residing in the United States of America.

6. Upon information and belief, Defendant RICHARD PATRICK is a musician and performing artist managed by 3 Artists Management d/b/a 3 A.M. located at 2550 Laurel Pass, West Hollywood, California.

7. Upon information and belief, Defendant WARNER BROTHERS RECORDS INC. d/b/a REPRISE RECORDS is a New York corporation with its principal place of business located at 75 Rockefeller Center, New York, New York.

8. Upon information and belief, WEA INTERNATIONAL INC. is a foreign corporation doing business in New York with offices located at 75 Rockefeller Center, New York, New York.

9. Upon information and belief, EMI APRIL MUSIC INC. is a foreign corporation doing business in New York with offices located at 1290 Avenue of the Americas, New York, New York.

10. Upon information and belief, EMI MUSIC INC. d/b/a EMI RECORDS is a foreign corporation doing business in New York with offices located at 1290 Avenue of the Americas, New York, New York.

11. Upon information and belief, EMI RECORDS GROUP is an unincorporated conglomeration of record companies including EMI MUSIC INC. d/b/a EMI RECORDS and doing business in New York with offices located at 1290 Avenue of the Americas, New York, New York.

OCCURRENCES

12. Plaintiff Michael Tisi is a songwriter, musician and performing artist who has been a member of the rock music groups "Sweet Mercy" and "Blue Dahlia." Plaintiff is currently a member of the rock music group "Smug."

13. Throughout his musical career, Plaintiff has been represented by Arthur Josephs Productions, a production company located at 84 Williams Street, New York, New York.

14. In 1994, Plaintiff composed the lyrics and music to a song entitled "Sell Your Soul" (the "Copyrighted Work").

15. On October 20, 1994, the United States Copyright Office registered to Plaintiff the copyright for the words and lyrics of the composition entitled "Sell Your Soul." See Copyright Registration Certificate dated October 20, 1994, attached hereto as **Exhibit A**.

16. On and prior to October 20, 1994, Plaintiff created a demonstration (“demo”) tape of original songs written by Plaintiff and performed by Plaintiff with Blue Dahlia. This demo tape included the Copyrighted Work.

17. In or around late 1994, after copyright registration of “Sell Your Soul,” Plaintiff submitted a copy of the demo tape containing the Copyrighted Work to Defendant EMI MUSIC INC. d/b/a EMI RECORDS.

18. On or about December 22, 1994, Arthur Josephs Productions received a formal rejection from Ken Lane, Senior Vice President of Promotion of EMI MUSIC INC. d/b/a EMI RECORDS and/or EMI RECORDS GROUP. See Letter dated December 20, 1994, attached hereto as **Exhibit B**.

19. None of Defendants EMI MUSIC INC. d/b/a EMI RECORDS, EMI RECORDS GROUP, or EMI APRIL MUSIC PUBLISHING INC. (hereinafter collectively referred to as the “EMI Defendants”) ever returned the copy of the demo tape containing the Copyrighted Work to Plaintiff or to Arthur Josephs Productions.

20. In or around late 1994, after copyright registration of “Sell Your Soul,” Plaintiff submitted a copy of the demo tape containing the Copyrighted Work to Defendant WARNER BROTHERS RECORDS INC.

21. On or about March 15, 1995, Arthur Josephs Productions received a formal rejection from WARNER BROTHERS RECORDS INC.’s Artist and Repertoire Department, East Coast. See Letter dated March 13, 1995, attached hereto as **Exhibit C**.

22. None of Defendants WARNER BROTHERS RECORDS INC., WARNER BROTHERS RECORDS INC. d/b/a REPRIS RECORDS, or WEA INTERNATIONAL INC., (hereinafter collectively referred to as the “WARNER Defendants”) ever returned the copy of the

demo tape containing the Copyrighted Work to Plaintiff or to Arthur Josephs Productions.

23. In or around late 1994 and early 1995, after copyright registration of "Sell Your Soul," Plaintiff submitted copies of the demo tape containing the Copyrighted Work to the following record companies: Mercury Records, Arista Records, Inc., Columbia Records, and MCA Records.

24. Mercury Records, Arista Records, Inc., Columbia Records, and MCA Records all rejected the music of Blue Dahlia and none ever returned their copies of the demo tape containing the Copyrighted Work to Plaintiff or to Arthur Josephs Productions.

25. On August 30, 1995, Arthur Josephs Productions sent a letter and a second copy of the demo tape containing the Copyrighted Work to EMI MUSIC INC. d/b/a EMI RECORDS addressed to Brian Koppelman at "EMI Records." See Letter dated August 30, 1995, attached hereto as **Exhibit D**.

26. On October 20, 1995, Arthur Josephs Productions faxed correspondence to Brian Koppelman at "EMI Records" inviting him to a Blue Dahlia performance scheduled for October 29, 1995. See Facsimile Letter and Flyer dated October 20, 1995, attached hereto as **Exhibit E**.

27. Blue Dahlia performed the Copyrighted Work as scheduled on October 29, 1995.

28. The October 29, 1995 performance of the Copyrighted Work took place at an outdoor street fair located on the Avenue of the Americas between 50th and 51st Streets in New York City.

29. Upon information and belief, all of the EMI Defendants maintain an office located at 1290 Avenue of the Americas, between 51st and 52nd Streets in New York City.

30. On or about August 24, 1999, the EMI Defendants caused to be published a song entitled "Take a Picture" (the "Infringing Work").

31. Upon information and belief, EMI APRIL MUSIC INC. is the music publisher of the Infringing Work.

32. The purported writer of the Infringing Work is Defendant RICHARD PATRICK.

33. Upon information and belief, RICHARD PATRICK was formerly a member of the rock music group "Nine Inch Nails."

34. Upon information and belief, RICHARD PATRICK is currently a member of the rock music group "FILTER."

35. Upon information and belief, RICHARD PATRICK, with FILTER, has performed and continues to perform the Infringing Work publicly worldwide and within the State of New York.

36. The Infringing Work is strikingly similar to the Copyrighted Work.

37. The Infringing Work is substantially similar to Copyrighted Work.

38. Upon information and belief, the Infringing Work is completely atypical of RICHARD PATRICK and FILTER'S music and musical genre.

39. Upon information and belief, the WARNER Defendants caused to be recorded and distributed the Infringing Work on an album entitled Title of Record by the group FILTER, released August 24, 1999.

40. Upon information and belief, the WARNER Defendants caused to be distributed the Infringing Work as a "maxi-single," released December 7, 1999.

41. Upon information and belief, Defendants caused a music video to be made based upon the Copyrighted Work.

42. Upon information and belief, the Infringing Work is currently being widely disseminated by radio stations, record stores, and by heavy rotation of the video on the cable television channel "MTV" on a daily basis.

43. Each of the Defendants derive substantial revenues from the performance and distribution of the Infringing Work.

44. Billboard Magazine, in its January 22, 2000 issue, ranked the Infringing Work No. 23 in the "Top 40 Tracks" list, No. 21 in the "Billboard Hot 100" most popular singles and tracks list, and ranked Title of Record No. 64 on the "Billboard Top 200" top-selling albums list.

45. Billboard Magazine, in its January 29, 2000 issue, ranked the Infringing Work No. 21 in the "Top 40 Tracks" list, No. 19 in the "Billboard Hot 100" most popular singles and tracks list, and ranked Title of Record No. 48 on the "Billboard Top 200" top-selling albums list.

**AS AND FOR A FIRST CAUSE OF ACTION
FOR COPYRIGHT INFRINGEMENT**

46. Plaintiff repleads and realleges each and every allegation of paragraphs "1" through "45" inclusive, with the same force and effect as if specifically pleaded herein.

47. Plaintiff is the current owner of a valid registered copyright in the song "Sell Your Soul." See Copyright Registration attached hereto as **Exhibit A**.

48. Defendants RICHARD PATRICK and FILTER copied the Copyrighted Work.

49. Plaintiff did not authorize the copying, reproduction, distribution, performance or derivative uses of the Copyrighted Work.

50. Defendants RICHARD PATRICK, FILTER, the EMI Defendants, and the WARNER Defendants had access to the Copyrighted Work.

51. The Copyrighted Work and the Infringing Work are strikingly similar.

52. The Copyrighted Work and the Infringing Work are substantially similar.

53. An average lay observer would recognize "Take a Picture" to have been appropriated from the Copyrighted Work.

54. By reason of the foregoing, Defendants are liable to Plaintiff for copyright infringement in violation of the Copyright Act of 1976, 17 U.S.C. § 101 et seq., for actual and statutory damages in an amount to be determined but not less than SEVENTEEN MILLION FIVE HUNDRED THOUSAND (\$17,500,000.00) DOLLARS for violation of Plaintiff's exclusive rights of reproduction, distribution, performance and preparation of derivative works under 17 U.S.C. §106.

**AS AND FOR A SECOND CAUSE OF ACTION
FOR VICARIOUS AND CONTRIBUTORY COPYRIGHT INFRINGEMENT**

55. Plaintiff repleads and realleges each and every allegation of paragraphs "1" through "54" inclusive, with the same force and effect as if specifically pleaded herein.

56. The EMI Defendants and the WARNER Defendants have knowledge of the infringing acts of Defendants RICHARD PATRICK and FILTER.

57. The EMI Defendants and the WARNER Defendants promoted and continue to promote the infringing acts of Defendants RICHARD PATRICK and FILTER.

58. The EMI Defendants and the WARNER Defendants induced and continue to induce the infringing acts of Defendants RICHARD PATRICK and FILTER.

59. The EMI Defendants and the WARNER Defendants caused and continue to cause the infringing acts of Defendants RICHARD PATRICK and FILTER.

60. The EMI Defendants and the WARNER Defendants materially contributed and continue to materially contribute to the infringing acts of Defendants RICHARD PATRICK and FILTER.

61. By reason of the foregoing, the EMI Defendants and the WARNER Defendants are liable to Plaintiff for vicarious and contributory copyright infringement in violation of the Copyright Act of 1976, 17 U.S.C. § 101 et seq. for actual and statutory damages in an amount to be determined but not less than SEVENTEEN MILLION FIVE HUNDRED THOUSAND (\$17,500,000.00) DOLLARS for violation of Plaintiff's exclusive rights of reproduction, distribution, performance and preparation of derivative works under 17 U.S.C. §106.

**AS AND FOR A THIRD CAUSE OF ACTION
FOR IMPOUNDMENT AND INJUNCTIVE RELIEF**

62. Plaintiff repleads and realleges each and every allegation of paragraphs "1" through "61" inclusive, with the same force and effect as if specifically pleaded herein.

63. By reason of Defendants' actions, Plaintiff has been and continues to be irreparably harmed by the infringement of the Copyrighted Work and the dissemination of the Infringing Work.

64. Plaintiff has no adequate remedy at law for such actionable copying and infringement.

65. Plaintiff is likely to succeed on the merits.

66. Accordingly, Plaintiff requests that this Court issue a preliminary injunction pending a determination granting a final and permanent injunction to prevent any future infringement of Plaintiff's valid registered copyright of the composition "Sell Your Soul"

pursuant to Rule 65 of the Federal Rules of Civil Procedure and 17 U.S.C. § 502.

67. Plaintiff further requests that this Court issue an Order impounding all copies and phonorecords found to have been made or used in violation of the Plaintiff's exclusive rights together with all masters, tapes, videos, or other articles by means of which such copies or phonorecords may be reproduced pursuant to 17 U.S.C. §503 (a).

**AS AND FOR A FOURTH CAUSE OF ACTION
FOR COSTS AND ATTORNEYS' FEES**

68. Plaintiff repleads and realleges each and every allegation of paragraphs "1" through "67" inclusive, with the same force and effect as if specifically pleaded herein.

69. Pursuant to 17 U.S.C. § 505, this Court may allow the recovery of full costs and reasonable attorneys' fees in any civil action brought pursuant to the Copyright Act.

70. Accordingly, Plaintiff requests that this Court award Plaintiff reasonable attorneys' fees and the costs of this action pursuant to 17 U.S.C. § 505.

WHEREFORE Plaintiff demands:

(1) Under the First Cause of Action, actual and statutory damages in an amount to be determined but not less than \$17,500,000.00;

(2) Under the Second Cause of Action, actual and statutory damages in an amount to be determined but not less than \$17,500,000.00;

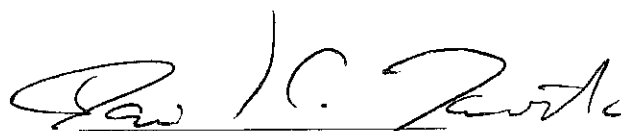
(3) Under the Third Cause of Action, a final and permanent injunction to prevent any future infringement of Plaintiff's valid registered copyright of the song "Sell Your Soul;

(4) Under the Fourth Cause of Action, an award of reasonable attorneys' fees and the costs of this action; and,

(5) That Plaintiff be awarded such other and further relief as is just and proper.

Dated: New York, New York
February 1, 2000

DOWD & MAROTTA, PC

A handwritten signature in black ink, appearing to read "Dan C. Marotta", written over a horizontal line.

By: DANIEL C. MAROTTA (DM 2581)
Attorneys for Plaintiff
277 Broadway, Suite 1310
New York, NY 10007
Tel: (212) 349-1200

INDIVIDUAL VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

MICHAEL TISI, being duly sworn, deposes and says:

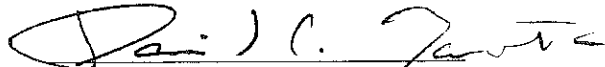
That I have read the annexed Complaint and know of the contents thereof and the same is true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.



Michael Tisi

Sworn to before me this

3 day of February, 2000.



NOTARY PUBLIC

DANIEL C. MAROTTA
Notary Public, State of New York
No. 0011 021048
County of Hamilton
Expires Jan. 21, 2001