

Stephen M. Doniger (SBN 179314)  
stephen@donigerlawfirm.com  
Scott Alan Burroughs (SBN 235718)  
scott@donigerlawfirm.com  
Frank Gregory Casella (SBN 301494)  
fcasella@donigerlawfirm.com  
DONIGER / BURROUGHS  
603 Rose Avenue  
Venice, California 90291  
Telephone: (310) 590-1820

David Rudich, Esq. (SBN 45868)  
Law Offices of David Rudich  
9255 Sunset Boulevard, Suite 920  
Los Angeles, Ca 90069  
(310) 550-8020 Telephone  
(310) 859-8651 Facsimile  
[david@davidrudich.com](mailto:david@davidrudich.com)

Attorneys for Plaintiffs  
Benny Mardones and Robert Tepper

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

BENNY MARDONES, an Individual; and  
ROBERT TEPPER, an Individual,

Plaintiffs,

v.

CYNDI LAUPER, an Individual;  
INDEPENDENT PRESENTERS  
NETWORK, a New York business entity,  
form unknown; CJ E&M CORP., a South  
Korean Corporation; JUST FOR  
LAUGHS THEATRICALS, LLC, a New  
York Limited Liability Company;  
JUJAMCYN THEATRES, LLC, a New

Case No.:

**PLAINTIFFS' COMPLAINT FOR:**

**(1) COPYRIGHT INFRINGEMENT  
(2) BREACH OF FIDUCIARY  
DUTIES  
(3) BREACH OF CONTRACT**

**JURY TRIAL DEMANDED**

1 York Limited Liability Corporation;  
2 SPIRIT TWO MUSIC, INC., a New York  
3 Corporation, and DOES 1 THROUGH 10,  
4 Defendants.

5  
6 Plaintiffs, Benny Mardones (“Mardones”) and Robert Tepper (“Tepper”), by  
7 and through their undersigned attorneys, hereby prays to this honorable Court for  
8 relief based on the following:

9  
10 **INTRODUCTION**

11 Mardones and Tepper are well known musicians who collaborated to write the  
12 hit song “Into the Night,” one of only ten records in history to have placed in the top  
13 20 of the Billboard Hot 100 chart twice—it reached #11 in 1980 following its release  
14 and hit #20 nearly a decade later in 1989. This action is brought because the song  
15 “Pick You Up” from the Broadway Musical “Kinky Boots” includes substantially  
16 similar lyrics and music which appear to be an unauthorized copy/derivation of the  
17 main theme/hook of “Into the Night.”

18  
19 **PARTIES**

20 1. At all times mentioned herein, Mardones was an individual residing in  
21 the state of California.

22 2. At all times mentioned herein, Tepper was an individual residing in the  
23 state of California.

24 3. At all relevant times, Defendant Cyndi Lauper (“Lauper”) was an  
25 individual residing in the state of New York.

26 4. CJ E&M CORP. is a South Korean entertainment and media company  
27 operating in the United States through its US-based subsidiary CJ E&M America,  
28

1 which has an ownership and/or financial interest in the Kinky Boots production and  
2 does business in California.

3 5. Plaintiffs are informed and believe and thereon allege that Defendant  
4 Independent Presenters Network (“IPN”) is a consortium of 40 of leading Broadway  
5 presenters, theaters and performing arts centers, which bring Broadway productions  
6 to more than 110 cities throughout North America and has produced the Kinky Boots  
7 musical. IPN is believed to have its principal place of business located at 270  
8 Lafayette Street, Suite 200, New York, New York 10012, which has an ownership  
9 and/or financial interest in the Kinky Boots Broadway production.

10 6. Plaintiffs are informed and believe and thereon allege that Defendant CJ  
11 Group USA, Inc. d/b/a/ CJ E&M (“CJ E&M”) is a corporation organized and existing  
12 under the laws of the state of New York, with its principal place of business located  
13 6324 Fort Hamilton Parkway, Brooklyn, New York 11219, and which has an  
14 ownership and/or financial interest in the Kinky Boots Broadway production.

15 7. Plaintiffs are informed and believe and thereon allege that Defendant Just  
16 For Laughs Theatricals, LLC (“Just For Laughs”) is a New York limited liability  
17 company with its principal place of business located at 263 West 38th Street, 12  
18 Floor, New York, New York 10018. Plaintiff is further informed and believes that  
19 Just for Laughs was involved in the production of Kinky Boots for Broadway,  
20 London, Australia, and for a North American tour which included Los Angeles.

21 8. Plaintiffs are informed and believe and thereon allege that Defendant  
22 Jujamcyn Theatres (“Jujamcyn”) is a corporation organized and existing under the  
23 laws of the state of New York, with its principal place of business located at 246  
24 West 44th Street New York, New York 10036.

25 9. Plaintiffs are informed and believe and thereon allege that Defendant  
26 Spirit Two Music, Inc. (“Spirit”) is a New York Corporation with offices in  
27 California at 12711 Ventura Blvd, Suite 110, Studio City, CA 91606.

10. Plaintiffs are unaware of the true names and capacities of the defendants sued herein as DOES 1 through 10, inclusive, and for that reason, sue defendant(s) under such fictitious names. Plaintiffs are informed and believe and based thereon allege that such fictitiously named defendants are responsible in some manner for the occurrences alleged herein, and that Plaintiffs' damages as herein alleged were proximately caused by the conduct of said defendants. Plaintiffs will seek to amend the complaint when the names and capacities of such fictitiously named defendants are ascertained. As alleged herein, the term "Plaintiffs" shall mean all named plaintiffs, and "Defendants" shall mean all named defendants and all fictitiously named defendants.

#### **JURISDICTION AND VENUE**

11. This Court has personal jurisdiction over each and every one of the Defendants. Venue in this Court is proper under 28 U.S.C. § 1391(c) and 1400(a) because one or more Defendants reside and/or carry on business here, and the wrongful acts of Defendants took place, in whole or in part, in this District.

12. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101 *et seq.*

13. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and 1338 (a) and (b).

#### **GENERAL FACTUAL ALLEGATIONS**

14. Plaintiffs are the authors and copyright owners in the musical composition "Into the Night" ("Subject Composition"), which was composed in this District and first recorded and released in 1980.

15. On June 29, 1981, Plaintiffs registered the Subject Composition with the United States Copyright Office, receiving Registration Number PA 79-692.

16. Since its initial release and publication, "Into the Night" has become a frequently performed major hit. It has achieved the distinction of being one of only

1 ten songs to place in the top 20 of the *Billboard* Top 100 Chart twice with nearly a  
2 decade between those chart appearances. It has been professionally recorded and  
3 widely and publicly performed in this District and throughout the United States by  
4 means of records, radio, streaming channels, and other media. Recordings of and  
5 sheet music for the Subject Composition have also been widely sold throughout the  
6 United States, including sales in this District.

7 17. Defendants have had repeated and continuing access to “Into the Night”  
8 in various ways including aforementioned public performances, records, streaming  
9 services, and sheet music. Without limiting the access and knowledge of other  
10 Defendants, Plaintiffs are informed and believe and thereon allege that, at all relevant  
11 times, Lauper and her agents were specifically aware of “Into the Night.” Indeed,  
12 Plaintiffs are informed and believe and thereon alleges that one of the musicians who  
13 toured with Mardones and is intimately familiar with “Into the Night” is now a  
14 touring musician with Lauper.

15 18. Plaintiffs discovered that since October 2013 Defendants have  
16 continuously and repeatedly infringed, and are presently infringing, Plaintiff’s  
17 copyright in “Into the Night,” in a song publically performed in the highly successful  
18 and award winning musical entitled “Kinky Boots.”

19 19. Defendants copied the principle “Pick You Up” theme of “Into the  
20 Night” virtually note for note and have made that copied theme the principle theme of  
21 a song purportedly written by Lauper entitled “Raise You Up” (“Infringing Work”),  
22 to the point that the principle themes of the two works are strikingly similar. Both the  
23 notes and the words surrounding the “raise you up” refrain, sung repeatedly in the  
24 Infringing Work, have been copied from the notes and words “pick you up” from  
25 “Into the Night.” The similarities of the two works include:

26 20. A “crucial musical climactic moment” the Infringing Work is not only  
27 similar but identical to the Subject Composition. See example 1 below:  
28

**EXAMPLE #1 (Infringing Work: top row, Subject Composition: middle row)***Comparative Analysis of two songs*

Dr. Robert Tomaro

quarter note = 126  
Raise You Up at : 45*Musical Example 1A- "Raise You Up" Signature Phrase*

1 1 1 2 2 2 2 2 5 3 3 2 1 1 2

Voice

If you hit the dust, let me raise you up If your bubble burst

quarter note = 88

Into the night at : 53

*Musical Example 1B- "Into the Night" Signature Phrase*

1 1 1 2 2 2 5 3 4 3 2 1 1 1 2

Lead Vocals

If I could fly I'd pick you up and take you in to the night

Rhythm Guitar

21. The "hooks" in the Subject Composition ("pick you up") and the Infringing Work ("raise you up") are identical in form, harmonic progression, and rhythm. See example 2.

**EXAMPLE #2 (Infringing Work: top row, Subject Composition: middle row)***Musical Example 2A- The hook in Raise You Up*

6 2 5 3

Voice

raise you up

*Musical Example 2B- The Hook in Into the Night*

2 5 3

Ld. Vox.

pick you up

Rhythm

22. The Infringing Work copies the iconic and crucial phrase "...you up" both in word and placement in the work. The Infringing Work sets the lyrics to the exact same progression of tones and rhythm as the Subject Composition. See example 2.

23. The Infringing Work uses similar lyrical phrases and themes as those in the Subject Composition immediately preceding its copying of the "...you up" phrase. See example 3 and 4.

### **EXAMPLE #3: LYRICS IN SUBJECT COMPOSITION**

*If I could fly  
I'd pick you up  
I'd take you into the night  
And show you a love  
Like you've never seen*

### **EXAMPLE #4: LYRICS IN INFRINGING WORK**

*If you hit the dust  
Let me raise you up  
When your bubble busts  
Let me raise you up  
If your glitter rusts  
Let me raise you up*

24. The Infringing Work uses phrases and musical progression identical to those in the Subject Composition immediately following its copying of the "hook." See example 2-4.

**EXAMPLE #4 (Infringing Work: top row, Subject Composition: middle row)**

*Musical Example 3A- The descending phrase following the hook in Raise You Up*

12 3 2 1 1 2

Voice

If your bub ble burst

*Musical Example 3B- The descending phrase after the hook in Into the Night*

3 2 1 1 1 2

L.d. Vox.

take you in to the night

Rhythm

25. Identical harmony, harmonic and rhythm progression, and emphasis of chords in the guitar and keyboard accompaniments to the Subject Composition and the Infringing Work. In both songs the music progresses from a “dotted syncopated rhythm beginning with the chord built on scale step 4” through step 5 before “harmonically resolving” in a rest. See example 5.

**EXAMPLE #5 (Infringing Work: top, Subject Composition: bottom)**

quarter note = 126  
Raise You Up at : 45

*Musical Example 4A- Harmony and rhythm part in the chorus of Raise You Up*

1 1 1 2 2 2 2 5 3 3 2 1 1 2

Lead Vocals

If you hit the dust, let me raise you up If your bub ble burst

4 chord 5 chord tonic chord 4 chord 5 chord

Ab Bb Bb Eb Ab Bb

Rhythm Guitar

quarter note = 88  
Into the night at : 53

*Musical Example 4B- Harmony and Rhythm part in the chorus of Into the Night*

1 1 1 2 2 2 5 3 4 3 2 1 1 1 2

Lead Vocals

If I could fly I'd pick you up and take you in to the night

4 chord 5 chord tonic chord 4 chord 5 chord

Ab Bb Bb Eb Ab Bb

Rhythm Guitar



1           26. The Infringing Work, and particularly its principle theme copied from  
2 “Into the Night,” is the the only song performed twice in Kinky Boots, including as  
3 the finale and major “hit” song in the production. A New York Times review of  
4 “Kinky Boots”, critical to the success of any Broadway show, singled out the  
5 Infringing Work for particular praise as having, by itself, “sent audiences dancing out  
6 of the theater.” The unique audience reaction and the extraordinarily favorable  
7 review have attracted vast number of additional patrons to the production and  
8 resulted in substantial added revenue to Defendants.

9           27. Defendants’ cast recording album of the music from “Kinky Boots”  
10 includes the Infringing Work and thus further disseminates and enables Defendants to  
11 profit from the principle themes that Defendants copied from “Into the Night.” That  
12 album has been widely and successfully sold in this District and elsewhere in the  
13 United States and the rest of the world. The Infringing Work has been repeatedly  
14 played on the radio, streaming services, and other media in this District and  
15 elsewhere in the United States and the rest of the world.

16           28. Since 2013 Kinky Boots has been performed continuously on Broadway,  
17 in London, Australia, and all across North America by road companies associated  
18 with and authorized by Defendants, including public performances in this District.  
19 Such performances of the Infringing Work have occurred continuously since the  
20 inception of the musical, and will continue unless enjoined by this Court.

21           29. In May 1999 Mardones entered into an Administration Agreement  
22 (“Agreement”) with Spirit whereby Spirit was granted the “sole and exclusive rights  
23 of administration” in musical compositions written and/or composed by Mardones,  
24 including but not limited to “Into the Night.”

25           30. Under the Agreement, Spirit was further granted the right and ability “to  
26 enforce, protect and defend all rights in and to the Compositions and, to the extent  
27 applicable, the copyrights thereof.”  
28



1           35. Plaintiffs own the copyright in the musical composition “Into the Night,”  
2 which was registered with the United States Copyright Office before the occurrence  
3 of the infringement claimed herein.

4           36. Defendants’ unauthorized reproduction, distribution, public performance,  
5 display, and creation of a derivative work of “Into the Night” infringes Plaintiffs’  
6 exclusive rights in violation of the Copyright Act, 17 U.S.C. § 101 *et seq.*

7           37. Defendants did not seek or receive permission to copy, take, sample, or  
8 interpolate any portion of “Into the Night” when creating “Raise You Up.” Yet,  
9 Defendants exploited a substantial and material portion of “Into the Night” in  
10 composing “Raise You Up.”

11           38. Defendants’ conduct has at all times been, and continues to be, knowing,  
12 willful, and with complete disregard to Plaintiffs’ rights.

13           39. As a proximate cause of Defendants’ wrongful conduct, Plaintiffs have  
14 been irreparably harmed.

15           40. The infringing “Raise You Up” song copies quantitatively and  
16 qualitatively distinct, important, and recognizable portions of “Into the Night,” as  
17 discussed herein.

18           41. From the date of creation of “Raise You Up,” Defendants, and each, have  
19 infringed Plaintiffs’ copyright interest in “Into the Night” by, without limitation: (a)  
20 authorizing the live performance, reproduction, distribution and sale of the records  
21 and digital downloads through the execution of licenses, and/or actually selling,  
22 manufacturing, and/or distributing physical or digital or electronic copies of “Raise  
23 You Up” through various physical and online sources; (b) performing “Raise You  
24 Up” at live productions and other performances of “Kinky Boots,” (c) participating in  
25 and furthering the aforementioned infringing acts, and/or sharing in the proceeds  
26 therefrom, all through substantial use of “Into the Night” in and as part of the  
27 infringing work “Raise You Up,” packaged in a variety of configurations and digital  
28

1 downloads, mixes and versions, and performed in a variety of ways including, but not  
2 limited to, audio and video.

3 42. Plaintiffs are informed and believe and thereon allege that Defendants,  
4 and each of them, had access to the Subject Composition, including, without  
5 limitation, through (a) listening to the recording via Plaintiffs' public performances or  
6 recordings, (b) streaming the Subject Composition online, (c) listening to the Subject  
7 Composition through a third party, (d) viewing the sheet music of the Subject  
8 Composition. Plaintiffs further allege that the identical nature of the copying  
9 establishes access.

10 43. Plaintiffs are informed and believe and thereon allege that Defendants,  
11 and each of them, performed and distributed songs and recordings thereof that were  
12 unauthorized copies of the Subject Composition, and exploited said composition  
13 online, in advertising, and in productions.

14 44. Plaintiffs are informed and believe and thereon allege that Defendants,  
15 and each of them, infringed Plaintiffs' copyrights by creating infringing derivative  
16 works from the Subject Works and by performing and publishing the infringing work  
17 to the public, including without limitation, through its live performances, YouTube  
18 channels, or elsewhere.

19 45. Plaintiffs are informed and believe and thereon allege that Defendants,  
20 and each of them, infringed Plaintiffs' rights by copying the Subject Composition  
21 without Plaintiffs' authorization or consent.

22 46. Due to Defendants', and each of their, acts of infringement, Plaintiffs  
23 have suffered general and special damages in an amount to be established at trial.

24 47. Due to Defendants' acts of copyright infringement as alleged herein,  
25 Defendants, and each of them, have obtained direct and indirect profits they would  
26 not otherwise have realized but for their infringement of Plaintiffs' rights in the  
27 Subject Composition. As such, Plaintiffs are entitled to disgorgement of Defendants'  
28

1 profits directly and indirectly attributable to Defendants' infringement of Plaintiffs'  
2 rights in the Subject Composition in an amount to be established at trial.

3 48. Plaintiffs are entitled to elect actual damages, including the substantial  
4 profits of Defendants, or in the alternative statutory damages pursuant to 17 U.S.C. §  
5 504(c), in an amount to be proven at trial.

6 49. Plaintiffs are entitled to their costs, including reasonable attorneys' fees,  
7 pursuant to 17 U.S.C. § 505.

8 50. Defendants' conduct is causing and, unless enjoined by this Court, will  
9 continue to cause Plaintiffs irreparable injury that cannot be fully compensated or  
10 measured in monetary terms. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a  
11 permanent injunction prohibiting the reproduction, distribution, sale, public  
12 performance or other use or exploitation of "Into the Night," including the infringing  
13 song "Raise You Up."

14 **SECOND CLAIM FOR RELIEF**

15 (For Breach of Fiduciary Duties – Against Spirit)

16 51. Plaintiffs repeat, re-allege, and incorporate herein by reference as though  
17 fully set forth, the allegations contained in the preceding paragraphs of this  
18 Complaint.

19 52. At all relevant times, Spirit created, accepted, and was obligated to act in  
20 a fiduciary relationship with and for the benefit of Plaintiffs. This fiduciary  
21 relationship was based on trust and confidence, as well as the express contractual  
22 obligations alleged herein, and it required Spirit to act in the best interests of  
23 Plaintiffs at all times.

24 53. Also by virtue of this special relationship that existed between Spirit and  
25 Plaintiffs, Plaintiffs had confidence in the fidelity and integrity of Spirit and entrusted  
26 Spirit with information and portions of their financial and legal affairs, thereby  
27 creating a confidential relationship which existed at all times relevant to this action,  
28

1 such that Spirit owed to Plaintiffs a fiduciary duty to put the interests of Plaintiff  
2 before their own.

3 54. Upon learning of the infringement claims at issue in this case, Plaintiffs  
4 reached out to Spirit as the administrator of “Into the Night” to advise it of the  
5 plagiarism of a substantial portion of “Into the Night” and to request that Spirit honor  
6 its contractual and fiduciary obligations with respect to that claim. Specifically,  
7 Mardones called and spoke to Spirit founder and President Mark Fried to make him  
8 aware of the claims against Lauper, et. al.

9 55. Plaintiffs are informed and believe, and thereon allege, that Spirit also  
10 represents Lauper, although at no point did Spirit disclose this conflict to Plaintiffs.

11 56. In June of 2015, after independently learning of Spirit’s relationship with  
12 Defendants and conflict of interests, Plaintiffs’ counsel documenter their claims in  
13 writing to Spirit with a supporting musicologist report and demanded that Spirit  
14 honor its contractual and fiduciary obligations to Plaintiffs with respect to the claims  
15 asserted herein.

16 57. Spirit has failed and refused to take action on the infringement claim  
17 asserted herein, and has instead made it abundantly clear that its priorities and  
18 allegiances lie with Lauper and the other defendants. Spirit’s willful breach and  
19 failure to act underscores a simple fact: Spirit has put its pecuniary interest in  
20 continuing to reap the financial benefits from the exploitation of both “into the  
21 Night” and “Raise You Up” above its obligations to protect Plaintiffs’ copyrights.  
22 Plaintiff believes that Spirit’s decision has been motivated by the fact that Mardones  
23 suffers from Parkinson’s Disease and has resultantly had to significantly reduce his  
24 touring (and the attendant promotion of “Into the Night”) while Lauper’s Kinky  
25 Boots with its main anthem “Lift You Up” is an ongoing commercial success that has  
26 won best musical awards including the Tony, the Grammy, and London’s Oliver  
27 Award.

1           58. Moreover, Spirit has made an intentional decision to align itself with  
2 Lauper, affirmatively stating to Mardones that “Raise You Up” does not infringe on  
3 “Into the Night.” At a minimum Spirit could have remained neutral, but it willfully  
4 chose not to do so despite having voluntarily accepted the trust and confidence of  
5 Plaintiffs, and the express fiduciary duties to which they agreed, Spirit breached its  
6 fiduciary duties by *inter alia* (1) failing to identify and raise claims based on the  
7 copyright for “Into the Night” which it was obligated to protect, (2) advising Plaintiff  
8 that the claim was very close but then discouraging Plaintiffs from pursuing the case,  
9 (3) refusing to bring the claims asserted herein, even when advised that a renowned  
10 musicologist believed the claim to be viable, (4) failing to advise Plaintiffs of its  
11 conflict of interest in this matter given Spirit’s representation of Lauper, (5) failing to  
12 remain neutral when faced with its conflict interest, instead giving strong biased  
13 support to Lauper and the other Defendants to the detriment of Plaintiff, and (6)  
14 refusing to cooperate in Plaintiff’s efforts to avoid further dispute and preempt  
15 unnecessary and costly litigation concerning standing by confirming Plaintiffs’ right  
16 to bring this action with a simple assignment of such right.

17           59. As a direct and proximate result of the aforementioned acts, Plaintiff has  
18 suffered and sustained damages in an amount not yet ascertained, but to be proven at  
19 trial. To the extent that the Agreement purports to contain an exculpatory clause,  
20 which purports to release Spirit from this unlawful conduct, Plaintiffs allege that such  
21 a clause is unenforceable pursuant to Civil Code Sec. 1668 and other applicable laws.

22           60. Spirit is guilty of malice, fraud or oppression, such that Plaintiffs should  
23 recover, in addition to actual damages, punitive damages to make an example of and  
24 punish and deter similar conduct.

25                           **THIRD CLAIM FOR RELIEF**

26                           (For Breach of Contract – Against Spirit)



1           61. Plaintiffs repeat, re-allege, and incorporate herein by reference as though  
2 fully set forth, the allegations contained in the preceding paragraphs of this  
3 Complaint.

4           62. Spirit expressly agreed with Plaintiffs that it would, among other things,  
5 act as the attorney-in-fact and initiate litigation against infringers of any of the  
6 compositions subject to the Agreement, including “Into the Night.” At the time the  
7 parties entered into the Agreement they were legally capable of contracting—there  
8 was mutual consent, a lawful objective and sufficient consideration.

9           63. Plaintiffs have performed all obligations required by the Agreement, and  
10 Spirit has accepted and benefitted from Plaintiffs’ performance under the Agreement.

11           64. Spirit has materially breached the terms of the Agreement by, among  
12 other things, refusing and failing to bring legal action against Lauper and the other  
13 Defendants named herein, and by acting to the detriment of the Plaintiffs. The breach  
14 is material.

15           65. As a direct and proximate result of the aforementioned acts, Plaintiff has  
16 suffered and sustained damages in an amount not yet ascertained, but to be proven at  
17 trial. To the extent that the Agreement purports to contain an exculpatory clause,  
18 which purports to release Spirit from this unlawful conduct, Plaintiffs allege that such  
19 a clause is unenforceable pursuant to Civil Code Sec. 1668 and other applicable laws.

20           66. Moreover, Plaintiff alleges that the Administration Agreement was  
21 obtained by Spirit through mistake and fraud, as alleged herein, since Plaintiffs did  
22 not understand that Spirit would not protect its interests, including bringing legal  
23 action if such action would conflict with other client interests that Spirit deemed to be  
24 more important or currently valuable than Spirit’s legal and contractual obligations to  
25 Plaintiffs.

26           67. Spirit affirmatively and fraudulently concealed from Plaintiffs that it  
27 would not carry out its contractual obligations to Plaintiffs in the event of a conflict  
28



1 of interests with other Spirit writers, notwithstanding the adverse effect and financial  
2 harm Plaintiffs. Spirit had a duty to so advise Plaintiffs in light of the fiduciary duties  
3 established but failed to so advise Plaintiffs.

4 68. Upon information and belief Spirit represents a substantial portion of the  
5 music publishing market throughout the world. Accordingly, there is a strong  
6 likelihood that conflicts of interest, such as the one at issue in the present case, will  
7 arise again between Spirit and Plaintiffs. Based on blatant and egregious breach of  
8 Spirit's fiduciary duty and covenant of good faith and fair dealing, Spirit has proven  
9 that it cannot be trusted to remain neutral and impartial, and that it is unworthy of the  
10 level of trust and unable to meet the level of professional conduct which is required  
11 of a copyright administrator charged with protecting Plaintiffs' important interests in  
12 their copyrighted works.

13 69. By Spirit materially breaching the terms of the Agreement, as set forth  
14 above, Spirit has rendered an ongoing relationship unworkable. Plaintiffs therefore  
15 serve notice through this pleading of their demand for rescissionary damages on the  
16 grounds of fraudulent misrepresentations, deceit, mistake, material breach, and  
17 breach of fiduciary duties by Spirit as alleged herein.

18 70. Plaintiffs hereby demand restitution from Spirit in an amount that will  
19 restore them to a position they would have been in had Spirit not engaged in the  
20 willful, intentional, and purposeful conduct alleged herein.

21 71. Plaintiffs also seek rescission of the Agreement, and disgorgement of  
22 profits, based on Spirit's breaches of various contractual and fiduciary duties owed to  
23 them. Plaintiffs should not be compelled to remain in this contractual relationship, the  
24 term of which continues for many years, in light of the fact that Spirit has actively  
25 and affirmatively worked against the rights and interests of Plaintiffs, despite its legal  
26 and contractual duties to protect those very rights and interests. Spirit has shown that  
27 it will not and cannot be trusted to perform its contractual obligations and duty to  
28

1 Plaintiffs in accordance with and as intended by the Agreement, and has no intention  
2 of doing so, particularly when confronted with conflicts of interest that are perceived  
3 to adversely affect its more significant revenue streams and other Spirit interests.

4  
5 **PRAYER FOR RELIEF**

6 **WHEREFORE,** Plaintiff respectfully prays for judgment against all  
7 Defendants, and each of them individually, as follows:

- 8 1. A declaration that Defendants have infringed Plaintiffs' copyrighted  
9 musical work in violation of the Copyright Act;
- 10 2. A declaration that Defendants are directly, vicariously and/or contributorily  
11 liable for copyright infringement, as applicable;
- 12 3. A permanent injunction requiring Defendants and their agents, servants,  
13 employees, officers, attorneys, successors, licensees, partners, and assigns,  
14 and all persons acting in concert or participation with each or any one of  
15 them, to cease directly and indirectly infringing, and causing, enabling,  
16 facilitating, encouraging, promoting, inducing, and/or participating in the  
17 infringement of any of Plaintiffs' rights protected by the Copyright Act;
- 18 4. For either statutory damages or the actual damages sustained by Plaintiffs;
- 19 5. For special and compensatory damages in an amount according to proof in  
20 excess of the jurisdictional limit of this court;
- 21 6. For an accounting;
- 22 7. For punitive damages;
- 23 8. For injunctive relief from any and all present and/or future exploitation;
- 24 9. For restitutionary damages;
- 25 10. For rescission of the Agreement with Spirit;
- 26 11. For prejudgment interest;
- 27 12. For attorney's fees, where applicable, interest, and costs of suit; and  
28

1 13. For such other and further relief as to this Court seems just and proper.

2 Plaintiffs demand a jury trial on all issues so triable pursuant to Fed. R. Civ. P.  
3 38 and the 7<sup>th</sup> Amendment to the United States Constitution.

4 Respectfully submitted,

5 Dated: August 30, 2017

By: /s/ Stephen M. Doniger  
Stephen M. Doniger, Esq.  
DONIGER / BURROUGHS  
Attorneys for Plaintiffs