

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE**

ESTATE OF ARMETIA CHATMON,)
a/k/a ARMENTER CHATMON,)
p/k/a “BO CARTER” or “BO CHATMON”)

Plaintiff,)

v.)

WARNER MUSIC GROUP CORP.,)
SONY/ATV MUSIC PUBLISHING,)
EMI MILLS MUSIC, INC., RHINO)
ENTERTAINMENT COMPANY, d/b/a)
RHINO RECORDS, VIACOM, INC., d/b/a)
VIACOM INTERNATIONAL, INC,)
FOLKWAYS MUSIC PUBLISHERS, INC.)
HAL LEONARD LLC, J.W. PEPPER &)
& SONS, INC., ERIC CLAPTON, AND)
JOHN DOE NOS. 1-10.)

Defendants.)

Case No.:

Judge:

Magistrate:

JURY DEMAND

COMPLAINT

The Plaintiff, the Estate of Armetia Chatmon, p/k/a Bo Carter¹ (hereinafter sometimes collectively referred to the “Plaintiff”), by its attorneys, as and for its complaint, alleges as follows:

¹ Armetia Chatmon is variously referred to in underlying documents as “Armenter Chatmon” or professionally as “Bo Chatmon” or “Bo Carter.” Mr. Chatmon is also referenced using the variant spelling of the last name “Chatman.” As used in the facts of this Complaint, the intention is to use either “Plaintiff” when referring to the estate and “Chatmon” when referring to the author/artist, Armetia Chatmon, p/k/a “Bo Carter” or “Bo Chatmon.” To deflect confusion, all of these names should be read interchangeably to refer to the Plaintiff or its interests.

NATURE OF THE ACTION

1. In this action, Plaintiff seeks damages for, *inter alia*, copyright infringement, false designation of origin, violation of personal rights and the right to claim authorship, as well as multiple other common law claims for acts engaged in by Defendants under the laws of the United States and the State of Tennessee as more fully set forth below in the claims for relief.

JURISDICTION AND VENUE

2. This action arises under Copyright Act of 1976, 17 U.S.C. §§101 *et seq.* (the "Copyright Act"), the Trademark Act of 1946, 15 U.S.C. §1051 *et seq.* (the "Lanham Act"), the Berne Convention Implementation Act of 1988 (the "Berne Act"), Tennessee's Consumer Protection Act of 1977, T.C.A. 47-18-104 (the "TCPA") and various common laws of the United States and the State of Tennessee as indicated more specifically in the claims. This Court has jurisdiction pursuant to 28 U.S.C. §1332(a)(1) & (2) regarding diversity of citizenship, 28 U.S.C. §1338 regarding issue involving copyright, 15 U.S.C. §1121 regarding original jurisdiction, and 28 U.S. §1367 regarding the law of supplemental jurisdiction.

3. The venue of this action is properly laid in the District of Tennessee pursuant to 28 U.S.C. §§1391(b)-(c) and 1400(a).

4. The amount in controversy exceeds, exclusive of interest and costs, the sum of \$75,000.00 as required by 28 U.S.C. §1332(a).

5. Upon information and belief, each of the Defendants has been transacting and continues to transact business in the State of Tennessee and elsewhere in interstate commerce, or transacts business that affects such commerce, and has been committing and continues to commit the acts complained of herein in the State of Tennessee and elsewhere in interstate commerce, and regularly has done and now does business and solicits business and derives substantial revenue from the sale and licensing of creative properties and other products and services sold, used or consumed in the State of Tennessee, including via the Internet, and elsewhere in interstate commerce. The Defendants expected or should have reasonably expected their acts, including the acts set forth above and complained of herein, to have consequences in the State of Tennessee.

THE PARTIES

6. Chatmon died on September 21, 1964 (see Death Certificate, attached as Exhibit “A”) and his estate was probated in Shelby County Probate Court, Memphis, Tennessee.

7. Chatmon left all rights to his intellectual property, including the Original Song as identified hereinafter, to the Plaintiff, The Estate of Armetia Chatmon, which is administered by Mr. Miles Floyd as executor (*see*, Order Appointing Miles Floyd as Executor, attached hereto as Exhibit “B”). Mr. Floyd is an individual resident of the State of Mississippi whose mailing address is 208 Gaylyn Avenue, Jackson, Mississippi 39209.

8. Plaintiff is informed and believes and based thereon alleges that:

(a) The Defendant, Warner Music Group Corp. (“Warner”), is a corporation existing under the laws of the State of Delaware, authorized to do business in the State of New York and, upon information and belief, having its principal office and place of business at 75 Rockefeller Plaza, 31st Floor, New York, New York 10019 and is in the business of acquiring, publishing, licensing, and otherwise commercially exploiting musical compositions and/or acquiring, producing, licensing, and otherwise commercially exploiting phonograph recordings, throughout the United States and the world.

(b) The Defendant, Sony/ATV Music Publishing LLC (“Sony”) is a limited liability company existing under the laws of the State of Delaware, authorized to do business in the State of New York and, upon information and belief, having its principal office and place of business at 25 Madison Avenue, 24th Floor, New York, New York 10010. Sony is in the business of acquiring, publishing, licensing, and otherwise commercially exploiting musical compositions and/or acquiring, producing, licensing, and otherwise commercially exploiting music all throughout the United States and the world.

(c) The Defendant, EMI Mills Music, Inc. (“EMI”) is a limited liability company existing under the laws of the State of Delaware, authorized to do business in the State of New York and, upon information and belief, having its principal office and place of business at 126 East 56 Street, Suite 1620, New York, New York 10011. EMI is in the business of acquiring, publishing, licensing, and otherwise commercially exploiting musical compositions and/or acquiring,

producing, licensing, and otherwise commercially exploiting music all throughout the United States and the world.

(d) The Defendant, Rhino Entertainment Company (“Rhino”), is a corporation existing under the laws of the State of Delaware, authorized to do business in the State of California and is a wholly-owned subsidiary of Warner. Upon information and belief, Rhino’s principal office and place of business is 10635 Santa Monica Boulevard, Los Angeles, California 90025. Rhino is in the business of acquiring, publishing, licensing, and otherwise commercially exploiting musical compositions and/or acquiring, producing, licensing, and otherwise commercially exploiting phonograph recordings, all throughout the United States and the world.

(e) The Defendant, Viacom International, Inc. (formerly Viacom Media Networks) is, upon information and belief, a subsidiary of Viacom, Inc. (“Viacom”), a corporation existing under the laws of the State of Delaware, whose principal office and place of business is 1515 Broadway, New York, New York 10036, that is in the business of mass media production and operations, including many television channels and Internet brands as well as the original Music Television (“MTV”) channel in the United States and the world.

(f) The Defendant, Folkways Music Publishers, Inc., is a corporation existing under the laws of the State of New York, whose catalog of musical compositions is being administered by The Richmond Organization TRO (“Folkways”). Its principal place of business is 266 West 37th Street, 17th Floor,

New York, New York 10018. Folkways is in the business of administering and exploiting musical compositions.

(g) The Defendant, Hal Leonard, LLC (“Leonard”), is a limited liability company existing under the laws of the State of Delaware, whose principal office and place of business is 7777 W. Bluemound Road, P.O. Box 13819, Milwaukee, Wisconsin 53213, that is the business of publishing written sheet music and songbooks.

(h) The Defendant, J.W. Pepper & Sons, Inc. (“Pepper”), is a corporation existing under the laws of the Commonwealth of Pennsylvania, whose principal office and place of business is 191 Sheree Boulevard, Exton, Pennsylvania 19341 that is the business of publishing written sheet music and songbooks.

(i) The Defendant, Eric Clapton (“Clapton”), is a citizen of England who, upon information and belief, resides at Hurtwood Edge, The Warren, Ewhurst, Cranleigh, Surrey, England, GU6 7NW and is in the business of creating, performing and recording music. Mr. Clapton is married to an American citizen and, upon information and belief, also has a residence at an unknown address in Dublin, Ohio.

(j) Upon information and belief, based on research conducted by Plaintiff to date, there may be other entities who are claim ownership, exploit the Original Song without authorization, or otherwise misrepresent the authorship or ownership of the Original Song. Plaintiff is hereby designating these unknown parties as John Does 1-10 and intends to seek leave to amend this Complaint in the

event that the identity of such further Defendants is uncovered during the course of discovery.

Hereinafter the Defendants Warner, Sony, EMI, Rhino, Viacom, Folkways, Leonard, Pepper, Clapton and John Does 1-10 will be collectively referred to conjunctively as the “Defendants” and/or disjunctively as a “Defendant” or by using their defined monikor.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

9. The musical composition entitled *Corrine, Corrina* (sometimes referred to as *Corrina, Corrina*) is a 12-measure, three-phrase blues song in the AAB call-and-response lyric format, that was written by Chatmon sometime prior to the fall of 1928 (the “Original Song”) (*see*, sheet music for the Original Song, attached hereto as Exhibit “C,” which is published and sold by Defendant Pepper²).

10. Chatmon sometimes performed with his brother, Lonnie Chatmon, and Walter Vincson (a/k/a Walter Jacobs) as the “Mississippi Sheiks,” a popular and influential musical trio of the 1930’s.

11. The Original Song was registered with the U.S. Copyright Office on December 5, 1929 in the names of Chatmon and J. Mayo Williams (“Williams”) (*See*, Registration Certificate, attached hereto as Exhibit “D”).

² Note that the sheet music incorrectly identifies Universal Music Group as the copyright registrant for The Original Song. Upon information and belief, this is a mistake on the part of Pepper, as Universal Music Group (“UMG”) does not claim any ownership interests in the copyright, nor is it listed with the U.S. Copyright Office database as such, and therefore is not currently named as a defendant. In the event that discovery reveals these assumptions to be incorrect, Plaintiff will seek to substitute UMG as one of the John Doe defendants identified earlier.

12. The Original Song was a successful “hit” record that grew into a standard, and ultimately became one of the most influential prototypes in modern music. It has been recorded in various musical genres, including Cajun, blues, jazz, rock, country, western swing, and pop, by such notable luminaries as Tampa Red & George Tom (Thomas A. Dorsey), Dean Martin, Jerry Lee Lewis, Big Joe Turner, Brooks & Dunn, Merle Haggard Bob Wills, Cab Calloway, Leo Soileau, Leo Kottke, Willie Nelson, Steppenwolf and Wynton Marsalis, to name a few, most of whom properly gave credit to Plaintiff as the author.

13. Upon information and belief, Williams did not participate in the writing of the song, but rather was doing business under the name State Street Music Publishing Co. Inc. (“State Street”). State Street is identified as the owner of the copyright on the Registration Certificate, however, there is no extant written agreement transferring the ownership of Chatmon’s rights in the copyright to State Street, as required by Section 42 of the 1909 Copyright Act.

14. Williams had the reputation for adding himself as an author to the musical compositions of his songwriters and for unscrupulously transferring and assigning rights that did not belong to him. For purposes of illustration, attached hereto are what purport to be assignments that were ostensibly made by Williams indicating that State Street assigned the copyright to Gotham in 1931 then to Mayo Music in 1942 (*See, Assignments, attached hereto as Exhibit “E”*).

15. Williams passed away on January 2, 1980 and, upon information and belief, did not have any heirs and arguably no longer possesses any rights in the Original Song, if he ever did.

16. The Original Song's copyright registration was properly renewed on December 3, 1957 (*see*, Renewal Certificate, attached hereto as Exhibit "F").³ Note that the renewal was paid for and received by Defendant EMI (as "Mills Music" on the Renewal Certificate), although Williams is identified as the "claimant." Incorrectly, the renewal registration omitted the name of Chatmon as an additional claimant, but identified him as an author.

17. Another copyright registration for the Original Song was filed in 1932 by Williams and Mitchell Parish, this time identifying Williams and Chatmon as original authors but claiming registration of "additional lyrics" by Parish (*See*, Library of Congress Catalog of Copyright Entries, Part 3, for the year 1932, attached hereto as Exhibit "G"). Again, there is no evidence of a written authorization from Chatmon to Parish and/or Williams permitting them to create a derivative work from the Original Song, so this copyright should be disregarded as an improper infringement (the "Disregarded Copyright").

18. Chatmon, along with Charlie McCoy, recorded the Original Song for Brunswick Records, which released the single (as Brunswick 7080) in 1929 (the "Brunswick Recording") (*see*, Brunswick label, attached hereto as Exhibit "H").

³ Hereinafter, the Registration Certificate and the Renewal Certificate shall be collectively referred to as the "1929 Copyright."

19. In or around 1930, Plaintiff's brother, Lonnie Chatman,⁴ along with Walter Vincson (a/k/a Walter Jacobs), also recorded a cover version of the Original Song as The Mississippi Shieks for Okeh Records (Okeh 8773) in which they substituted the name "Alberta" for "Corrina" and called the song *Alberta Blues* (the "Alberta Cover") (See Okeh label, attached hereto as Exhibit "I"). Although Lonnie Chatman and Walter Vincson are not parties to the instance action, it is important to note that their Alberta Cover had an extended life of its own apart from the Original Song on which it is based and is notable for its influence on Eaglin Cover, as discussed below.

20. Over the years, the Alberta Cover was recorded by several different artists, including, for example, by New Orleans artist, Snooks Eaglin, in 1959 for the Bluesville Label (the "Eaglin Cover"). As a result of these subsequent covers of the Alberta Cover, the titles "Alberta" and Corrine/Corrina became interchangeable in the country blues genre, and the names "Alberta" and "Corrine/Corrina" were often used in different songs that bare absolutely no similarity to the structure, lyrics or melodies of the Original Song nor to the Alberta Cover.

21. To wit, in 1940, Huddie Ledbetter, professionally known as Lead Belly,⁵ recorded for RCA Victor Bluebird a song which he called *Alberta* (the "Lead Belly Song" - not to be confused with the Alberta Cover) whose melodic structure, chords, structure and lyrics bear absolutely no resemblance to either the Original Song, the Alberta Cover, nor the Eaglin Cover, except that the Lead Belly Song and the Alberta/Eaglin Covers share the

⁴ Lonnie's last name was incorrectly spelled on the Okeh recording.

⁵ According to Wikipedia, Ledbetter's professional name was "Leadbelly," although he spelled it as two distinct words and that the spelling adopted by the Lead Belly Foundation.

same title. There were four different versions of this Lead Belly Song which were performed and recorded commercially and privately (for purposes of research), neither of which bear any musical similarities to the Original Song.

22. Dean Martin later recorded his version of the Original Song in 1963 on Reprise Records (the “Martin Recording,” see Reprise Record label attached hereto as Exhibit “J”), which through a succession of purchases is now owned by Defendant Warner. Attribution on the Martin Recording is given by reference to the Disregarded Copyright, so it does properly credit Chatmon as an author.

23. From approximately 1989 through the present, Defendant Viacom has produced an American television series featuring a different musical artist in each episode playing primarily acoustical instruments which is called *MTV Unplugged* (the “Unplugged Series”).

24. The artists’ performances on the Unplugged Series are often recorded and released separately as compilations of sound recordings.

25. In 1992, Defendant Clapton recorded an episode in the Unplugged Series at Bay Studios in London during which he performed many of his classics as well as several old blues songs, including a performance that featured the Original Song with the title and lyrical references to the name *Corinne*, *Corrina* replaced with *Alberta*, *Alberta* (the “Clapton Unplugged Performance”).

26. The Clapton Unplugged Performance aired on Viacom-owned MTV on August 25, 1992 and contained the lyrics, melodies and chord progressions of the Original

Song as recorded in The Brunswick Recording (and by default the Alberta/Eaglin Covers thereof) but for the substitution of “Alberta/Alberta” for “Corinne/Corrina.”

27. During the Clapton Unplugged Performance, Clapton incorrectly identified the Original Song he performed as having been written by Lead Belly and referred to it by the title *Alberta*. Despite that attribution, however, Clapton *did not* perform the Lead Belly Song and, upon information and belief, never has, nor did the Clapton Unplugged Performance bear any resemblance or similarities to the Lead Belly Song.

28. The only thing the Clapton Unplugged Performance of *Alberta* had in common with the Lead Belly Song was the title. Rather, as indicated earlier, the melody, chord progression and all other lyrics performed by Clapton are those belonging to the Original Song, the Brunswick Recording and/or the Alberta/Eaglin Covers, wherein the words “Alberta, Alberta” are exchanged for “Corrine, Corrina.”

29. In an interview conducted for *Guitar World* magazine in 1993 regarding the Clapton Unplugged Performance, Clapton reveals that the Eaglin Cover was part of his record collection growing up and recognizes that is served as the basis of the performance of the Original Song on the Clapton Unplugged Performance. Again, the Eaglin Cover melody and words are based on the Original Song, and bear absolutely no similarity to the Lead Belly Song.

30. The Clapton Unplugged Performance was recorded and first released on Reprise Records, now owned by Defendant Warner, in 1992 (the “Clapton Unplugged Album”) and included Clapton’s performance of the Original Song.

31. Upon information and belief, the Clapton Unplugged Album sold over 60 million copies worldwide, and Clapton received six Grammy Awards for the album, including Record of the Year, Album of the Year, Song of the Year (for “Tears in Heaven”), Best Male Pop Vocal Performance, Best Rock Male Vocal Performance and Best Rock Song.

32. The Original Song as performed on the Clapton Unplugged Album was incorrectly identified as *Alberta* (the Lead Belly Song) on its liner notes and incorrectly designated as having been written by Lead Belly. As indicated earlier, by virtue of Reprise Records’ release of the Martin Recording of the Original Song, Defendant Warner (as successor-in-interest to Reprise) knew, or should have known, that the Plaintiff was the author.

33. In 2011, Defendant Clapton performed a derivative version of the Original Song with Wynton Marsalis at the Lincoln Center, a live jazz performance that was later released by Defendant Warner on a sound recording entitled *Marsalis & Clapton Play the Blues* (the “Marsalis Recording”). In the liner notes for the Marsalis Recording, Defendant Warner correctly identifies Plaintiff as a joint author of the Original Song, but incorrectly identified defendant EMI as owner of the publishing rights (*See*, cover and liner notes for the Marsalis Recording, attached hereto as Exhibit “K”).

34. In 2013, the Clapton Unplugged Album was remastered and rereleased as a “Deluxe Edition” by Defendants Warner, through its wholly-owned subsidiary Rhino (the “Deluxe Clapton Unplugged” – *see* cover art and liner notes for album attached hereto as Exhibit “L”). The Deluxe Clapton Unplugged featured a remastered version of the

Original Song as well as the complete video footage of the Clapton Unplugged Performance, upon information and belief, licensed from Defendant Viacom.

35. Despite its awareness that the Original Song was authored by the Plaintiff, as evidenced by the attribution on both the Martin Recording and the Marsalis Recording, the Defendants once again identified Lead Belly as the author in the liner notes to the Deluxe Clapton Unplugged release and as a result, named Folkways as the publisher. Folkways is not the publisher of the Original Song but, rather, of the Lead Belly Song. As a result of this misidentification, all publishing royalties from sales of the Deluxe Clapton Unplugged were and continue to be paid to Folkways, not Plaintiff.

36. Upon information and belief, the Deluxe Clapton Unplugged set, including both the Original Song and the Clapton Unplugged Performance thereof, has sold at least 10 million copies without any compensation to Plaintiff.

37. As a result of the success of both the Clapton Unplugged Album and the Deluxe Clapton Unplugged, on August 1, 2014, Hal Leonard licensed the sheet music and published it in the *Eric Clapton – Unplugged – Deluxe Edition Songbook* in both paperback and digital versions (the “Songbooks”, copy of Cover and pages featuring sheet music for the Original Song titled *Alberta* with the lyrics “Corrine Corrina” changed to “Alberta, Alberta,” and attributed to Huddie Leadbetter, attached hereto as Exhibit “M”).

38. Plaintiff has made repeated attempts to correct the misidentification and incorrect royalty accounting with the various Defendants to no avail, and many of those communications have gone unanswered (*See*, for example, Correspondence from

Plaintiff's prior legal counsel to Viacom as well as Viacom's sole response indicating their intention to investigate the allegation, both attached hereto as Exhibit "N").

FIRST CLAIM FOR RELIEF
(Copyright Infringement, 17 U.S.C. §501)
As to All Defendants

39. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 38 of this complaint as if fully set forth herein.

40. The cause of action in this first claim for relief arises under The Copyright Act, 17 U.S.C. §501.

41. Plaintiff is the exclusive holder of the 1929 Copyright, as subsequently renewed, and is the holder of the exclusive right to adapt, reproduce, distribute, perform, and/or license the adaptation, reproduction, distribution and performance of the Original Song.

42. Chatmon's contributions to the Original Song were wholly original and constitute copyrightable subject matter under the Copyright Act, and Plaintiff is the legal and beneficial owner of all exclusive rights in the Original Song. There are no written documents evidencing an assignment or transfer of interest from Chatmon to Williams. Therefore, no other entity possesses any rights, title or interests in the 1929 Copyright, and any assignments or transfers of the copyright in the Original Song, including, but not limited to, the 1932 Copyright, should be ruled to be derivatives of the 1929 Copyright and therefore wholly owned by Plaintiff.

43. The Original Song is the subject of a number of existing copyright registrations with the United States Copyright Office as identified. The copyright has been duly registered in the Copyright Office and all applicable recordation, registration and renewal formalities and notice requirements under The Copyright Act have been fully complied with. True and correct copies of the Certificate of Registration and Renewal Certificate are attached hereto as Exhibits.

44. Each of the Defendants has failed to account to Plaintiff for their unauthorized use of the Original Song, including without limitation sales of phonograph recordings/DVDs of the Original Song as part of the Deluxe Clapton Unplugged video/recording and the Songbooks, and Defendants have failed to pay any royalties to Plaintiff for such unauthorized sales or other uses of the Original Song.

45. Folkways is receiving “licensing” revenue from the erroneous attribution of the Original Song as the Lead Belly Song. As a longtime publisher in the music industry, Folkways had constructive knowledge that the Original Song performed by Clapton was not the same as the Lead Belly Song, and knows or should have known that the royalties being received for Clapton’s performance of the Original Song did not belong to them (*See*, for example, the print out of BMI royalty distribution on the royalties for, *inter alia*, the Clapton Unplugged Performance to Defendant Folkways, attached hereto as Exhibit “O”).

46. On that basis, Plaintiff is informed, believes and alleges that Defendants have willfully and knowingly infringed the Original Song by manufacturing, distributing, exploiting, performing, licensing and selling, in the Middle District of Tennessee and

elsewhere in the world, audio/visual recordings of the Original Song, all without the consent or authorization of Plaintiff.

47. Plaintiff is informed and believes and on that basis alleges that Defendants have been continuously infringing its copyright in the Original Song since 1992, have committed successive new acts of infringement, and threaten to further infringe upon Plaintiff's copyright in the Original Song by offering for license and licensing, in the Middle District of Tennessee and elsewhere, to third parties the right to exploit, record, manufacture, distribute, sale, publish and/or publicly perform one or more covers of the Original Song, all without the consent or authorization of Plaintiff.

48. Any "license" of the Original Song by Defendants, including without limitation the video footage distributed in the Deluxe Clapton Unplugged, constitutes unauthorized reproduction and/or public performance of the Original Song.

49. The marketing and sale of sound recordings of the Original Song as well as publications in the Songbooks by third parties "licensed" by Defendants constitutes an unauthorized distribution of copies of the Original Song.

50. The public performance of the Original Song, live or via the public broadcast of sound recordings of any version of the Original Song by third parties "licensed" by Defendants constitutes an unauthorized public performance of Plaintiff's 1929 Copyright and a violation of its performance rights under 17 U.S.C. 106.

51. Plaintiff is informed and believes and on that basis further alleges that Defendants have infringed and threaten to further infringe upon Plaintiff's copyright by making one or more audio/visual recordings of the Original Song available for

downloading and/or streaming by third parties via the Internet, in the Middle District of Tennessee and elsewhere, all without the consent or authorization of Plaintiff.

52. Any downloading or streaming of any audio/visual recording of the Original Song by third parties from the Internet constitutes an unauthorized distribution, reproduction and/or public performance of the Original Song.

53. Any use, sale and exploitation of printed sheet music versions of the melody and lyrics of the Original Song constitutes an unauthorized adaptation, distribution, display and reproduction of the Original Song.

54. Plaintiff is informed and believes, because of multiple attempts to clarify its ownership and authorship, and because of the Martin/Marsalis Recordings, that Defendants' infringement of Plaintiff's 1929 Copyright has been and continues to be carried out with Defendants' full knowledge that the Original Song is protected by copyright and was written by Chatmon. In committing the acts complained of herein, Defendants have thus willfully and intentionally infringed Plaintiff's copyrights as defined in 17 U.S.C. §504(c)(2).

55. Plaintiff has suffered and continues to suffer irreparable harm and injury as a result of the aforesaid infringing acts of Defendants and Plaintiff is without an adequate remedy at law, in that damages are extremely difficult to ascertain and, unless injunctive relief is granted as prayed for herein, Plaintiff will be required to pursue a multiplicity of actions.

56. Plaintiff has sustained damage as a result of Defendants' wrongful acts as hereinabove alleged. Plaintiff is presently unable to ascertain the full extent of the money

damages it has suffered by reason of said acts of copyright infringement, and will seek leave to amend this Complaint to state the full amount of said damages when the same has been ascertained.

57. Plaintiff is informed and believes and on that basis alleges that Defendants have obtained gains, profits, and advantages as a result of their infringing acts as hereinabove alleged. Plaintiff is presently unable to ascertain the full extent of the gains, profits, and advantages Defendants have obtained by reason of their aforesaid acts of copyright infringement, and will seek leave to amend this complaint to state the full amount of said damages when the same has been ascertained or, in the alternative, as this Court to apply a calculation of statutory damages pursuant to 17 U.S. Code § 504.

**SECOND CLAIM FOR RELIEF
(False Designation of Origin, 15 U.S.C. §1125 & 47 T.C.A. §104(b))
as to Warner, Sony, EMI, Rhino, Viacom, Folkways, Leonard and Clapton**

58. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 57 of this complaint as if fully set forth herein.

59. The cause of action in the second claim for relief arises under The Lanham Act, 15 U.S.C. §1125 and under the Tennessee Consumer Protection Act, 47 T.C.A. §104(b).

60. Clapton, MTV and/or Viacom falsely designated Lead Belly as the author of the Original Song on the Clapton Unplugged Performance.

61. Clapton, Warner (Reprise) and/or Rhino falsely designated Lead Belly as the author of the Original Song on the Clapton Unplugged Album and the Deluxe Clapton Unplugged.

62. Defendant Folkways has falsely designated Lead Belly as the author of the Original Song as performed by Clapton by identifying it as such with BMI and others.

63. Defendant Leonard has falsely designated Lead Belly as the author of the Original Song in the Songbook.

64. Upon information and belief, these Defendants have violated 15 U.S.C. §1125 by falsely designating Lead Belly as the author of the Original Song instead of properly designating Chatmon by: (a) failing to properly designate Chatmon as the author of the Original Song creating a likelihood of confusion that mistakenly causes consumers to believe that Lead Belly is the origin of the Original Song; and (b) falsely designating Lead Belly as the author of the Original Song in the liner notes accompanying physical product, commercial advertising and/or promotional materials and Internet references is a material misrepresentation to the public as to its origin. These actions create an existing and continuing harm to Plaintiff as well as deprive it of its right to receive publishing royalties.

65. Upon information and belief, these Defendants have also violated 40 T.C.A. §104(b) through falsely designating Lead Belly as the author of the Original Song instead of properly designating Chatmon by: (a) falsely passing off goods or services as those of another (40 T.C.A. §104(b)(1)); (b) causing likelihood of confusion or misunderstanding as to the source, sponsorship, approval or certification of their use of the Original Song (40 T.C.A. §104(b)(2)); (c) causing likelihood of confusion or misunderstanding as to a connection between Plaintiff and Lead Belly (40 T.C.A. §104(b)(3)); and (d) representing

that the Lead Belly Song has characteristics, uses and benefits that it did not have (40 T.C.A. §104(b)(5)).

66. Although Plaintiff has advised Defendants that the attributions and representations in the Clapton Unplugged Performance, the Clapton Unplugged Album and the Deluxe Clapton Unplugged are incorrectly attributed to Lead Belly, the attribution has not been removed, revised nor corrected, nor have Defendant ceased selling the misappropriated product in the Middle District of Tennessee or elsewhere.

67. Plaintiff did not receive any communications from Defendants requesting clarification of the authorship of the Original Song prior to making these new false designations and representations in the second release of the Original Song on the Deluxe Clapton Unplugged. As indicated earlier, Defendants Warner and Folkways knew, or should have known, the correct attribution for the Original Song.

68. As a direct and proximate result of the foregoing willful acts and conduct of Defendants and by reason of their violation of 15 U.S.C. §1125 and 40 T.C.A. §104(b), as hereinabove set forth, Plaintiff has been damaged in an amount which Plaintiff cannot presently ascertain with certainty, plus interest thereon. Plaintiff is informed and believes and on that basis alleges that the amount of such damages may well exceed Five Million Dollars (\$5,000,000.00). Plaintiff will seek leave to amend this complaint to state the full amount of said damages when the same has been ascertained.

**THIRD CLAIM FOR RELIEF
(Violation of Personal Rights, T.C.A. 47-25-1104)
As to All Defendants**

69. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 68 of this complaint as if fully set forth herein.

70. The cause of action in the third claim for relief arises under Tennessee Code Annotated 47-25-1104 as well as the common law rights of publicity.

71. Plaintiff is informed and believes and on that basis alleges that Defendants embarked upon a course of conduct that deprived Plaintiff of its exclusive use of the rights granted in T.C.A. 47-25-1104.

72. Defendants' acts and conduct, as hereinabove alleged, constitute an unjust enrichment by theft of Chatmon's reputation and goodwill and in violation of Plaintiff's posthumous rights of publicity.

73. As a direct and proximate result of Defendants' acts and conduct, as hereinabove set forth, Plaintiff has been damaged in an amount which Plaintiff cannot presently ascertain with certainty. Plaintiff is informed and believes and on that basis alleges that the amount of such damages may well exceed Five Million Dollars (\$5,000,000.00). Plaintiff will seek leave to amend this complaint to state the full amount of said damages when the same has been ascertained.

**FOURTH CLAIM FOR RELIEF
(Violation of Right to Claim Authorship, Berne Treaty, Article 6bis)
As to All Defendants**

74. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 72 of this complaint as if fully set forth herein.

75. The cause of action in the fourth claim for relief arises under the Berne Convention for the Protection for Literary and Artistic Works (Paris Text, 1971), Article 6bis as well as the Berne Convention Implementation Act of 1988.

76. Article 6bis of the Berne Treaty grants Plaintiff the right, independent of any economic rights in the copyright of the Original Song, “the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.” The Berne Convention Implementation Act of 1988 merged the rights of the Berne Treaty into Title 17 (the Copyright Act) as well as any other relevant provision of Federal and State law, including the common law of the United States and the State of Tennessee.

77. Defendants falsely designated Lead Belly as the author of the Original Song during the Clapton Unplugged Performance, and in the liner notes of the Clapton Unplugged Album and the Deluxe Clapton Unplugged, and in the Songbook, and elsewhere in commerce, even though the documentary evidence indicates that most, if not all, of the Defendants had previously recognized Chatmon as an author, as indicated by the Martin Recording and the Marsalis Recording.

78. Upon information and belief, Defendants have violated Chatmon's right to claim authorship and/or be recognized as the author of the Original Song.

79. By falsely designating Lead Belly as the author of the Original Song, Defendants have prejudiced Chatmon's honor and reputation as well as Plaintiff's posthumous rights of publicity.

80. By falsely designating Lead Belly as the author of the Original Song Defendants have forever distorted and mutilated the Original Song in violation of Plaintiff's moral rights in the 1929 Copyright.

81. As a direct and proximate result of the foregoing willful acts and conduct of Defendants and by reason of their violation of Plaintiff's rights as set forth in this fourth claim for relief, Plaintiff has been damaged in an amount which Plaintiff cannot presently ascertain with certainty, plus interest thereon. Plaintiff is informed and believes and on that basis alleges that the amount of such damages may well exceed Five Million Dollars (\$5,000,000.00). Plaintiff will seek leave to amend this complaint to state the full amount of said damages when the same has been ascertained.

FIFTH CLAIM FOR RELIEF
(Conversion)
as to All Defendants

82. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 81 of this complaint as if fully set forth herein.

83. Upon information and belief, Defendants have received monies from third parties that should be credited to the sale and/or licensing of The Original Song but have

incorrectly received and/or distributed those royalties as belonging to the Lead Belly Song.

84. Defendants continue to erroneously identify the Original Song as the Lead Belly Song while receiving revenues from use of the Original Song, and then crediting royalties and other monies received for use of the Original Song to Folkways.

85. Folkways has continuously received and used for its own benefit, royalties derived from the use of the Original Song as performed by Clapton and released as audio/visual recordings and sheet music, because of the fact that the Original Song was improperly credited as the Lead Belly Song.

86. As leaders in the music industry, Defendants knew, or should have reasonably known, that the royalties being received from these uses of the Original Song did not belong to it.

87. Though duly demanded, Defendants have refused and continue to refuse to correct the erroneous information regarding the Original Song and to account to Plaintiff for the proceeds received therefrom, and Folkways has continued to receive said publishing proceeds, thereby converting Plaintiff's property for their purpose and financial gain.

88. As a direct and proximate result of the foregoing willful acts and conduct of Defendants as hereinabove set forth, Plaintiff has been damaged in an amount which Plaintiff cannot presently ascertain with certainty, plus interest thereon. Plaintiff is informed and believes and on that basis alleges that the amount of such damages exceeds

Five Million Dollars (\$5,000,000). Plaintiff will seek leave to amend this complaint to state the full amount of said damages when the same has been ascertained.

SIXTH CLAIM FOR RELIEF
(Unjust Enrichment)
as to All Defendants

89. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 88 of this complaint as if fully set forth herein.

90. Defendants, by virtue of their receipt and unlawful retention and distribution of monies due and owing to Plaintiff, Defendants have been unjustly enriched to the detriment of Plaintiff.

91. Defendants have made pecuniary gain due to the Original Song and their willful and knowing misattribution.

92. Plaintiff has been damaged by the actions of Defendants, in an amount to be determined at trial, for retribution for the unjust enrichment derived from the misattribution of authorship of Plaintiff's Original Song and their unlawful retention of revenues derived as a direct result therefrom. Plaintiff is informed and believes and on that basis alleges that the amount of such damages exceeds Five Million Dollars (\$5,000,000). Plaintiff will seek leave to amend this complaint to state the full amount of said damages when the same has been ascertained.

SEVENTH CLAIM FOR RELIEF
(Quantum Meruit)
as to All Defendants

93. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 80 of this complaint as if fully set forth herein.

94. Chatmon exerted significant effort in the creation of the Original Song which is a valuable commodity that was used and enjoyed by Defendants in the creation of the Clapton Unplugged Performance, Clapton Unplugged Album, Deluxe Clapton Unplugged and the Songbook.

95. By virtue of the registration of the 1929 Copyright in the Copyright Office, and subsequent renewals, and by simply comparing the Original Song to the Lead Belly Song, Defendants had reasonable notice that the Original Song was authored by Chatmon.

96. Plaintiffs notified the Defendants on many occasions about the misrepresentations and misattribution.

97. As leaders having a long history of doing business in the music and entertainment community, Defendants were aware that the author of the Original Song should be adequately compensated for the valuable efforts exerted in its creations and had a duty to adequately research the authorship and ownership of the Original Song prior to its usage and distribution of royalties derived therefrom.

98. Defendants received, retained and inappropriately distributed royalties and monies generated by their unauthorized use of the Original Song, and from their

misattribution thereof, a portion of which should have been accounted for and paid to Plaintiff as compensation.

99. In equity and justice, Plaintiff deserved that compensation and should receive *quantum meruit*.

100. As a direct and proximate result of Defendants' actions, Plaintiff suffered substantial damages in the form of loss revenues and reputation which it would have received had the Original Song been properly designated as being written by Bo Carter, in an amount not yet fully ascertained, and is, therefore, entitled to equitable and punitive relief at law. Plaintiff is informed and believes and on that basis alleges that the amount of such damages exceeds Five Million Dollars (\$5,000,000). Plaintiff will seek leave to amend this complaint to state the full amount of said damages when the same has been ascertained.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants, and each of them, jointly and severally, as follows:

1. Permanently enjoining and restraining Defendants, their respective officers, agents, servants, employees and attorneys, and predecessors and successors, by whatever name, and all those in active concert or participation with them who receive actual notice of the Court's order by personal service or otherwise from further violating any of the exclusive rights of Plaintiff in the Original Song, including, but not limited to, the licensing for reproduction,

performance, or sale or distribution of copies thereof to any third parties anywhere in the world;

2. directing that all revenues received by the Defendants as a result of their production, manufacture, sale or licensing of and form or adaptation of the Original Song be delivered to Plaintiff;

3. directing that a full and complete accounting be conducted of the Defendants under the supervision of the Court and judgment be rendered against each Defendant:

(a) for all profits, income, receipts or other benefit derived by Defendants from the reproduction, copying, display, promotion, distribution or sale of the Original Song in any media, either now known or hereafter derived, that improperly infringes Plaintiff's copyrights pursuant to 17 U.S.C. §§ 503(b), 504(a)(1) & (b);

(b) in the alternative, at the election of Plaintiff, for statutory damages separately against each Defendant in the amount of \$250,000.00 as a result of each willful copyright infringement of the 1929 Copyright by such Defendant, as provided for in 17 U.S.C. § 504(c)(2);

(c) a disgorgement by Defendants of all profits derived by Defendants from their acts of copyright infringement, misappropriation unjust enrichment or otherwise, and to reimburse Plaintiff for all damages suffered by Plaintiff by reason of Defendants' acts, pursuant to 17 U.S.C. §§ 504(a)(1) and (b);

(d) for all revenues received by each of the Defendants and all damages sustained by Plaintiff on account of Defendants' unlawful activities, including misrepresenting the authorship of the Original Song, in accordance with Plaintiff's contentions set forth herein;

(e) for all monies received by or owing to any of the Defendants and all damages sustained by Plaintiff on account of Defendants' conversion of Plaintiff's monies and property;

(f) for a declaratory Order holding that the Disregarded Copyright, together with all other unauthorized adaptations, are unlicensed derivative works belonging to and owned by the Plaintiff, and for a transfer or assignment of any copyrights held by Defendants in such adaptations; and

(g) for an Order issued by this Court directing the specific performance of all Defendants in correcting the identification of the authors of the Original Song as used by each Defendant in accordance with Plaintiff's contentions set forth herein and for the aforementioned assignments;

4. awarding Plaintiff civil damages for Defendants' violation of The Lanham Act pursuant to 15 U.S.C. §1125(a)(1), violation of T.C.A. 47-25-1104, and violation of the Berne Convention Implementation Act of 1988;

5. awarding Plaintiff pre-judgment interest according to law;

6. awarding Plaintiff their costs in this action, including reasonable attorney's, accountant, expert and investigative fees, pursuant to 17 U.S.C. § 505;

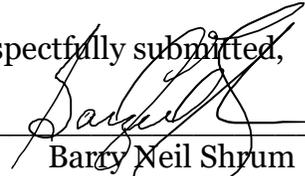
7. directing that the Court retains jurisdiction of this action for the purpose of enabling Plaintiff to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the interpretation or execution of any order entered in this action, for the modification of any such order, for the enforcement or compliance therewith, and for the punishment of any violations thereof; and

8. awarding to Plaintiff such other and further relief as the Court may deem just and proper.

Nashville, Tennessee
Dated:

Respectfully submitted,

By



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144 2nd Avenue North
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Nashville, Tennessee 37201
Telephone: (615) 338-5130

Attorneys for the Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby respectfully demands a trial by jury for all claims and issues related to its Complaint to which it is or may be entitled to a jury trial.

Dated:

By  _____
Barry Neil Shrum
Shrum & Associates
144 2nd Avenue North
Suite 157
Nashville, Tennessee 37201
Telephone: (615) 338-5130

Attorneys for the Plaintiff