

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CHRISTOPHER SELLETTI,

Plaintiff

COMPLAINT

v.

Plaintiff demands  
trial by jury

MARIAH CAREY, SONY MUSIC ENTERTAINMENT,  
INC., SONY SONGS, INC., SONY MUSIC  
PUBLISHING, WALLYWORLD MUSIC, RYE SONGS,  
WB MUSIC CORPORATION, COLUMBIA RECORDS,  
INC., SYLVESTER STEWART, p/k/a SLY STONE,  
EVEN STREET PRODUCTIONS, LTD., JERRY  
GOLDSTEIN, individually and as President  
of EVEN STREET PRODUCTIONS, LTD., AVENUE  
RECORDS, AMERICAN SOCIETY OF COMPOSERS,  
AUTHORS & PUBLISHERS (ASCAP), BROADCAST  
MUSIC, INC. (BMI), STEVE TOPPLEY and RUBY  
JONES,

Defendants.

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Plaintiff, CHRISTOPHER SELLETTI, [hereinafter  
"PLAINTIFF"], complains of the above-named defendants as follows:

BACKGROUND FACTS

1. PLAINTIFF is an individual residing in the County of Queens, State of New York. From in or about 1985 through the present day, PLAINTIFF engaged in the creative process of composing poems and musical lyrics. Throughout the time period in question, PLAINTIFF kept his poems and compositions in a personal notebook.

2. In or about 1989, PLAINTIFF composed a poem, [hereinafter referred to as the "SUBJECT WORK"], which he transcribed in the aforesaid notebook. The SUBJECT WORK contains material wholly original with PLAINTIFF, and is copyrightable subject matter under the laws of the United States. PLAINTIFF

never published said SUBJECT WORK nor did he take any steps towards publication of said SUBJECT WORK nor did he authorize anyone to publish said SUBJECT WORK in his behalf.

3. Defendant SYLVESTER STEWART, p/k/a SLY STONE, [hereinafter "STONE"], was and continues to be a musical performer and entertainer. Upon information and belief, in or about 1989 and at various times thereafter, STONE was contractually obligated to record music for defendant, EVEN STREET PRODUCTIONS, LTD., [hereinafter "EVEN STREET"], a company involved in the music production industry and with defendant, AVENUE RECORDS, a New York corporation engaged in the business of making and distributing musical recordings and phonorecords.

4. During that same period of time, PLAINTIFF was employed by Tony Joseph & Sons Investigations, Inc., an investigation and security firm. In or about 1989, EVEN STREET, through its President, defendant JERRY GOLDSTEIN, [hereinafter GOLDSTEIN], contracted with Tony Joseph & Sons to provide security for STONE. Defendant GOLDSTEIN was, at all times relevant herein, a principal of defendant AVENUE RECORDS as well.

5. PLAINTIFF, in the course of his duties, was specifically assigned to provide security services for STONE, within this Judicial District. Throughout this time period, PLAINTIFF became friendly with STONE and shared some of his writings with STONE in the hope that STONE might wish to record one of said writings as a song.

6. Defendant RUBY JONES, was and is an individual who,

at the times relevant herein, was present with defendant STONE and had the opportunity to view the PLAINTIFF's compositions including, upon information and belief, the SUBJECT WORK. Defendant JONES had knowledge of PLAINTIFF's notebook and had access to said notebook and the compositions contained therein, including the SUBJECT WORK.

7. Defendant STEVE TOPPLEY [hereinafter "TOPPLEY"], was and is an individual engaged in the business of musical promotions. In and about 1989, TOPPLEY was involved in promotional activities with defendants STONE, AVENUE RECORDS, EVEN STREET and GOLDSTEIN. As a result of his professional relationship with said defendants, upon information and belief, TOPPLEY acquired access to PLAINTIFF's notebook containing the SUBJECT WORK.

8. Upon information and belief, defendants RUBY, STONE, TOPPLEY, EVEN STREET, AVENUE RECORDS and GOLDSTEIN, acting collectively and in concert, arranged to appropriate copies of the SUBJECT WORK from PLAINTIFF's notebook without PLAINTIFF's knowledge or consent. Thereafter, upon information and belief, said Defendants, individually and/or collectively did then solicit said SUBJECT WORK for purposes of having said SUBJECT WORK recorded.

9. Defendant, MARIAH CAREY, [hereinafter "CAREY"], is a musical performer and entertainer with world-wide recognition and fame. In or about 1993, CAREY recorded ten (10) individual songs which were released and sold to the public as an album entitled "Music Box". One composition contained on said album was entitled "HERO". In addition to its release on the album "Music Box",

"HERO" was released and distributed as a single as well. Some or all of the labels and packaging of "Music Box" attribute authorship of the composition "HERO" solely to defendant CAREY. Likewise, some or all of the labels and packaging of the single "HERO", attribute authorship of said composition solely to CAREY.

10. The composition "HERO" is virtually identical in substance to the SUBJECT WORK created by PLAINTIFF. Upon information and belief, Defendant CAREY knowingly and willfully directly copied PLAINTIFF'S SUBJECT WORK in its entirety. Upon further information and belief, Defendant CAREY, copied SUBJECT WORK for the specific purposes of infringing PLAINTIFF'S copyrights and exploiting said SUBJECT WORK for her economic benefit while fraudulently claiming authorship.

11. The composition "HERO" entered and remained in the Top Ten charts for a significant period of time in sales and airplay, resulting in said composition achieving multi-platinum status.

12. Defendant COLUMBIA RECORDS, INC. [hereinafter "COLUMBIA"], is a New York corporation engaged in the business of making and distributing musical recordings and phonorecords. COLUMBIA recorded and distributed CAREY'S album "Music Box" containing the composition "HERO". Defendant SONY MUSIC ENTERTAINMENT, INC., is a New York corporation engaged in all facets of the music industry including, but not limited to, the management of Sony Corporation of America's music holdings.

13. Defendants SONY SONGS, INC. and RYE SONGS, upon

information and belief, are corporations which own and exploit some or all of the rights in and to the composition "HERO". Defendant SONY MUSIC PUBLISHING is a corporation which administers the rights of defendants SONY SONGS INC. and RYE SONGS in the United States and elsewhere to songs, including such rights to the composition "HERO".

14. Defendant BROADCAST MUSIC, INC., [hereinafter "BMI"], upon information and belief, has licensed performances of the SUBJECT WORK in the United States and has collected royalties on behalf of defendant CAREY from such performances.

15. Defendant WALLYWORLD MUSIC [hereinafter "WALLYWORLD"], upon information and belief, is a corporation which owns and exploits some or all of the rights in and to the composition "HERO". Defendant WB MUSIC CORP. [hereinafter "WB MUSIC"] is a corporation which administers the rights of defendant WALLYWORLD in the United States and elsewhere.

16. Defendant AMERICAN SOCIETY OF COMPOSERS, AUTHORS and PUBLISHERS, [hereinafter "ASCAP"], has licensed performances of the SUBJECT WORK in the United States and has collected royalties on behalf of defendant CAREY from such performances.

17. PLAINTIFF has not received any monies from the sales of copies of the sound recordings of the composition "HERO", derived from the SUBJECT WORK nor from sales of lyric sheets embodying the composition "HERO", nor from licensed performances of the composition "HERO", or otherwise.

18. On or about November 11, 1995, PLAINTIFF applied to

the Register of Copyrights for a Certificate of Registration for the SUBJECT WORK. The Certification was issued by the Register of Copyrights on November 16, 1995, and bears registration number TXu 7C1-261. A true and correct copy of said Certificate is annexed hereto as Exhibit A.

19. PLAINTIFF is currently and at all relevant times has been the sole proprietor of all right, title and interest in and to the copyright in the SUBJECT WORK. At no time has PLAINTIFF published or authorized any other individuals or entities to publish said SUBJECT WORK.

COUNT ONE

COPYRIGHT INFRINGEMENT

20. PLAINTIFF incorporates all of the allegations contained in paragraphs "1" through "19" of this Complaint as if fully set forth herein.

21. Count One arises under the copyright laws of the United States, 17 U.S.C. §§101 et seq. This Court has original and exclusive jurisdiction of Count One pursuant to 28 U.S.C. §§1331 and 1338. Venue is proper in this Court under 28 U.S.C. §1400(a).

22. By their actions alleged herein, Defendants STONE, EVEN STREET, GOLDSTEIN, AVENUE RECORDS, TOPPLEY and JONES infringed PLAINTIFF's copyright in and relating to the SUBJECT WORK by their acts, both individual and in concert, of appropriating and copying PLAINTIFF's SUBJECT WORK.

23. By their actions alleged herein, Defendants CAREY, SONY MUSIC ENTERTAINMENT and COLUMBIA, have infringed and will

continue to infringe PLAINTIFF's copyright in  
SUBJECT WORK by producing, distributing  
market products encompassing the composition  
of the SUBJECT WORK.

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24. By their actions alleged herein, L  
SONGS, INC., RYE SONGS, SONY MUSIC PUBLISHING, WALLYWORLD  
MUSIC CORPORATION, BMI and ASCAP, have infringed and will continue  
to infringe PLAINTIFF's copyright in and relating to the SUBJECT  
WORK by publishing, administering and collecting royalties as and  
for the rights to the SUBJECT WORK.

25. PLAINTIFF is entitled to recover from Defendants the  
damages, including attorneys' fees, it has sustained and will  
sustain, and any gains, profits and advantages obtained by  
Defendants as a result of Defendants acts of infringement alleged  
above. At present, the amount of such damages, gains, profits and  
advantages cannot be fully ascertained by PLAINTIFF.

#### COUNT TWO

#### DECLARATORY JUDGMENT

26. PLAINTIFF incorporates all of the allegations  
contained in paragraphs "1" through "25" of this Complaint as if  
fully set forth herein.

27. Count Two arises under the copyright laws of the  
United States, 17 U.S.C. §§101 et seq. This Court has original and  
exclusive jurisdiction of Count One pursuant to 28 U.S.C. §§1331  
and 1338. Venue is proper in this Court under 28 U.S.C. §1400(a).

28. Defendants CAREY, SONY MUSIC ENTERTAINMENT and

COLUMBIA, have received substantial monies  
recordings of the SUBJECT WORK in vinyl, cassette  
form, and lyric sheets, and from the performance  
of the SUBJECT WORK and otherwise.

29. Defendants CAREY, SONY MUSIC ENTERPRISES, INC. and COLUMBIA, at no time have had the right or authority to produce or distribute for sale to the public the SUBJECT WORK in any musical format or in any other form. Sole authorship and all rights in said SUBJECT WORK rest with PLAINTIFF.

30. Pursuant to 28 U.S.C. §2201, PLAINTIFF requests that the Court issue a decree declaring that PLAINTIFF is the sole and complete owner of the SUBJECT WORK within the meaning of 17 U.S.C. §201(a).

### COUNT THREE

#### ACCOUNTING

31. PLAINTIFF incorporates all of the allegations contained in paragraphs "1" through "30" of this Complaint as if fully set forth herein.

32. This Court has jurisdiction over Count Three under the doctrine of pendent jurisdiction.

33. Defendants have released and sold to the public sound recordings, video recordings, lyric sheets and other materials embodying the SUBJECT WORK from about 1993 to the present, and performances of the SUBJECT WORK has been licensed by defendants from about 1993 to the present. As a result of such sales and licensing, defendants have received substantial sums of

money the exact amount of which is at this time unknown, but is believed to exceed \$10,000,000.00.

34. The exact amount of money received by defendants is unknown to PLAINTIFF and can only be determined by an accounting. Upon information and belief, the profits realized to date from the exploitation of the SUBJECT WORK is in excess of \$10,000,000.00.

35. PLAINTIFF hereby demands of all defendants that an accounting be made of all amounts received as a result of the exploitation of the SUBJECT WORK, including, without limitation, sales of sound recordings, sales of video recordings, licensing of performance rights, and licensing of masters containing the SUBJECT WORK, and that defendants pay plaintiff his share of all profits realized.

COUNT FOUR

**VIOLATION OF LANHAM ACT §43(a)  
FALSE DESIGNATION OF ORIGIN**

36. PLAINTIFF incorporates all of the allegations contained in paragraphs "1" through "35" of this Complaint as if fully set forth herein.

37. This Court has jurisdiction over Count Four pursuant to 15 U.S.C. §1121.

38. By falsely identifying the author of the lyrics of "HERO" on lyric sheets, the album "Music Box", the cassette single and all other distributed formats of said SUBJECT WORK and by failing to identify PLAINTIFF as author of the lyrics of "HERO", defendants CAREY, SONY MUSIC ENTERTAINMENT, COLUMBIA, SONY SONGS, INC., RYE SONGS, SONY MUSIC PUBLISHING, WALLYWORLD MUSIC and WB

MUSIC have falsely designated the origin of their goods and services in violation of Lanham Act §43(a), 15 U.S.C. §1125(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands that this Court grant him relief as follows:

ON COUNT ONE:

- A. That the Court direct Defendants to pay to PLAINTIFF general damages in an amount to be proven.
- B. That the Court direct the defendants to pay to PLAINTIFF punitive damages for their intentional and willful conduct.
- C. That the Court direct the defendants to pay to PLAINTIFF their costs and attorneys fees related to this action.
- D. That the Court grant such other and further relief as may be deemed just, proper and equitable.

ON COUNT TWO:

- A. That the Court issue a decree declaring that PLAINTIFF is the sole owner of the copyright in the SUBJECT WORK.
- B. That the Court direct defendants to pay to PLAINTIFF their costs and attorneys fees related to this action.
- C. That the Court grant such other and further relief as may be deemed just, proper and equitable.

ON COUNT THREE:

- A. That the Court order an accounting between PLAINTIFF and defendants.
- B. That the Court direct payment to PLAINTIFF of any and all sums duly owed by defendants.

C. That the Court direct defendants to pay to PLAINTIFF their costs and attorneys fees related to this action.

D. That the Court grant such other and further relief as may be deemed just, proper and equitable.

ON COUNT FOUR:

A. That the Court direct Defendants to pay to PLAINTIFF general damages in an amount to be proven.

B. That the Court direct the defendants to pay to PLAINTIFF punitive damages for their intentional and willful conduct.

C. That the Court direct the defendants to pay to PLAINTIFF their costs and attorneys fees related to this action.

D. That the Court grant such other and further relief as may be deemed just, proper and equitable.

Dated: December 29, 1995  
Garden City, New York

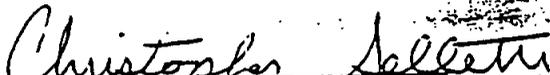
LAW OFFICES OF THOMAS F. LIOTTI

  
By: THOMAS F. LIOTTI (TL 4471)  
1001 Franklin Avenue  
Suite 300  
Garden City, New York 111530  
(516) 739-3700

VERIFICATION

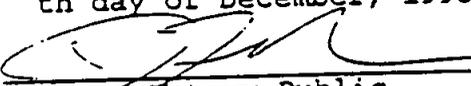
STATE OF NEW YORK)  
   ) ss.:  
 COUNTY OF NASSAU )

I, CHRISTOPHER SELLETTI, being duly sworn, depose and say: I am the plaintiff in the action entitled: (Christopher Selletti v. Mariah Carey, et al., United States District Court, Southern District of New York). I have read the foregoing Complaint and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

  
 CHRISTOPHER SELLETTI

Sworn to before me this

24<sup>th</sup> day of December, 1995

  
 \_\_\_\_\_  
 Notary Public

DONALD F. MADEO  
 Notary Public, State of New York  
 No. 02MA5023022  
 Qualified in Nassau County  
 Commission Expires Jan. 24, 1996