

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

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ANTHONY STOKES,

Plaintiff

vs.

JOHN STEPHENS A/K/A JOHN LEGEND,
SONY MUSIC ENTERTAINMENT,
COLUMBIA RECORDS,
GETTING OUT OUR DREAMS MUSIC
d/b/a G.O.O.D. Music, JOHN
DOES 1-20, fictitious persons, and XYZ
CORPORATIONS 1-20, fictitious entities,
Defendants.

Case No.

July 5, 2011

**VERIFIED COMPLAINT FOR COPYRIGHT INFRINGEMENT, UNFAIR
COMPETITION AND UNJUST ENRICHMENT**

Plaintiff, Anthony Stokes (hereinafter "Plaintiff" or "Stokes"), by his attorneys, Marks & Klein, LLP, here by way of Verified Complaint against Defendants John Stephens AKA John Legend ("Legend"), Sony Music Entertainment ("Sony"), Columbia Records ("Columbia"), Getting Out Our Dreams Music d/b/a G.O.O.D. Music ("G.O.O.D. Music"), John Does 1-20 and XYZ Corporations 1-20 (hereinafter collectively referred to as "Defendants"), states as follows:

NATURE OF THE ACTION

1. This is an action for the willful and knowing infringement of Plaintiff's composition and sound recording entitled *Where Are You Now* (hereinafter "*Where Are You Now*" or "*the song*"). The defendants' ongoing and multi-faceted infringement of *Where Are You Now* violates the Copyright Act of 1976 U.S.C. § 101, *et seq.* (hereinafter "Copyright Act"), as well as the common law tort of unjust enrichment.

2. *Maxine's Interlude*, an album track on the 2006 John Stephens P/K/A John Legend album *Once Again* is the alleged infringing composition and recording that used key aspects of the *Where are You Now* to commit infringing acts.

3. Defendants have, and continue to date to, intentionally market, promote, publicly perform, sell, distribute, reproduce and otherwise disseminate the infringing composition and recording that uses core elements of *Where are You Now* without Plaintiff's consent or authorization, all to Plaintiff's detriment. Despite the best efforts of Stokes to resolve this matter, Defendants refuse to cooperate or account for their intentional infringement.

JURISDICTION AND VENUE

4. This Court has both Federal Question jurisdiction and Diversity jurisdiction over this matter.

5. Federal Question jurisdiction is established as this action arises under the United States Copyright Act, 17 U.S.C. § 101, *et seq.*

6. Diversity of Citizenship is established because Stokes and Defendants are diverse parties, and the amount in controversy exceeds the sum or value specified by 28 U.S.C. § 1332, exclusive of costs and interests. Plaintiff Stokes is a citizen of the state of New Jersey; Defendant Legend is, upon information and belief, a citizen of the States of New York and

California; Defendant Sony Music Entertainment (hereinafter “Sony”) is a New York company with its principal place of business in the state of New York; Defendant Columbia Records is a subsidiary label of Sony with its principal place of business in the State of New York; Defendant G.O.O.D. Music is a New York Company with its principal place of business in the state of New York.

7. Venue is proper in this jurisdiction pursuant to 28 U.S.C § 1391(a)(2) and 28 U.S.C. § 1391(e)(2) because Plaintiff resides in Jersey City (Hudson County), New Jersey. Moreover, the Defendants promoted, marketed and sold the infringing recording in this jurisdiction’s stream of commerce and one or more of the Defendants have offices located in the State of New Jersey.

THE PARTIES

8. Plaintiff Stokes is a songwriter who currently resides in the State of New Jersey.

9. Defendant Legend is a Grammy Award winning recording artist who resides in the States of New York and California and recorded and released the infringing recording, *Maxine’s Interlude*.

10. Defendant Sony, the parent company of Columbia Records, is a corporation formed under the laws of the state of Delaware with principal offices located in the state of New York and, upon information and belief, with agents in the State of New Jersey who distributed and promoted the recording that infringed upon Stokes’ copyright in *Where are You Now*. Upon information and belief, at all times material hereto, Sony was directly involved in the promotion and marketing of R&B artist John Legend, and regularly conducted business in the state of New Jersey.

11. Defendant Columbia Records is a record company, a subsidiary of Sony, and a corporation based in the state of New York, which distributed and promoted one or more recordings that infringed upon Stokes' copyright. Upon information and belief, at all times material hereto, Columbia Records was directly involved with the promotion and marketing of R&B artist John Legend, and regularly conducts business in the state of New Jersey.

12. Defendant G.O.O.D. Music is a corporation formed under the laws of the State of Delaware with offices located in the State of New York that distributed and promoted the recording that infringed upon Stokes' copyright. Upon information and belief, at all times material hereto, G.O.O.D. Music was directly involved with the promotion and marketing of R&B artist John Legend, and regularly conducts business in the state of New Jersey.

13. Defendants John Does 1-20, fictitious persons, are currently unknown individuals and/or entities that may be responsible for certain infringing acts and/or other tortious conduct complained of herein, either individually or as agents or affiliates of one or more of the Defendants named herein.

14. Defendants XYZ 1-20 are fictitious entities that are currently unknown, and based upon information and belief, are affiliates of the corporate defendants named herein and/or may also be responsible for certain of the infringing acts and/or other tortious conduct that is complained of herein.

FACTS COMMON TO ALL COUNTS

15. Plaintiff Stokes is a songwriter who, while attending the University of North Carolina-Chapel Hill (hereinafter "UNC"), wrote and recorded a musical composition entitled *Where are You Now*.

16. Upon completion of *Where are You Now* on July 26, 2004, Stokes registered the music, lyrics, and arrangement of his *song* with the United States Copyright Office on October 28, 2004. Annexed hereto and made a part hereof as **Exhibit A** is a true copy of the October 28, 2004 Copyright Registration.

A. Legend's Access to Stokes' Original Copyrighted Work

17. Several days prior to registering his copyright for *Where Are You Now*, on October 24, 2004, Stokes attended Defendant Legend's sold-out "homecoming concert" (hereinafter "Legend Concert"), at UNC.

18. At the conclusion of the Legend Concert, Legend hosted an autograph signing session (hereinafter "Signing Session") where Stokes and other students had the opportunity to personally meet Legend. As a student and aspiring recording artist, Stokes introduced himself to Legend and presented Legend with the original demo recording of *Where are You Now* ("Original Demo") as well as his complete contact information. The encounter ended with Legend indicating that he would listen to the Original Demo.

19. Craig Stokes, Stokes' brother, attended the concert along with Stokes and witnessed Stokes and Legend exchange the *Where Are You Now* Demo. Craig Stokes also took a number of photographs of the encounter between Legend and Stokes, as well as several other pictures during the Legend Concert. *See* Exhibits "B," and "B1," "B2," and "B3," Declaration of Craig Stokes and Exhibits.

20. Thus Defendant Legend had direct access to *Where Are You Now* and, despite their having full knowledge that the *Where are You Now* Original Demo was the original expression of Stokes, Defendants misappropriated core aspects of the composition to produce

Maxine's Interlude (hereinafter "*Maxine's Interlude*" or "infringing record"), which is Track 11 on the 16-track platinum album *Once Again*.

B. Substantial Similarity between *Where are You Now* and *Maxine's Interlude*

21. There are numerous and substantial similarities between *Where Are You Now* and Legend's infringing recording, *Maxine's Interlude*. In fact, their overall musical compositions make them nearly identical.

22. In addition to the striking similarities that are evident by simply listening to the two recordings side-by-side, the musical and lyrical similarities include, but are not limited to, the following:

i. **Key and Tempo**

- *Where are You Now* is written in A Major. The Key Signature contains three sharps (C#, F#, and G#). The composition contains moderate and varying tempos, including 4/4 time. *Source: Original Demo Recording by Anthony Stokes.*
- *Maxine's Interlude* is also written in A Major and contains three sharps (C#, F#, and G#). It is also characterized by a moderate tempo and 4/4 Time Signature. *Source: "Maxine's Interlude" Sheet Music (Sony/ATV Publ.).*

ii. **Instrumentation and Harmonies**

- *Where are You Now* is a demo recording that features a keyboard and vocals. The song is made up of three tracks (one for keyboard, one for lead vocal, and one for background vocal). The song features light harmonies on parts of the chorus, accenting the line "where are you now. . ." *Source: Original Demo Recording by Anthony Stokes.*
- *Maxine's Interlude* features multiple tracks for lead vocals, background vocals, piano, acoustic guitar, horns, and drum programming. It also features harmonies throughout the song and the background vocalists sing the exact same lines of lyrics that Stokes sings as the lead vocalist on his *song*. *Source: Liner Notes/Recording.*

iii. **Delivery and Phrasing**

- *Where are You Now* is a traditional Rhythm and Blues (hereinafter “R&B”), vocal performance with a superior soulful projection of the phrase “where are you now.” In the chorus, beginning at 0:43 minutes, Stokes sings “where are you . . .,” cutting off the “now” after the first recital, followed by a singing of the entire phrase “where are you now” in the refrain of the chorus.
- *Maxine’s Interlude* is also a traditional R&B song. A key similarity is at 1:29 minutes, where Legend sings “where are you now” similarly to Stokes’ singing of the catch phrase throughout the chorus of the original *Where are You Now*. Also, like in Stokes’ *Where are You Now*, in *Maxine’s Interlude*, Legend cuts off the “now” after the first recital, while background vocalists sing the full phrase “where are you now” on the refrain.

iv. **Similarities in the Storyline and Lyrics**

- *Where are you Now* is based on a man’s search for lost love and the regret he feels for the choices he made during the relationship. The song is unique and recognizable by the catch phrase “where are you now” throughout the verses and the chorus.
- *Maxine’s Interlude* is also based on a lost love, why she left, and a confession of the mistakes the man made. The chorus of *Maxine’s Interlude* also consistently features the catch phrase “where are you now” and its delivery is substantially similar to the delivery in *Where are You Now*.

22. *Maxine’s Interlude* was released on or about October 24, 2006 as an album track on Legend’s album *Once Again*, which sold more than two hundred thousand (230,000) copies in its first week of release and has, upon information and belief, since sold more than one million (1,000,000) copies to date.

23. *Once Again* has been, and continues to be, sold in various formats including compact disc, vinyl and digital (i.e., .mp3) recordings sold via the internet.

24. Upon information and belief, *Maxine’s Interlude* has been publicly performed by Legend, without the consent of Stokes, in excess of one hundred (100) times concert performances between 2006 and the present, which each constitute infringing acts of Stokes’ Copyright in *Where Are You Now*.

25. Moreover, in or about January 2008, Legend commercially released a concert DVD of an April 2007 performance entitled “Live from Philadelphia,” which, like many concerts during this time period, featured *Maxine’s Interlude* as the opening song of the set (hereinafter “the Live from Philadelphia DVD”). The Live from Philadelphia DVD remains for sale, to date, on various music online stores. Annexed hereto and made a part hereof as **Exhibit C** is a true copy of the John Legend Store at LiveNation (www.livenation.com) product description and set-list for the Live from Philadelphia DVD.

26. This action is brought to remedy Stokes for Defendants’ collective and repeated violations of federal law in connection with the continued infringing sale, reproduction, dissemination and public performance of the *Where are You Now* composition and recording, which have unjustly enriched Defendants and further constitute violations of the Copyright Act and the tort of common law unfair competition. Stokes seeks actual damages arising from the copyright violations pursuant to 17 U.S.C. § 504(b), or, in the alternative, enhanced statutory damages pursuant to 17 U.S.C. § 504(c)(2).

27. Stokes also seeks damages for Defendants’ unjust enrichment and injunctive relief to restrain and enjoin Defendants from any further recording, sale, transfer, dissemination and/or any other unauthorized use of the *Maxine’s Interlude* music composition and recording.

FIRST COUNT
COPYRIGHT INFRINGEMENT (17 U.S.C. § 501)
INJUNCTIVE RELIEF AND DAMAGES
(As to all Defendants)

28. Plaintiff realleges, as fully stated herein, his allegations set forth in paragraphs 1 through 27 of this Verified Complaint.

29. Plaintiff registered his copyright in his original composition and recording *Where are you Now* in October 2004.

30. Defendant Legend had access to Stokes' original copyrighted composition *Where are You Now* via the exchange of the Original Demo in October 2004 at the Legend Concert.

31. Defendant Legend's composition *Maxine's Interlude* infringes Plaintiff's copyright in *Where Are You Now*, by and through the wholesale copying of multiple lyrical and musical elements of *Where Are You Now*, rendering the works substantially similar as defined by the Copyright Act.

32. Defendants' willful infringement of Stokes' copyright violates the express provisions of the Copyright Act.

33. Since October 24, 2006, up and until the date of the filing of this Complaint, Defendants' continued participation in the recording, publishing, sale, dissemination, and performance of *Maxine's Interlude* constitutes willful infringement within the definition in the Copyright Act because their acts were intentional with indifference to Plaintiff's rights.

34. As a result of Defendants' infringing acts, Stokes has, and continues to, sustain significant monetary damages and suffer irreparable harm, which further necessitates declaratory and injunctive relief.

WHEREFORE, Plaintiff, Anthony Stokes demands relief in an Order:

- (a) Declaring and adjudging that all Defendants knew or should have known that Stokes owned the copyright to *Where are You Now* and infringed upon his copyright under 17 U.S.C. § 501;
- (b) Enjoining and restraining each of the Defendants, and Defendants' agents, from disposing of any copies of the infringing recordings, via digital or physical sales of the *Maxine's Interlude* sound recording or concert recording Live from Philadelphia, and otherwise enjoining Legend from performing *Maxine's Interlude* publicly,

- pending the resolution of this matter;
- (c) Ordering pursuant to 17 U.S.C. § 503 that Defendants deliver for impoundment all copies of the infringing recordings in Defendants' possession or control and deliver for destruction all infringing copies and all original master recordings and any other materials used for making infringing copies;
 - (d) Finding that Defendants be held jointly and severally liable to Stokes, and pursuant to 17 U.S.C. § 504(b) account for and pay as damages to Stokes all profits and advantages gained from infringing upon Stokes' copyright interest in *Where Are You Now*, or, in the alternative, enhanced statutory damages pursuant to 17 U.S.C. § 504(c)(2), for Defendants' willful infringement of Stokes' copyright;
 - (e) Ordering that Defendants pay Stokes interest from the date of the original release of *Maxine's Interlude*, attorneys' fees and costs of suit pursuant to 17 U.S.C. § 505;
 - (f) Finding that Stokes be awarded judgment against all Defendants herein, JOHN STEPHENS, SONY MUSIC ENTERTAINMENT, COLUMBIA RECORDS, GETTING OUT OUR DREAMS MUSIC, JOHN DOES 1-20 (individuals whose identities are as of yet unknown), and XYZ CORPORATIONS 1-20 (heretofore unidentified corporations, partnerships, and/or business entities), jointly and severally for compensatory, statutory and/or punitive damages together with interest, costs of suit, attorneys fees, and,
 - (g) Awarding Stokes any other relief this Court deems equitable and just.

SECOND COUNT
UNJUST ENRICHMENT
(As to all Defendants)

35. Plaintiff Stokes realleges, as fully stated herein, his allegations set forth in

paragraphs 1 through 27 and the First Count of the Verified Complaint.

36. Through their ongoing, repeating, knowing, and willful infringement on Stokes' copyright via release of *Maxine's Interlude*, all Defendants named herein unjustly obtained profits related to the infringing recording.

37. As a result of their actions, Defendants herein were improperly and unjustly enriched by payments received from the sale of the infringing record as set forth herein.

38. The Defendants named herein have failed to account for and return to Stokes the value of the benefits Defendants derived therefrom.

39. As a result of Defendants' wrongful acts and omissions as described above, Defendants have been unjustly enriched at the expense of Stokes.

40. Stokes demands restitution and judgment against Defendants herein jointly and severally for compensatory and punitive damages, together with interest, attorneys' fees and the costs of this action.

WHEREFORE, Plaintiff, Anthony Stokes, seeks relief in an Order awarding:

- (a) compensatory damages and consequential damages;
- (c) interest, attorneys' fees and costs of suit; and
- (d) any, and all other relief this Court deems equitable and just.

THIRD COUNT
SEEKING LEAVE TO AMEND AGAINST FICTITIOUS PERSONS AND ENTITIES
(As to John Does 1-20 and XYZ Corporations 1-20)

41. Plaintiff Stokes realleges, as fully stated herein, his allegations set forth in paragraphs 1 through 27 and the First and Second Counts of the Verified Complaint.

42. At all times relevant hereto, there may have been unidentified individuals and/or entities who produced, contributed to, or acted as agents of Defendants named herein in, causing

the creation and release of *Maxine's Interlude*, which infringed upon Stokes' copyright and constituted unjust enrichment to Defendants.

43. These unknown individuals and/or entities have been designated in the caption of this Verified Complaint as John Does 1-20 and XYZ Corporations 1-20 (said names being fictitious) and are included herein for the specific purpose of tolling the Statute of Limitations.

44. As a direct and proximate consequence of the unlawful actions by these Defendants, Stokes was caused to suffer significant monetary damages, and was otherwise harmed by these Defendants.

45. Stokes therefore seeks all applicable compensatory damages, statutory and/or punitive damages, attorneys' fees and costs of suit against all such unidentified Defendants.

46. Stokes reserves the right to amend this Verified Complaint in the event the aforementioned unidentified individuals and/or entities who are responsible in this matter are identified.

WHEREFORE, Plaintiff, Anthony Stokes, demands judgment against Defendants JOHN DOES 1-20 (individuals whose identities are as of yet unknown), and XYZ CORPORATIONS 1-20 (heretofore unidentified corporations, partnerships, and/or any form of business entities), along with their agents, servants, and/or employees jointly, severally and/or in the alternative, as to this Count for:

- (a) compensatory damages and consequential damages;
- (b) statutory and/or punitive damages;
- (c) interest, attorneys' fees, and costs of suit; and
- (d) any other relief the Court deems equitable and just.

JURY DEMAND

Plaintiff demands a trial by jury on all issues herein so triable.

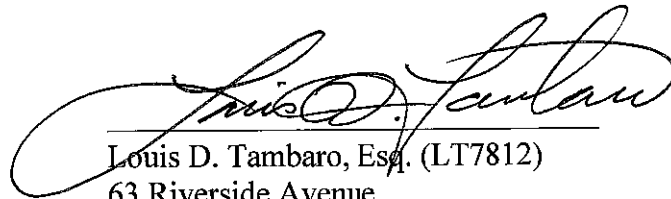
DESIGNATION OF TRIAL COUNSEL

Louis D. Tambaro, Esq. is hereby designated as trial counsel in the within matter.

Date: July 5, 2011

Respectfully submitted,

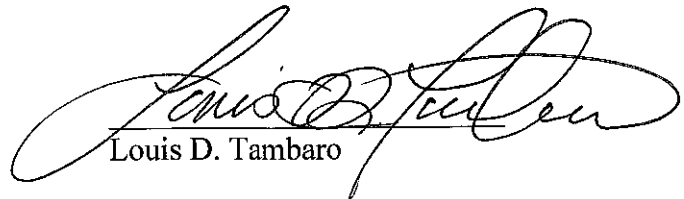
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CERTIFICATION

I hereby certify that the matter in controversy is not the subject of any other court, arbitration or administrative proceeding.

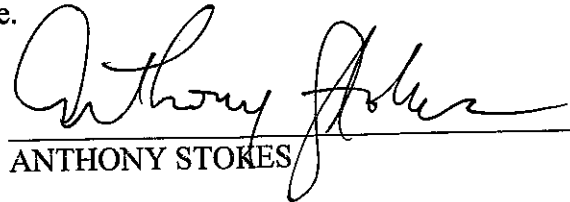


Louis D. Tambaro

VERIFICATION

I, Anthony Stokes, being of full age and duly sworn according to law, say under oath:

I am the Plaintiff in this action and have read the foregoing Verified Complaint and, to the best of my own personal knowledge, the facts set forth therein are true and accurate and they are incorporated in this affidavit by reference.


ANTHONY STOKES

Date: June 13, 2011