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6 Attorneys for Plaintiff,
7 FORMAL ENTERTAINMENT LLC

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

11 FORMAL ENTERTAINMENT LLC, a
12 Delaware Corporation,

13 Plaintiff,

14 v.

15 ZAIN JAVADD MALIK p/k/a ZAYN, an
16 individual; DAVID DEBRANDON BROWN
17 p/k/a LUCKY DAYE, an individual;
18 DUSTIN ADRIAN BOWIE p/k/a DAB, an
19 individual; MICHAEL LAVELL
20 MCGREGOR, an individual; COLE ALAN
21 CITRENBAUM, an individual; PHILIP VON
22 BOCH SCULLY, an individual; SONY
23 MUSIC ENTERTAINMENT, a Delaware
General Partnership; and DOES 1 through
100,

24 Defendants.

Case No.: 2:23-cv-07888-CBM-SK

**FIRST AMENDED COMPLAINT
FOR:**

**DIRECT, CONTRIBUTORY AND
VICARIOUS COPYRIGHT
INFRINGEMENT**

JURY TRIAL DEMANDED

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1 Plaintiff Formal Entertainment LLC (“Plaintiff”), by and through its
2 undersigned counsel, respectfully brings this Complaint against Defendants Zain
3 Javadd Malik p/k/a Zayn (“Zayn”), David Debrandon Brown p/k/a Lucky Daye
4 (“Daye”), Dustin Adrian Bowie p/k/a DAB (“Bowie”), Michael Lavell McGregor
5 (“McGregor”), Cole Alan Citrenbaum (“Citrenbaum”), Philip von Boch Scully
6 (“Scully”), Sony Music Entertainment (“Sony”), and DOES 1 through 100 (all
7 defendants collectively referred to herein as “Defendants”) and alleges:

8 **JURISDICTION AND VENUE**

9 1. This action arises under the laws of the United States and the Copyright
10 Act of 1976 (17 U.S.C. § 101, et seq.), and as such, the Court has subject matter
11 jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

12 2. This Court has personal jurisdiction because the Defendants are either
13 California citizens, maintain a residence or place of business in California, do
14 business within California on a regular and ongoing basis, or resided in California
15 during a material portion of the creation of all or part of the accused infringing work.

16 3. This Court has general personal jurisdiction over Defendant Zain Javadd
17 Malik p/k/a Zayn because, upon information and belief, he owned property in this
18 Judicial District, and has other substantial contacts with the State of California and
19 with this Judicial District specifically. This Court has specific personal jurisdiction
20 over Zayn because this suit arises out of and/or is related to his contacts with the
21 State of California and this Judicial District. Specifically, upon information and
22 belief, Zayn co-wrote the Infringing Work (as defined herein) in the State of
23 California. Upon information and belief, the sound recording of the Infringing Work
24 was also recorded in whole or in part in California and in this Judicial District
25 specifically. Zayn is credited as an author of the United States Copyright
26 Registration for the infringing musical composition and/or sound recording titled,
27 “Better,” bearing registration number SR0000886378. Zayn is also credited as a
28 songwriter for the Infringing Work.

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1 4. Additionally, this Court has specific personal jurisdiction over Zayn
2 because, upon information and belief, Zayn has licensed and/or authorized the
3 licensing, distribution, and sale of the Infringing Work to residents of California and
4 to California companies including within this Judicial District; has directly
5 advertised or authorized others to advertise the Infringing Work through California
6 companies and to California residents; and has generated substantial revenues from
7 digital music sales and streaming of the Infringing Work in the State of California
8 and this Judicial District.

9 5. This Court has general personal jurisdiction over Sony Music
10 Entertainment (hereinafter, “Sony”) because, upon information and belief, it has
11 continuous and systematic contacts with the State of California to render it
12 essentially at home in California. Specifically, upon information and belief, (1) Sony
13 is qualified to do business in the State of California by and through Sony Music
14 Entertainment Digital, LLC, which is a business registered in the State of California;
15 and (2) Sony maintains an office located at 10202 Washington Boulevard, Culver
16 City, California, 90232, where it employs California residents.

17 6. This Court has specific personal jurisdiction over Sony because its suit-
18 related conduct creates a substantial connection with the State of California. Sony is
19 a copyright claimant of the United States Copyright Registration for the infringing
20 Sound Recording bearing registration number SR0000886378. Upon information
21 and belief, the Infringing Work was released commercially through Sony, among
22 others, and Sony has generated substantial revenue from exploitation of the
23 Infringing Work in California.

24 7. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) as a substantial part
25 of the events giving rise to the claim occurred in this Judicial District. Venue is
26 proper pursuant to 28 U.S.C. § 1391(b)(1) and 28 U.S.C. § 1400 as at least one of the
27 Defendants or their agents reside or may be found in this Judicial District and is
28 subject to personal jurisdiction.

1 8. This case is properly filed in the Central District, as a substantial part of
2 events giving rise to this case occurred in the Central District of California.

3 **THE PARTIES**

4 9. Plaintiff Formal Entertainment LLC is a Delaware limited liability
5 company, existing under the laws of Delaware and registered to conduct business
6 within the state of California, which is also its principal place of business. Its
7 Managing Member is Patrick Simmons p/k/a Havyn (“Simmons” or “Havyn”), a
8 writer, composer, producer, and performer of musical works distributed throughout
9 the United States, including California. Mr. Simmons is an individual and resident
10 of California, and in particular, this district. Simmons is a co-author and main
11 contributor to the musical composition and sound recording titled, “Somebody
12 Tonight,” registered with the United States Copyright Office bearing registration
13 number SR0000962834 (the “Original Work”). Formal Entertainment LLC is the
14 copyright claimant of the musical composition and sound recording titled,
15 “Somebody Tonight,” registered with the United States Copyright Office bearing
16 registration number SR0000962834.

17 10. Upon information and belief, Defendant Zain Javadd Malik p/k/a Zayn
18 (“Zayn”) is a writer, composer, producer, and performer of musical works distributed
19 throughout the United States, including California. Upon information and belief,
20 Zayn was formerly a part of the band, One Direction, during which Zayn benefited
21 from California, including earning substantial sums of income from recording,
22 producing, and/or performing musical compositions and sound recordings in and
23 around United States, including California. Upon information and belief, Zayn is a
24 resident of London, United Kingdom.

25 11. Upon information and belief, Defendant David Debrandon Brown p/k/a
26 Lucky Daye is a writer, composer, producer, and performer of musical works,
27 including the Infringing Work, distributed throughout the United States, including
28 California. Upon information and belief, Lucky Daye benefited, and continues to

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1 benefit, from California, including earning substantial sums of income from
2 recording, producing, and/or performing musical compositions and sound recordings
3 in and around the United States, including California. Upon information and belief,
4 Lucky Daye is a resident of Encino, California. Defendant Brown is listed as a
5 songwriter for the Infringing Work.

6 12. Upon information and belief, Defendant Dustin Adrian Bowie p/k/a
7 DAB is a writer, composer, producer, and performer of musical works, including the
8 Infringing Work, distributed throughout the United States, including California.
9 Upon information and belief, Bowie benefited, and continues to benefit, from
10 California, including earning substantial sums of income from recording, producing,
11 and/or performing musical compositions and sound recordings in and around the
12 United States, including California. Upon information and belief, Bowie is a resident
13 of Los Angeles, California. Defendant Bowie is listed as a songwriter for the
14 Infringing Work.

15 13. Upon information and belief, Defendant Michael Lavell McGregor is a
16 writer, composer, producer, and performer of musical works, including the Infringing
17 Work, distributed throughout the United States, including California. Upon
18 information and belief, McGregor benefited, and continues to benefit, from
19 California, including earning substantial sums of income from recording, producing,
20 and/or performing musical compositions and sound recordings in and around the
21 United States, including California. Upon information and belief, McGregor is a
22 resident of Los Angeles, California. Defendant McGregor is listed as a songwriter
23 for the Infringing Work.

24 14. Upon information and belief, Defendant Cole Alan Citrenbaum is a
25 writer, composer, producer, and performer of musical works, including the Infringing
26 Work, distributed throughout the United States, including California. Upon
27 information and belief, Citrenbaum benefited, and continues to benefit, from
28 California, including earning substantial sums of income from recording, producing,

1 and/or performing musical compositions and sound recordings in and around the
2 United States, including California. Upon information and belief, Citrenbaum is a
3 resident of Los Angeles, California. Defendant Citrenbaum is listed as a songwriter
4 for the Infringing Work.

5 15. Upon information and belief, Defendant Philip von Boch Scully is a
6 writer, composer, producer, and performer of musical works, including the Infringing
7 Work, distributed throughout the United States, including California. Upon
8 information and belief, Scully benefited, and continues to benefit, from California,
9 including earning substantial sums of income from recording, producing, and/or
10 performing musical compositions and sound recordings in and around the United
11 States, including California. Upon information and belief, Scully is a resident of Los
12 Angeles, California. Defendant Scully is listed as a songwriter for the Infringing
13 Work.

14 16. Defendant Sony Music Entertainment is a Delaware general partnership
15 involved in the recording, production, distribution, and licensing of musical works,
16 including the Infringing Work, in the United States, including in California and in
17 particular, this district. Defendant Sony Music Entertainment is listed as the
18 copyright claimant of the Infringing Work.

19 17. Defendants DOES 1 through 100, inclusive, are other parties not yet
20 identified who have infringed Plaintiff's copyright, have contributed to the
21 infringement of Plaintiff's copyright, or have engaged in one or more of the wrongful
22 acts alleged herein. The true names, whether corporate, individual, or otherwise of
23 DOES 1 through 100, inclusive, are presently unknown to Plaintiff, and therefore,
24 are being sued by such fictitious names, and Plaintiff will seek leave to amend this
25 Complaint to include their true names and capacities when they have been
26 ascertained.

27 18. Plaintiff is informed and believes, and on that basis alleges, that at all
28 times relevant to this action, Defendants actively participated in or subsequently

1 ratified and adopted, or both, each and all of the acts or conduct alleged herein with
2 full knowledge of each and every violation of Plaintiff’s rights and the damages to
3 Plaintiff proximately caused thereby.

4 **FACTS COMMON TO ALL COUNTS**

5 19. In this action for willful copyright infringement, Defendant Zayn, with
6 complete disregard for Plaintiff’s rights, copied Plaintiff’s “Somebody Tonight” in
7 Defendants’ “Better.” Zayn boasts in “Better” that “[i]t’s a gamble to take any more
8 of you. Still in my mind sometimes, I must admit it, [I]ike it’s a crime on trial, I got
9 acquitted.” Similarly here, a civil wrong has occurred, but in this trial, Defendants
10 will not be acquitted. Plaintiff has and maintains lawful ownership in the musical
11 composition and performance of the Original Work.

12 20. This action centers on the intentional and actionable copying of
13 numerous significant compositional elements of the Original Work, without which
14 blatant copying, Zayn’s “Better” would never have come to exist in its present form
15 or become a massive worldwide success, beginning on or about September 25, 2020,
16 when Zayn released the song. Plaintiff herein therefore includes those persons and
17 parties involved in the unlawful copying, sale, performance, licensing, distribution,
18 and other exploitation of “Better.”

19 21. “Somebody Tonight” was recorded by Simmons in 2018 and released
20 that same year, enjoying success among followers across the United States and
21 around the world, with many thousands of digital streams on Spotify and streams on
22 YouTube.

23 22. Defendants are the writers, producers, performers, record labels,
24 publishers, and distributors of the infringing musical composition “Better,” the
25 infringing sound recording, “Better,” the music video for “Better,” and all other
26 products embodying the infringing composition and sound recording, “Better”
27 (collectively, the “Infringing Work”).

28 23. In order to write and record “Better,” and ultimately to produce,

1 perform, distribute, and otherwise exploit “Better,” Defendants boldly copied
2 “Somebody Tonight,” to which they had prior access, resulting in a composition and
3 song in “Better,” which is so similar to “Somebody Tonight” that the ordinary
4 observer would easily determine that the songs sound the same in their essential
5 compositional and other elements.

6 24. The Infringing Work copies various essential, distinctive, and
7 recognizable elements and traits of the Original Work, which renders the songs
8 substantially similar. The Infringing Work uses a similar chord progression and
9 motif as the Original Work. Significantly, the distinct portions of each work that
10 drive the recognizability (the distinct nature) of the songs include the recurring
11 melody and combination of notes heard throughout, taken together with the lyrics.
12 The Infringing Work features a chorus with a similar melody, timing of chord
13 changes, rhythm, and lyrics as the Original Work. This includes similar pauses
14 between vocal syllables and similar vocal inflections in the enunciation of the verses
15 and chorus.

16 25. For example, the recurring melody in the Original Work is found in the
17 guitar melody as well as the lead and backup vocal melodies in its introduction, all
18 verses, last chorus, and outro. The same recurring melody is also found in the
19 backup vocals entering the last chorus and outro of the Original Work. On the other
20 hand, the Infringing Work contains the same, if not substantially similar, recurring
21 melody in both its guitar and vocal melodies. The distinct guitar melody from the
22 Original Work repeats continuously throughout the entirety of the Infringing Work.
23 Furthermore, the distinct vocal melodies from the “Somebody Tonight,” such as the
24 melody from its verse sections, recur in the chorus sections as the vocal hook of
25 “Better.”¹

26 _____

27 ¹ A “hook” is the term used in popular and commercial music for the signature melodic material of
28 the work, by which the song is recognized. In the case of songs, the hook is usually the phrase in
the chorus in which the title lyrics are sung. In instrumental music, it is often the signature theme
by which the listener recognizes which song is being performed.

1 26. Even the lyrics and their annunciation within the two songs overlap.
 2 The Original Work uses the lyrics “fight anymore” within its melody and the
 3 Infringing Work uses the lyrics “why wait to fight” within its melody. The shared
 4 lyric “fight” occurs on the same position in the melody in both songs. The same can
 5 be said for the lyrics “begging for more” in “Somebody Tonight” and “when you
 6 asked for more” in “Better.” Both songs contain a melisma on “more”.²

7 27. The melody is the most recognizable and memorable element of both
 8 “Somebody Tonight” and “Better.” In significantly copying the combination of
 9 chord progression, melody, timing of chord changes, rhythm, and enunciation of
 10 lyrical elements of the verses and chorus of “Somebody Tonight,” “Better”
 11 essentially copied the “soul” and signature element of the Original Work, which
 12 renders both pieces substantially similar. The inclusion of the signature elements in
 13 the Infringing Song significantly enhances both the musical and financial value of
 14 the Infringing Song.

15 28. Defendants did not seek authorization from Plaintiff, nor were they
 16 given authorization to use the Original Work by Plaintiff, or any owner of the rights
 17 to the Original Work. Plaintiff is informed and believes and thereon alleges that
 18 Defendants had access to Plaintiff’s Original Work by and through a marketing
 19 company.

20 29. In or around April 2020, Simmons engaged Talent Spotlight LLC d/b/a
 21 Modern Music Marketing a/k/a Premium Music Marketing (“MMM”), a company
 22 involved in the promotion of musical works, to promote Simmons’s song, “People
 23 Change.” Simmons’s point of contact at MMM was Jonah Rindner p/k/a Dolo
 24 Tonight. During the engagement, while reviewing Simmons’s music catalog,
 25 Rindner listened to Simmons’s “Somebody Tonight” on his own volition and
 26 contacted Simmons regarding the same. During their conversation, Rindner, on
 27 _____

28 ² A “melisma” describes vocal writing in which a single syllable or word is sung sustained over two or more consecutive tones.

1 behalf of MMM, indicated that MMM would promote “Somebody Tonight” for free
 2 because Rindner believed that it was Simmons’s best song. Rindner further
 3 requested permission from Simmons to send “Somebody Tonight” to every person in
 4 his contact list that works in the music industry in order to make some type of deal
 5 happen. Rindner specifically mentioned that, should Simmons reach some type of
 6 deal with a record label or a major artist regarding “Somebody Tonight,” Rindner
 7 would receive a finder’s fee for his efforts. Simmons agreed.

8 30. From April 2020 through October 2020, Simmons and MMM conferred
 9 on a regular basis to discuss the performance of MMM’s promotional activities. On
 10 October 19, 2020, Simmons contacted Jonah Rindner regarding Zayn’s, “Better.”
 11 Rindner responded that MMM “worked it” implying that MMM promoted Zayn’s
 12 song. Simmons asked Rindner if the song sounded familiar, to which Rindner
 13 responded, “Kind of.” Having been informed that MMM “worked” Zayn’s “Better,”
 14 and knowing that MMM had explicitly discussed “Somebody Tonight,” Simmons
 15 asked Rindner point blank: “Did [Zayn] base [Better] off of my ‘Somebody
 16 Tonight’?” and Rindner responded “How would I know.”



27 31. Upon information and belief, Defendants Zayn, Daye, Bowie,
 28 McGregor, Citrenbaum, Scully, and Sony became aware of Simmons’s “Somebody

1 Tonight” by and through MMM.

2 32. “Better” was released in September 2020 as the lead single on the
3 “Nobody is Listening” album, released in January 2021, years after “Somebody
4 Tonight” had been released. “Better” was strategically released prior to the “Nobody
5 is Listening” album because “Better” was intended to bring attention back to Zayn
6 after not releasing a song for approximately one year. Zayn shared a teaser of the
7 song (roughly 15 seconds in length) to draw attention to the song’s imminent release
8 just days away. The success of the “Nobody is Listening” album hinged upon the
9 success of the release of the “Better” single.

10 33. Approximately three months after the Infringing Work was released, on
11 December 4, 2020, Simmons sent a cease and desist letter to Defendant Sony, among
12 other entities, regarding the Infringing Work. Defendant Sony responded to the
13 cease and desist letter expressly denying any infringement claims relating to the
14 Infringing Work.

15 34. “Better” and “Somebody Tonight” contain essential compositional
16 elements so similar as to evidence the conscious copying of one in pursuit of the
17 creation of the other. Resulting from this unlawful copying are two songs so similar
18 that the ordinary observer can only conclude that “Better” would not exist but for the
19 copying of “Somebody Tonight.”

20 35. Defendants unlawfully exploited “Better” without the knowledge or
21 consent of Plaintiff, resulting in the generation of massive profits, fame, and credit in
22 favor of Defendants. Defendants’ conduct was undertaken purposefully, willfully,
23 knowingly, and maliciously to the exclusion of, and without regard to the inevitable
24 damage certain to result to Plaintiff, the rightful owner of the “Somebody Tonight”
25 compositional elements and sound recording.

26 36. “Better” continues to be exploited, licensed, performed, distributed,
27 displayed, and/or reproduced on compact discs and albums, as digital downloads and
28 streams, music videos, all absent any form of compensation to Plaintiff.

1 37. Upon information and belief, Defendants are the agents, employees,
2 joint venturers, and/or partners of one another, and each joined in, ratified,
3 contributed to, and encouraged the unlawful conduct alleged herein, rendering each
4 jointly and severally liable to Plaintiff.

5 **FIRST CAUSE OF ACTION**

6 (Direct Copyright Infringement

7 Against All Defendants)

8 38. Plaintiff hereby realleges and incorporates the allegations in the
9 preceding paragraphs as if fully set forth herein.

10 39. Plaintiff Formal Entertainment LLC is the sole owner of the Original
11 Work, including all rights, titles, and interests in its musical composition. The
12 musical composition is properly registered with the United States Copyright Office,
13 bearing registration number SR0000962834.

14 40. Defendants’ unauthorized reproduction, distribution, performance,
15 display, and creation of a derivative work of “Somebody Tonight” infringes on
16 Plaintiff’s exclusive rights in direct violation of the Copyright Act, 17 U.S.C. § 101,
17 *et seq.*

18 41. Defendants did not seek or receive any permission or authorization,
19 express or otherwise, to interpolate any portion of the Original Work into the
20 Infringing Work.

21 42. Defendants’ conduct has been at all times relevant herein knowing,
22 willful, and with complete disregard for the rights of Plaintiff and also without any
23 regard for the damage sure to result from the infringement alleged herein.

24 43. As a direct and proximate cause of the conduct alleged herein, Plaintiff
25 has suffered irreparable damage.

26 44. The Infringing Work copies, qualitatively and quantitatively, essential,
27 distinctive, and recognizable elements of substantial portions of the Original Work,
28 and the inclusion of signature elements of the Original Work into the Infringing

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1 Work significantly enhances both the musical and financial value of the Infringing
2 Work.

3 45. From the date of creation of “Better,” Defendants have infringed
4 Plaintiff’s copyright interest in “Somebody Tonight” including: (a) substantially
5 copying and publicly performing, or authorizing the copying and public performing
6 of “Better,” including on radio, personal appearances, and on film, video, television,
7 and otherwise; (b) authorizing the reproduction, distribution and sale of the records,
8 digital download and streaming of “Better” through the execution of licenses and/or
9 actually selling, manufacturing, and/or distributing “Better” through various
10 sources; (c) substantially copying “Somebody Tonight” in the marketing, promotion
11 and sale of “Better” and the Infringing Work in the form of records, videos, and
12 other performances and merchandise; and (d) participating in and furthering the
13 aforementioned infringing acts, and/or sharing in the proceeds therefrom, all
14 through substantial use of “Somebody Tonight” in and as part of the Infringing
15 Work, packaged in a variety of configurations and digital downloads, mixes, and
16 versions, and performed in a variety of manners including on radio, personal
17 appearances, and on film, television, and/or otherwise.

18 46. Plaintiff has received no songwriter credit for, nor any copyright
19 ownership interests in, any of the exploitations of “Better” or in the Infringing
20 Work, demonstrating Defendants’ willful intention to violate Plaintiff’s copyright
21 interests.

22 47. The infringement alleged herein by Defendants has been and continues
23 to be willful and knowing and in disregard of Plaintiff’s rights.

24 48. Defendants had the right and ability to control other infringers and have
25 derived an extreme financial benefit from the continued infringement alleged herein,
26 including that infringement Defendants failed to control, such that Defendants must
27 be found vicariously liable to Plaintiff.

28 49. The infringement alleged herein continues as the album “Nobody is

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1 Listening,” on which “Better” appears, continues to be sold, and both the album and
2 the “Better” single continue to be licensed for sale, downloads, streaming, master
3 tones, and in motion pictures, advertisements and other exploitations to which
4 Defendants have put “Better” and the “Nobody is Listening” album.

5 50. As a direct and proximate result of the infringement and conduct of
6 Defendants as alleged herein, Plaintiff has suffered actual injury and damage
7 including lost profits, the lost opportunity to reinvest those profits, and the loss of
8 industry goodwill, all in amounts to be proven at the time of trial, but in excess of
9 the minimum jurisdiction of this Court.

10 51. Pursuant to 17 U.S.C. § 504(b), Plaintiff is entitled to damages,
11 including without limitation, the loss of profits suffered, and disgorgement of
12 Defendants’ profits and ill-gotten gains, all in amounts to be proven at the time of
13 trial.

14 52. The conduct of Defendants has caused and will continue to cause
15 Plaintiff substantial damage unless enjoined by this Court, and will continue, if
16 allowed to go unchecked, to cause Plaintiff irreparable damage not capable of ready
17 determination, and as such Plaintiff has no adequate remedy at law. Pursuant to 17
18 U.S.C. § 502, Plaintiff is therefore entitled to a permanent injunction prohibiting the
19 reproduction distribution, sale, public performance, or other use of exploitation of
20 “Better,” in any and all formats, configurations, and/or media, including without
21 limitation, the Infringing Work.

22 **SECOND CAUSE OF ACTION**

23 (Contributory Copyright Infringement

24 Against All Defendants)

25 53. Plaintiff hereby realleges and incorporates the allegations in the
26 preceding paragraphs as if fully set forth herein.

27 54. Defendants’ unauthorized reproduction, distribution, performance,
28 display, and creation of a derivative work of “Somebody Tonight” infringes on

1 Plaintiff’s exclusive rights in direct violation of the Copyright Act, 17 U.S.C. § 101,
2 *et seq.*

3 55. Defendants did not seek or receive any permission or authorization,
4 express or otherwise, to interpolate any portion of the Original Work into the
5 Infringing Work.

6 56. Defendants’ conduct has been at all times relevant herein knowing,
7 willful, and with complete disregard for the rights of Plaintiff and also without any
8 regard for the damage sure to result from the infringement alleged herein.

9 57. Defendants actively participated in or subsequently ratified and adopted,
10 or both, each and all of the acts or conduct alleged herein with full knowledge of
11 each and every violation of Plaintiff’s rights.

12 58. By and through MMM and Rindner’s distribution of the Original Work
13 to Defendants, Defendants knew and or had reason to know that the Infringing Work
14 derived from the Original Work. Notwithstanding this knowledge, Defendants
15 continued to exploit the Original Work in creating, producing, performing, and
16 distributing the Infringing Work.

17 59. As a direct and proximate cause of the conduct alleged herein, Plaintiff
18 has suffered irreparable damage.

19 60. The Infringing Work copies, qualitatively and quantitatively, essential,
20 distinctive, and recognizable elements of substantial portions of the Original Work,
21 and the inclusion of signature elements of the Original Work into the Infringing
22 Work significantly enhances both the musical and financial value of the Infringing
23 Work.

24 61. From the date of creation of “Better,” Defendants have infringed
25 Plaintiff’s copyright interest in “Somebody Tonight” including: (a) substantially
26 copying and publicly performing, or authorizing the copying and public performing
27 of “Better,” including on radio, personal appearances, and on film, video, television,
28 and otherwise; (b) authorizing the reproduction, distribution and sale of the records,

1 digital download and streaming of “Better” through the execution of licenses and/or
2 actually selling, manufacturing, and/or distributing “Better” through various sources;
3 (c) substantially copying “Somebody Tonight” in the marketing, promotion and sale
4 of “Better” and the Infringing Work in the form of records, videos, and other
5 performances and merchandise; and (d) participating in and furthering the
6 aforementioned infringing acts, and/or sharing in the proceeds therefrom, all through
7 substantial use of “Somebody Tonight” in and as part of the Infringing Work,
8 packaged in a variety of configurations and digital downloads, mixes, and versions,
9 and performed in a variety of manners including on radio, personal appearances, and
10 on film, television, and/or otherwise.

11 62. Plaintiff has received no songwriter credit for, nor any copyright
12 ownership interests in, any of the exploitations of “Better” or in the Infringing Work,
13 demonstrating Defendants’ willful intention to violate Plaintiff’s copyright interests.

14 63. The infringement alleged herein by Defendants has been and continues
15 to be willful and knowing and in disregard of Plaintiff’s rights.

16 64. Defendants had the right and ability to control other infringers and have
17 derived an extreme financial benefit from the continued infringement alleged herein,
18 including that infringement Defendants failed to control, such that Defendants must
19 be found vicariously liable to Plaintiff.

20 65. The infringement alleged herein continues as the album “Nobody is
21 Listening,” on which “Better” appears, continues to be sold, and both the album and
22 the “Better” single continue to be licensed for sale, downloads, streaming, master
23 tones, and in motion pictures, advertisements and other exploitations to which
24 Defendants have put “Better” and the “Nobody is Listening” album.

25 66. As a direct and proximate result of the infringement and conduct of
26 Defendants as alleged herein, Plaintiff has suffered actual injury and damage
27 including lost profits, the lost opportunity to reinvest those profits, and the loss of
28 industry goodwill, all in amounts to be proven at the time of trial, but in excess of the

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1 minimum jurisdiction of this Court.

2 67. Pursuant to 17 U.S.C. § 504(b), Plaintiff is entitled to damages,
3 including without limitation, the loss of profits suffered, and disgorgement of
4 Defendants’ profits and ill-gotten gains, all in amounts to be proven at the time of
5 trial.

6 68. The conduct of Defendants has caused and will continue to cause
7 Plaintiff substantial damage unless enjoined by this Court, and will continue, if
8 allowed to go unchecked, to cause Plaintiff irreparable damage not capable of ready
9 determination, and as such Plaintiff has no adequate remedy at law. Pursuant to 17
10 U.S.C. § 502, Plaintiff is therefore entitled to a permanent injunction prohibiting the
11 reproduction distribution, sale, public performance, or other use of exploitation of
12 “Better,” in any and all formats, configurations, and/or media, including without
13 limitation, the Infringing Work.

14 **THIRD CAUSE OF ACTION**

15 (Vicarious Copyright Infringement

16 Against All Defendants)

17 69. Plaintiff hereby realleges and incorporates the allegations in the
18 preceding paragraphs as if fully set forth herein.

19 70. Defendants’ unauthorized reproduction, distribution, performance,
20 display, and creation of a derivative work of “Somebody Tonight” infringes on
21 Plaintiff’s exclusive rights in direct violation of the Copyright Act, 17 U.S.C. § 101,
22 *et seq.*

23 71. Defendants did not seek or receive any permission or authorization,
24 express or otherwise, to interpolate any portion of the Original Work into the
25 Infringing Work.

26 72. Defendants’ conduct has been at all times relevant herein knowing,
27 willful, and with complete disregard for the rights of Plaintiff and also without any
28 regard for the damage sure to result from the infringement alleged herein.

1 73. As a direct and proximate cause of the conduct alleged herein, Plaintiff
2 has suffered irreparable damage.

3 74. The Infringing Work copies, qualitatively and quantitatively, essential,
4 distinctive, and recognizable elements of substantial portions of the Original Work,
5 and the inclusion of signature elements of the Original Work into the Infringing
6 Work significantly enhances both the musical and financial value of the Infringing
7 Work.

8 75. From the date of creation of “Better,” Defendants have infringed
9 Plaintiff’s copyright interest in “Somebody Tonight” including: (a) substantially
10 copying and publicly performing, or authorizing the copying and public performing
11 of “Better,” including on radio, personal appearances, and on film, video, television,
12 and otherwise; (b) authorizing the reproduction, distribution and sale of the records,
13 digital download and streaming of “Better” through the execution of licenses and/or
14 actually selling, manufacturing, and/or distributing “Better” through various sources;
15 (c) substantially copying “Somebody Tonight” in the marketing, promotion and sale
16 of “Better” and the Infringing Work in the form of records, videos, and other
17 performances and merchandise; and (d) participating in and furthering the
18 aforementioned infringing acts, and/or sharing in the proceeds therefrom, all through
19 substantial use of “Somebody Tonight” in and as part of the Infringing Work,
20 packaged in a variety of configurations and digital downloads, mixes, and versions,
21 and performed in a variety of manners including on radio, personal appearances, and
22 on film, television, and/or otherwise.

23 76. Plaintiff has received no songwriter credit for, nor any copyright
24 ownership interests in, any of the exploitations of “Better” or in the Infringing Work,
25 demonstrating Defendants’ willful intention to violate Plaintiff’s copyright interests.

26 77. The infringement alleged herein by Defendants has been and continues
27 to be willful and knowing and in disregard of Plaintiff’s rights.

28 78. Defendants had the right and ability to control each other as well as

1 other infringers and have derived an extreme financial benefit from the continued
2 infringement alleged herein, including that infringement Defendants failed to control,
3 such that Defendants must be found vicariously liable to Plaintiff.

4 79. The infringement alleged herein continues as the album “Nobody is
5 Listening,” on which “Better” appears, continues to be sold, and both the album and
6 the “Better” single continue to be licensed for sale, downloads, streaming, master
7 tones, and in motion pictures, advertisements and other exploitations to which
8 Defendants have put “Better” and the “Nobody is Listening” album.

9 80. As a direct and proximate result of the infringement and conduct of
10 Defendants as alleged herein, Plaintiff has suffered actual injury and damage
11 including lost profits, the lost opportunity to reinvest those profits, and the loss of
12 industry goodwill, all in amounts to be proven at the time of trial, but in excess of the
13 minimum jurisdiction of this Court.

14 81. Pursuant to 17 U.S.C. § 504(b), Plaintiff is entitled to damages,
15 including without limitation, the loss of profits suffered, and disgorgement of
16 Defendants’ profits and ill-gotten gains, all in amounts to be proven at the time of
17 trial.

18 82. The conduct of Defendants has caused and will continue to cause
19 Plaintiff substantial damage unless enjoined by this Court, and will continue, if
20 allowed to go unchecked, to cause Plaintiff irreparable damage not capable of ready
21 determination, and as such Plaintiff has no adequate remedy at law. Pursuant to 17
22 U.S.C. § 502, Plaintiff is therefore entitled to a permanent injunction prohibiting the
23 reproduction distribution, sale, public performance, or other use of exploitation of
24 “Better,” in any and all formats, configurations, and/or media, including without
25 limitation, the Infringing Work.

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27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

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- A. For a judicial determination and Declaration to the effect that Defendants have infringed the copyrighted work alleged herein, “Somebody Tonight,” in violation of the Copyright Act.
- B. For a judicial determination and Declaration to the effect that Defendants are directly, vicariously, and or contributorily liable for copyright infringement as alleged herein, as may be applicable.
- C. For a permanent injunction prohibiting Defendants and their agents, employees, servants, officers, attorneys, successors in interest, licensees, partners, assigns, and all persons acting in concert with the foregoing, or at their direction or behest, and each and all of them, from directly and/or indirectly causing, enabling, facilitating, permitting, encouraging, promoting, inducing, and/or participating in the infringement of any right enjoyed and/or owned by Plaintiff and protected by the Copyright Act.
- D. An award of damages against Defendants pursuant to 17 USC § 504(b), including actual damages and disgorgement of profits reaped by Defendants.
- E. Compensatory and special damages according to proof offered and made at the time of trial.
- F. For pre-judgment and post-judgment interest on all damages awarded.
- G. For such other and further relief as this Court may deem to be just and proper.

1 Dated: December 11, 2023

Respectfully submitted,

MARTORELL LAW APC

4 By: /s/ Eduardo Martorell
Eduardo Martorell
Jordan M. Zim
Attorneys for Plaintiff,
FORMAL ENTERTAINMENT LLC

MARTORELL LAW APC

Litigation & Trial Counsel

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DEMAND FOR JURY TRIAL

Plaintiff, through its attorneys of record, hereby demands a trial by Jury.

Dated: December 11, 2023

Respectfully submitted,

MARTORELL LAW APC

By: /s/ Eduardo Martorell
Eduardo Martorell
Jordan M. Zim
Attorneys for Plaintiff,
FORMAL ENTERTAINMENT LLC

MARTORELL LAW APC
Litigation & Trial Counsel