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

15 JAMES W. NEWTON, JR. dba)
16 JANEW MUSIC,) **Case No. CV 00-04909-NM (MANx)**
17)
18 Plaintiff,) **FIRST AMENDED COMPLAINT**
19) **(COPYRIGHT INFRINGEMENT --**
20 v.) **17 U.S.C. §101 et seq.)**
21)

22 MICHAEL DIAMOND, ADAM HOROVITZ)
23 and ADAM YAUCH, dba BEASTIE BOYS,) **DEMAND FOR JURY TRIAL**
24 a New York Partnership, CAPITOL)
25 RECORDS, INC., a Delaware)
26 Corporation, GRAND ROYAL RECORDS,)
27 INC., a California Corporation,)
28 UNIVERSAL POLYGRAM INTERNATIONAL)
29 PUBLISHING, INC., a Delaware)
30 Corporation, BROOKLYN DUST MUSIC,)
31 an entity of unknown origin,)
32 MARIO CALDATO, JR., an)
33 individual, JANUS FILMS, LLC, a)
34 New York Limited Liability)
35 Company, CRITERION COLLECTION, a)
36 California Partnership, VOYAGER)
37 PUBLISHING COMPANY, INC., a)
38 Delaware Corporation, SONY MUSIC)
39 ENTERTAINMENT, INC., A Delaware)
40 Corporation, BMG DIRECT)

1 MARKETING, INC., a Delaware)
2 Corporation, and THE COLUMBIA)
3 HOUSE COMPANY, an entity of)
4 unknown origin,)
5)
6 Defendants.)
7 /

8 **JURISDICTION AND VENUE**

9 1. This Court has jurisdiction of the subject matter for
10 this claim under the provisions of 28 U.S.C. §1338(a), because
11 this action arises under an Act of Congress relating to
12 Copyrights, the Copyright Act of 1976, Pub. L. 94-553, 90 Stat.
13 2541 *et seq.* 17 U.S.C. 101 *et seq.*

14 2. This Court has jurisdiction of the subject matter of
15 this claim under the provisions of 28 U.S.C. §1331, because the
16 action arises under the laws of the United States, specifically
17 the above-cited Copyright Act of 1976.

18 3. Venue is properly laid in the District Court for the
19 Central District of California pursuant to 28 U.S.C. § 1391(b),
20 and § 1391(c), since, *inter alia*, the causes of action asserted
21 arose from or are connected with purposeful acts committed by
22 the individual Defendants in this District, and the corporate
23 and individual Defendants named herein are doing business, and
24 therefore reside, in this District.

25 **PARTIES**

4. Plaintiff James W. Newton, Jr., dba Janew Music,

1 ("NEWTON") is an individual, residing within the State of
2 California, whose business address is 4946 Stone Ridge Drive,
3 Chino Hills, California 91209. Plaintiff is a critically
4 acclaimed jazz and classical flautist, composer, performer and
5 university professor, and author of the copyrighted composition
6 *Choir* (referred to herein as "COMPOSITION" or "CHOIR") released
7 on Plaintiff's 1982 solo album entitled *Axum*.

8
9 5. Plaintiff is, and at all relevant times was, a
10 domiciliary of the United States.

11 6. Defendant Michael Louis Diamond, ("DIAMOND"), whose
12 business address is in care of Gelfand, Rennert & Feldman, 1880
13 Century Park East, Los Angeles, California 90067, is a
14 professional recording artist, performer and composer who is the
15 co-author of derivative compositions and sound recordings, which
16 said derivative compositions and sound recordings embody and
17 reproduce, through their entirety, substantial excerpts of
18 Plaintiffs' copyrighted COMPOSITION. Plaintiff is informed and
19 believes and thereon alleges that DIAMOND is responsible in some
20 manner for the occurrences herein alleged, and that Plaintiff's
21 injuries as herein alleged were proximately caused by the acts
22 or omissions of DIAMOND.

23 7. Adam Keefe Horovitz, ("HOROVITZ"), whose business
24 address is in care of Gelfand, Rennert & Feldman, 1880 Century
25 Park East, Los Angeles, California 90067, is a professional

1 recording artist, performer and composer who is the co-author of
2 derivative compositions and sound recordings, which said
3 derivative compositions and sound recordings embody and
4 reproduce, through their entirety, substantial excerpts of
5 Plaintiff's copyrighted COMPOSITION. Plaintiff is informed and
6 believes and thereon alleges that DIAMOND is responsible in some
7 manner for the occurrences herein alleged, and that Plaintiff's
8 injuries as herein alleged were proximately caused by the acts
9 or omissions of DIAMOND.

10
11 8. Defendant Adam Nathaniel Yauch, ("YAUCH"), whose
12 business address is in care of Gelfand, Rennert & Feldman, 1880
13 Century Park East, Los Angeles, California 90067, is a
14 professional recording artist, performer and composer who is the
15 co-author of derivative compositions and sound recordings, which
16 said derivative compositions and sound recordings embody and
17 reproduce, through their entirety, substantial excerpts of
18 Plaintiff's copyrighted COMPOSITION. Plaintiff is informed and
19 believes and thereon alleges that DIAMOND is responsible in some
20 manner for the occurrences herein alleged, and that Plaintiff's
21 injuries as herein alleged were proximately caused by the acts
22 or omissions of DIAMOND.

23
24 9. Defendants DIAMOND, HOROVITZ and YAUCH, at all times
25 herein alleged, conducted business as a legal partnership
existing under the laws of the State of New York under the

1 fictitious name the Beastie Boys ("BEASTIE BOYS"), whose
2 business address is in care of Gelfand, Rennert & Feldman, 1880
3 Century Park East, Los Angeles, California 90067. BEASTIE BOYS
4 are a legal entity that have in the past, and are presently,
5 doing business within the State of California as a recording and
6 performing musical group within the genre of rap, hip-hop and
7 popular music. Plaintiff is informed and believes, and hereby
8 alleges, that the BEASTIE BOYS are the authors and/or co-authors
9 of derivative compositions and/or sound recordings reproducing
10 substantial portions of Plaintiff's copyrighted COMPOSITION.
11

12 10. Defendant Mario Caldato, Jr., ("CALDATO"), whose
13 address is currently unknown, is the Producer and co-author,
14 along with Defendants DIAMOND, HOROVITZ and YAUCH, of derivative
15 compositions and sound recordings, which said derivative
16 compositions and sound recordings embody and reproduce, through
17 their entirety, substantial excerpts of Plaintiffs' copyrighted
18 COMPOSITION. Plaintiff is informed and believes and thereon
19 alleges that CALDATO is responsible in some manner for the
20 occurrences herein alleged, and that Plaintiff's injuries as
21 herein alleged were proximately caused by the acts or omissions
22 of CALDATO. Plaintiff will amend this Complaint as soon as
23 Plaintiff ascertains the proper address for this Defendant.
24

25 11. Defendant Capitol Records, Inc. ("CAPITOL"), located
at 2751 Centerville Road, Suite 205, Wilmington, Delaware 19808,

1 is a corporation existing under the laws of the State of
2 Delaware. CAPITOL is, and at all times herein mentioned was,
3 doing business within the State of California as a record
4 company involved in the business of licensing, manufacturing,
5 publishing, distributing and performing analog and digital audio
6 recordings and video recordings of popular recording artists,
7 including audio and video recordings of Defendants BEASTIE BOYS
8 embodying Plaintiff's copyrighted COMPOSITION.
9

10 12. Defendant Grand Royal Records, Inc. ("GRAND ROYAL"),
11 located in care of Gelfand, Rennert & Feldman, 1880 Century Park
12 East, #900, Los Angeles, California 90067 is a corporation
13 existing under the laws of the State of California. GRAND ROYAL
14 has in the past, and is presently, doing business within the
15 State of California as a record company involved in the business
16 of licensing, manufacturing, publishing and distributing analog
17 and digital audio recordings and video recordings of popular and
18 alternative recording artists, including audio and video
19 recordings of Defendant BEASTIE BOYS embodying Plaintiff's
20 copyrighted COMPOSITION.
21

22 13. Defendant Universal Polygram International Publishing,
23 Inc., ("UNIVERSAL"), located in care of Polygram Holding, Inc.,
24 825 8th Avenue, New York, New York 10019, is a corporation
25 existing under the laws of the State of Delaware. UNIVERSAL is,
and at all times herein mentioned was, doing business within the

1 State of California as a music publishing company involved in
2 the business of authorizing the reproduction, synchronization,
3 publication and performance of compositions, including
4 derivative compositions embodying Plaintiff's COMPOSITION, and
5 collecting income arising from the exercise of such rights.

6 14. On information and belief, Plaintiff alleges that
7 Defendant Brooklyn Dust Music ("BROOKLYN DUST"), located in care
8 of Kenneth B. Anderson, Esq., Loeb and Loeb, 345 Park Avenue,
9 18th Floor, New York, NY 10154, is an entity of unknown origin
10 existing under the laws of the State of New York and controlled
11 in whole or in part by Defendant BEASTIE BOYS. BROOKLYN DUST
12 is, and at all times herein mentioned was, doing business within
13 the State of California as a music publishing company involved
14 in the business of authorizing the reproduction,
15 synchronization, publication and performance of compositions,
16 including derivative compositions embodying Plaintiff's
17 COMPOSITION, and collecting income arising from the exercise of
18 such rights.
19

20 15. Defendant Janus Films, LLC, ("JANUS") which Plaintiff
21 believes on information and belief is located in care of Jana
22 Edelbaum, 18 East 67th Street, Suite 2B, New York, NY 10021, is a
23 limited liability corporation existing under the laws of the
24 State of New York. JANUS is, and at all times herein mentioned
25 was, doing business within the State of California as a company

1 involved in the business of authorizing the reproduction,
2 distribution and sale of digital video disks ("DVD's"), and
3 specifically, DVD's containing works by Defendant BEASTIE BOYS
4 embodying Plaintiff's COMPOSITION.

5 16. Defendant Criterion Collection ("CRITERION"), located
6 at 1351 Pacific Coast Highway, Third Floor, Santa Monica,
7 California 90401, is a partnership existing under the laws of
8 the State of California. CRITERION is, and at all times herein
9 mentioned was, doing business within the State of California as
10 a company involved in the business of authorizing the
11 reproduction, distribution and sale of digital video disks
12 ("DVD's"), and specifically, DVD's containing works by Defendant
13 BEASTIE BOYS embodying Plaintiff's COMPOSITION.

14 17. Voyager Publishing Company, Inc. ("VOYAGER"), located
15 at 578 Broadway, Suite 406, New York, NY 10012, is a corporation
16 existing under the laws of the State of Delaware. On
17 information and belief, Plaintiff alleges that VOYAGER is the
18 owner of Defendant CRITERION. Accordingly, VOYAGER is, and at
19 all times herein mentioned was, doing business within the State
20 of California as a company involved in the business of
21 authorizing the reproduction, distribution and sale of digital
22 video disks ("DVD's"), and specifically, DVD's containing works
23 by Defendant BEASTIE BOYS embodying Plaintiff's COMPOSITION.
24
25

1 18. Defendant BMG Direct Marketing, Inc. ("BMG") located
2 at 1540 Broadway, New York, New York 10036, is a corporation
3 existing under the laws of the State of Delaware. BMG is, and
4 at all times herein mentioned was, doing business within the
5 State of California as a record "club" involved in the business
6 of licensing, manufacturing, distribution and sale of analog and
7 digital audio recordings of popular recording artists, including
8 recordings of Defendants BEASTIE BOYS embodying Plaintiff's
9 copyrighted COMPOSITION.
10

11 19. Defendant Sony Music Entertainment, Inc. ("SONY"),
12 located at 550 Madison Avenue, New York, New York 10022, is a
13 corporation existing under the laws of the State of Delaware.
14 SONY is, and at all times herein mentioned was, doing business
15 within the State of California as a record "club" involved in
16 the business of licensing, manufacturing, publishing,
17 distributing and performing analog and digital audio recordings
18 recordings of popular recording artists, including recordings of
19 Defendants BEASTIE BOYS embodying Plaintiff's copyrighted
20 COMPOSITION.
21

22 20. Defendant Columbia House Company ("COLUMBIA HOUSE"),
23 located at 1221 Avenue of the Americas, New York, New York,
24 10020, is an entity of unknown origin existing under the laws of
25 the State of New York. On information and belief, Plaintiff
contends that COLUMBIA HOUSE is, and at all times herein

1 mentioned was, doing business within the State of California as
2 a record "club" involved in the business of licensing,
3 manufacturing, publishing, distributing and performing analog
4 and digital audio recordings of popular recording artists,
5 including recordings of Defendants BEASTIE BOYS embodying
6 Plaintiff's copyrighted COMPOSITION.

7 **BACKGROUND OF LITIGATION**

8
9 21. Plaintiff is an internationally recognized jazz and
10 classical flautist, composer, performer and university
11 professor, who is an 18 consecutive year winner of the Downbeat
12 Magazine Critics' Poll (1982-99) and 17 consecutive year winner
13 of the Downbeat Magazine International Reader's Poll for "Best
14 Jazz Flutist" (1983-99). A resume detailing Plaintiff's
15 numerous fellowships, grants, commissions, and other significant
16 achievements in the field of jazz and classical music is
17 attached hereto as Exhibit "A," and incorporated herein by this
18 reference.

19
20 22. Plaintiff is the sole author of the solo flute
21 COMPOSITION *Choir*, written in or about 1976. Said COMPOSITION
22 contains material original with Plaintiff, which original
23 material constitutes copyrightable subject matter under the laws
24 of the United States. Said COMPOSITION is widely recognized as
25 one of Plaintiff's "signature" compositions, and is subject to
copyright registration as a musical work, United States

1 Copyright Registration Certificate No. PAu-36-947 issued by the
2 Register of Copyrights on August 4, 1978, a true copy of which
3 is attached as Exhibit "B," and which is incorporated herein by
4 this reference.

5 23. Since 1976, Plaintiff Newton, dba Janew Publishing,
6 has been, and still is, the proprietor of the statutory
7 copyright in the COMPOSITION, and is duly possessed of all
8 rights, title and interest therein.

9 24. Plaintiff's COMPOSITION , which makes extensive use of
10 a flute playing technique known as "vocalization," is a jazz and
11 classical music composition that also embodies elements of
12 traditional, folk, African, Afro-American and avant-garde music.

13 25. Plaintiff, through his sole proprietor music
14 publishing company, Janew Music, is the sole publisher of said
15 COMPOSITION. The performing rights in and to Plaintiff's
16 COMPOSITION are registered with the American Society of
17 Composers and Publishers ("ASCAP"), pursuant to Title Code No.
18 30066867, with the COMPOSITION author credited as James Weldon
19 Newton, Jr. and COMPOSITION publisher credited as Janew Music.
20 A true and correct copy of a Title Detail printout from the
21 ASCAP website with respect to the COMPOSITION, dated January 31,
22 2000, is attached hereto as Exhibit "C," and incorporated herein
23 by this reference.
24
25

1 26. On or about August 21, 1981, Plaintiff entered into an
2 agreement (the "AGREEMENT") with ECM Records ("ECM") in
3 connection with the recording of a solo LP comprised of original
4 flute compositions. A true and correct copy of this AGREEMENT
5 is attached hereto as Exhibit "D," and incorporated herein by
6 this reference. Pursuant to this AGREEMENT, ECM retained the
7 exclusive rights to those sound recordings recorded by Plaintiff
8 on August 19-20, 1981, and Plaintiff retained all publishing
9 rights in and to the compositions appearing therein.
10

11 27. On or about August 19-20, 1981, Plaintiff re-recorded
12 the COMPOSITION for ECM pursuant to the above AGREEMENT. The
13 ECM sound recording of this COMPOSITION (the "MASTER") was
14 subsequently released on Plaintiff's critically acclaimed solo
15 LP entitled *Axum*, issued by ECM in or about March 1982
16 (Catalogue No. ECM 1214). A true and correct copy digital
17 audio copy of the *Axum* MASTER embodying Plaintiff's COMPOSITION
18 is attached hereto on the accompanying CD-R as Exhibit "E,"
19 Track 1, and incorporated herein by this reference. A true and
20 correct copy of the record jacket artwork accompanying the *Axum*
21 MASTER is attached hereto as Exhibit "F," and incorporated
22 herein by this reference. With respect to authorship of the
23 compositions on *Axum*, the jacket artwork clearly provides "All
24 compositions by James Newton." In addition, the back cover of
25 said jacket artwork states with respect to the compositions:

1 "Scores available: Janew Music Publications P.O. Box 43A47, Los
2 Angeles, CA 90043-0108."

3 28. Plaintiff's unique compositional and performance
4 technique, referenced in the *Mobius Music: The European & Afro-*
5 *American Flute Traditions* and the *Penguin Guide to Jazz on CD*,
6 is sometimes referred to by Plaintiff as "multiphonics." This
7 unique compositional device involves the above-described
8 vocalization techniques, along with the use of certain fingers
9 to play two or three notes simultaneously. The COMPOSITION
10 embodied on the *Axum* LP make substantial use of this
11 "multiphonic" technique, in that the first 75 seconds of the 4-
12 1/2 minute COMPOSITION features Plaintiff playing seven
13 identical sustained phrases on flute, with each identical phrase
14 consisting of multiple simultaneous notes and multiple
15 contrapuntal vocal notes. These seven identical sustained
16 phrases, comprising simultaneous notes and contrapuntal
17 vocalizations, are again repeated throughout the remaining 70
18 seconds of the COMPOSITION.
19

20 **CLAIM ONE**
21 **COPYRIGHT INFRINGEMENT**

22 29. Plaintiff repeats and realleges each of the
23 allegations set forth in Paragraphs 1 through 28 inclusive, and
24 by this reference incorporates the same as though fully set
25 forth herein.

1 30. On information and belief, Plaintiff alleges that in
2 or about 1991 or early 1992, Defendants DIAMOND, HOROVITZ,
3 YAUCH, BEASTIE BOYS and CALDATO authored a derivative musical
4 composition ("INFRINGING COMPOSITION") and derivative sound
5 recording ("INFRINGING SOUND RECORDING"), each entitled *Pass the*
6 *Mic* (collectively "THEINFRINGING MASTER) by digitally sampling a
7 six-second passage of Plaintiff's COMPOSITION and the *Axum*
8 MASTER, by using Plaintiff's six-second passage as the
9 unaccompanied introduction to Defendants' infringing work, and
10 by looping this passage at least forty-two (42) additional times
11 throughout Defendants' INFRINGING MASTER for a total of
12 approximately four minutes. Plaintiff alleges the four minutes
13 of Plaintiff's COMPOSITION used by Defendants constitutes the
14 heart of the copyrighted COMPOSITION. A true and correct
15 digital audio copy of the INFRINGING MASTER is attached hereto
16 on the accompanying CD-R as Exhibit "E," Track 2, and
17 incorporated herein by this reference

19 31. On information and belief, Plaintiff alleges that in
20 or about 1991 or early 1992, the BEASTIE BOYS and their producer
21 CALDATO authored a derivative "remixed" composition and
22 derivative "remixed" sound recording entitled *Pass the Mic (Pt.*
23 *2, Skills to Pay the Bills)* ("collectively referred to herein as
24 "INFRINGING REMIX"), constituting a substantially different
25 vocal and instrumental performance of the INFRINGING MASTER, by

1 again sampling six-seconds of Plaintiff's COMPOSITION and the
2 Axum MASTER, and looping Plaintiff's six-second passage at least
3 fourteen (14) times throughout said derivative INFRINGING REMIX.
4 Plaintiff contends this six-second solo flute passage with
5 accompanying multiphonic vocalizations, repeated throughout the
6 INFRINGING REMIX, also constitutes the "heart" of his
7 copyrighted COMPOSITION. A true and correct digital audio copy
8 of the INFRINGING REMIX is attached hereto on the accompanying
9 CD-R as Exhibit "E," Track 3, and incorporated herein by this
10 reference
11

12 32. On information and belief, Plaintiff alleges that in
13 or about 1991 or early 1992, the BEASTIE BOYS and their producer
14 CALDATO authored a separate derivative instrumental composition
15 and derivative instrumental sound recording entitled *Dub the Mic*
16 ("collectively referred to herein as "INFRINGING INSTRUMENTAL
17 REMIX"), which derivative infringing work constitutes a
18 substantially different instrumental performance of the
19 INFRINGING MASTER, by again sampling six-seconds of Plaintiff's
20 COMPOSITION and Axum MASTER, and looping this six-second passage
21 at least six (6) times throughout said derivative INFRINGING
22 INSTRUMENTAL REMIX. Plaintiff contends this six-second solo
23 flute passage with accompanying multiphonic vocalizations,
24 incorporated without permission into the INFRINGING INSTRUMENTAL
25 REMIX, constitutes the "heart" of his copyrighted COMPOSITION.

1 A true and correct digital audio copy of the INFRINGING
2 INSTRUMENTAL REMIX is attached hereto on the accompanying CD-R
3 as Exhibit "E," Track 4, and incorporated herein by this
4 reference

5 33. On or about February 26, 1992, the BEASTIE BOYS
6 entered into a "license and release" (the "SAMPLE LICENSE") with
7 ECM concerning the use of the MASTER, and the MASTER only, in
8 derivative BEASTIE BOYS works, including but not limited to, the
9 INFRINGING MASTER, the INFRINGING REMIX and the INFRINGING
10 INSTRUMENTAL REMIX. Under Paragraph 1 of the "SAMPLE LICENSE,"
11 the BEASTIE BOYS are granted the right "to copy portions . . .of
12 the sound recording entitled "Choir" performed by James Newton"
13 (the "SAMPLE"), to use and incorporate digitally altered version
14 of the SAMPLE in some or all versions of BEASTIE BOYS recordings
15 collectively entitled *Pass the Mic*, and "to reproduce,
16 distribute and otherwise exploit the Sample . . . in all media,
17 whether nor known or hereinafter developed, including without
18 limitation, all record formats throughout the world in
19 perpetuity." A true and correct copy of the SAMPLE LICENSE is
20 attached hereto as Exhibit "G," and incorporated herein by this
21 reference.
22

23 34. Notwithstanding the foregoing, at no time was
24 Plaintiff ever contacted by ECM or any other Defendant
25 concerning the SAMPLE, the SAMPLE LICENSE or the licensing of

1 the MASTER for inclusion in derivative compositions and
2 derivative recordings by Defendants. Attached hereto as Exhibit
3 "H," and incorporated herein by this reference is a letter dated
4 April 4, 2000 from Manfred Eicher, founder of ECM, to Plaintiff
5 which letter confirms that Plaintiff never received notice of,
6 or income arising from, the SAMPLE LICENSE, and that Plaintiff
7 was never told of the existence of the SAMPLE LICENSE because,
8 allegedly, "[w]hen we spoke on the phone in 1993 I had no reason
9 to mention this Beastie Boys situation, one of very many
10 agreements that are too minor (sic) to be brought to my
11 attention."
12

13 35. Plaintiff contends, on information and belief, that it
14 is common practice and custom in the music industry for
15 composers, musicians, record companies and music publishers to
16 obtain the right to use both the sound recording from the record
17 company, and the right to use the underlying musical composition
18 from composition's publisher and/or author, whenever such a work
19 is "sampled" for use in a derivative musical recording. See,
20 e.g., M. Ashburne, Sampling in the Record Industry, 2 (1994).
21 Plaintiff further contends, on information and belief, that such
22 practice and custom exists within the music industry whenever
23 qualitatively substantial elements of a musical composition are
24 looped throughout an entire song. See, e.g., A. Kohn & B. Kohn,
25 Kohn on Music Licensing, 2nd Ed., 1292 (1996) ("Even a very short

1 phrase from a musical composition could be infringed by the use
2 of a sample of that phrase if the sampled phrase is repeated
3 through substantial portions of the sampler's new work.").

4 36. Notwithstanding the above-described practice and
5 custom in the music industry, Plaintiff was never contacted by
6 ECM, or any other Defendant, concerning the use of his
7 COMPOSITION in the INFRINGING MASTER, INFRINGING REMIX or
8 INFRINGING INSTRUMENTAL REMIX. Defendants' failure to secure
9 Plaintiff's permission with respect to the derivative use of his
10 copyrighted COMPOSITION in the INFRINGING MASTER, INFRINGING
11 REMIX and INFRINGING INSTRUMENTAL REMIX violated Plaintiff's
12 rights under the Copyright Act, in that Plaintiff retained the
13 exclusive right under the Copyright Act to authorize the
14 adaptation, reproduction, performance and distribution of his
15 COMPOSITION, including the exclusive right to authorize the
16 creation of derivative works based on his COMPOSITION.

17
18 37. On information and belief, Plaintiff alleges that
19 Defendants DIAMOND, HOROVITZ, YAUCH, BEASTIE BOYS and CALDATO
20 entered into exclusive music publishing agreements with
21 Defendants BROOKLYN DUST and UNIVERSAL concerning the underlying
22 compositions embodied in the INFRINGING MASTER, the INFRINGING
23 REMIX and the INFRINGING INSTRUMENTAL REMIX. Pursuant to these
24 agreements, said Defendants granted BROOKLYN DUST and UNIVERSAL
25 certain copyrights and/or exclusive musical publishing rights

1 and/or exclusive administration rights to compositions embodied
2 in the INFRINGING MASTER, the INFRINGING REMIX and INFRINGING
3 INSTRUMENTAL REMIX. In consideration for such rights, Plaintiff
4 alleges that BROOKLYN DUST and UNIVERSAL agreed to perform a
5 variety of services, including but not limited to, 1) securing
6 any and all necessary rights from third parties in connection
7 with the use of pre-existing works incorporated into said
8 derivative and infringing compositions, 2) licensing,
9 administering and otherwise authorizing the mechanical,
10 performance, synchronization and other publishing rights in said
11 derivative infringing compositions, 3) collecting mechanical,
12 performance, synchronization and other income derived from the
13 exploitation of said publishing rights in such derivative
14 infringing compositions, and 4) paying said Defendants a
15 percentage of income derived from the exploitation of publishing
16 rights in and to said derivative compositions. Plaintiff
17 alleges that BROOKLYN DUST's and UNIVERSAL's respective exercise
18 of publishing and/or administration rights in and to the
19 compositions embodied in the INFRINGING MASTER, INFRINGING REMIX
20 and INFRINGING INSTRUMENTAL REMIX violated Plaintiff's exclusive
21 rights in and to his COMPOSITION under the Copyright Act, and
22 that said Defendants profited thereby.
23
24

25 38. On or about March 30, 1992, pursuant to their
exclusive recording and or production agreement between the

1 parties, Defendants infringed the statutory copyright in
2 Plaintiff's COMPOSITION, including by duplicating a substantial
3 part of Plaintiff's COMPOSITION in phonorecords serving to
4 reproduce mechanically the recording of the INFRINGING MASTER,
5 INFRINGING REMIX and INFRINGING INSTRUMENTAL REMIX on a "CD
6 Single" entitled *Pass the Mic* (Catalogue Number C215827) (the
7 INFRINGING SINGLE), and by making and distributing, or
8 authorizing the making and distribution, of such phonorecords,
9 and participating in and furthering such infringing acts or
10 sharing in the proceeds therefrom. A true and correct photocopy
11 of the INFRINGING SINGLE jacket artwork demonstrating the
12 inclusion of the INFRINGING MASTER as Track 1, the INFRINGING
13 REMIX as Track 4 and the INFRINGING INSTRUMENTAL REMIX as Track
14 2, is attached hereto as Exhibit "I," and incorporated herein by
15 this reference.

17 39. The unauthorized derivative compositions and sound
18 recordings contained on the INFRINGING SINGLE, including the
19 INFRINGING MASTER, INFRINGING REMIX and INFRINGING INSTRUMENTAL
20 REMIX, were reproduced and published in additional formats.
21 Plaintiff alleges each additional adaptation, publication,
22 reproduction, distribution and/or performance of said
23 unauthorized derivative works in other formats (including but
24 not limited to, vinyl, audio cassette and digital audio MP3
25 formats) constitutes a separate violation of Plaintiff's rights

1 under the Copyright Act.

2 40. On or about April 13, 1992, Defendants, and each of
3 them, infringed the statutory copyright in Plaintiff's
4 COMPOSITION by duplicating a substantial part of Plaintiff's
5 COMPOSITION in phonorecords serving to reproduce mechanically
6 the recording of the INFRINGING MASTER on the best-selling
7 BEASTIE BOYS full-length CD entitled *Check Your Head* (Catalogue
8 No. CDP7989382) (hereafter, the "INFRINGING CD") and by making
9 and distributing, or authorizing the making and distribution, of
10 such phonorecords, and participating in and furthering such
11 infringing acts or sharing in the proceeds therefrom. True and
12 correct photocopies of jacket artwork from the INFRINGING CD,
13 demonstrating inclusion of the INFRINGING MASTER, are attached
14 hereto as Exhibit "J," and incorporated herein by this
15 reference. Although permission was never sought from Plaintiff
16 or Plaintiff's sole proprietorship publishing company, the
17 inside panel of said jacket artwork acknowledges Plaintiff, his
18 COMPOSITION, and his performance rights agency (ASCAP) as
19 follows: "We'd like to 'knowledge' the following artists and
20 sources of inspiration for their contributions. Thanks. . . .
21 James Newton for "Choir," (ASCAP) Courtesy of ECM Records."
22 (See Exhibit J at page 3).

24 41. Plaintiff alleges that the INFRINGING CD was also
25 reproduced and published in a variety of additional audio

1 formats. Plaintiff alleges that each adaptation, publication,
2 reproduction, distribution and/or performance of the INFRINGING
3 CD in other formats (including but not limited to, limited
4 edition vinyl, audiocassette, minidisc and digital audio "MP3"
5 formats) constitutes a separate violation of Plaintiff's rights
6 under the Copyright Act.

7
8 42. On information and belief, Plaintiff alleges that the
9 INFRINGING MASTER entitled *Pass the Mic* was at all times
10 considered the "hit single" on said INFRINGING CD, and that the
11 presence of the INFRINGING MASTER on the INFRINGING CD was a
12 primary reason why consumers purchased, and continue to
13 purchase, copies of said INFRINGING CD. On information and
14 belief, Plaintiff further alleges that the INFRINGING CD is one
15 of Defendants' most successful full-length recordings, that said
16 INFRINGING CD has sold over two-million copies in the United
17 States alone, and that said INFRINGING CD was awarded "Double
18 Platinum" status by the Recording Industry Association of
19 America ("RIAA").

20 43. Plaintiff alleges that in or about 1992, Defendants,
21 and each of them, authorized the creation, reproduction,
22 distribution and performance of an audio-visual "music video"
23 based on the INFRINGING MASTER, which music video consists of
24 filmed visual performances by Defendants DIAMOND, HOROVITZ,
25 YAUCH and BEASTIE BOYS in synchronization with the composition

1 embodied on the INFRINGING MASTER ("the INFRINGING VIDEO").
2 Plaintiff alleges that the incorporation of his COMPOSITION into
3 the INFRINGING VIDEO, and the reproduction, distribution and/or
4 performance of this INFRINGING VIDEO over cable and broadcast
5 television constitutes a separate violation of Plaintiff's
6 exclusive rights under the Copyright Act.

7
8 44. On information and belief, Plaintiff contends that in
9 or about 1992, Defendants, and each of them, authorized the
10 release of the INFRINGING VIDEO on a music video collection
11 entitled *Beastie Boys - The Skills to Pay the Bills*, which music
12 video collection contains the INFRINGING VIDEO in conjunction
13 with other audio-visual performances of Defendant BEASTIE BOYS
14 ("the INFRINGING VIDEOCASSETTE"). Plaintiff alleges that the
15 adaptation and incorporation of his COMPOSITION into the
16 INFRINGING VIDEOCASSETTE, and the publication, reproduction,
17 distribution and/or performance of such INFRINGING VIDEOCASSETTE
18 constitutes a separate violation of Plaintiff's exclusive rights
19 under the Copyright Act.

20
21 45. On information and belief, Plaintiff further alleges
22 that Defendants, and each of them, authorized the "master use"
23 of the INFRINGING MASTER and "synchronization use" of the
24 composition embodied therein in timed relation to one or more
25 motion pictures (the "INFRINGING MOTION PICTURE"). Plaintiff
alleges that the adaptation and incorporation of his COMPOSITION

1 as part of the INFRINGING MASTER used in timed relation with the
2 INFRINGING MOTION PICTURE, and the publication, reproduction,
3 distribution and/or performance of same, constitutes a separate
4 violation of Plaintiff's exclusive rights under the Copyright
5 Act.

6 46. Plaintiff further alleges that in or around the mid-
7 1990s, Defendants, and each of them, authorized the "master use"
8 of the INFRINGING MASTER and "synchronization use" of the
9 composition embodied therein in one or more episodes of the
10 animated MTV series "Beavis and Butthead" (the "INFRINGING
11 ANIMATION") and in commercially distributed videotapes of same
12 (the "INFRINGING ANIMATION VIDEO"). Plaintiff alleges that the
13 use of the INFRINGING MASTER in timed relation with the
14 INFRINGING ANIMATION and INFRINGING ANIMATION VIDEO, and the
15 publication, reproduction, distribution and/or performance of
16 same, constitutes separate violations of Plaintiff's exclusive
17 rights under the Copyright Act.

18 47. Plaintiff further alleges that Defendants, and each of
19 them, authorized the sale of the INFRINGING MASTER, INFRINGING
20 REMIX and INFRINGING INSTRUMENTAL REMIX over the Internet in the
21 form of digital audio files, and that Defendants have sold and
22 continue to sell the INFRINGING MASTER, INFRINGING REMIX and
23 INFRINGING INSTRUMENTAL REMIX in the form of digital audio
24 files, and that such adaptation, publication, reproduction,
25

1 distribution and/or performance of said INFRINGING MASTER,
2 INFRINGING REMIX and INFRINGING INSTRUMENTAL REMIX as digital
3 audio files over the Internet constitutes a separate violation
4 of Plaintiff's exclusive rights under the Copyright Act.

5 48. Plaintiff further alleges that on or about November
6 23, 1999, Defendants infringed the statutory copyright in
7 Plaintiff's COMPOSITION, including by duplicating Plaintiff's
8 COMPOSITION in phonorecords containing remastered recordings of
9 the INFRINGING MASTER and INFRINGING INSTRUMENTAL REMIX on a
10 double CD anthology entitled *Beastie Boys Anthology: The Sounds*
11 *of Science* (Catalogue No. CAP22940) (the "INFRINGING ANTHOLOGY")
12 and by making and distributing, or authorizing the making and
13 distribution, of such phonorecords, and participating in and
14 furthering such infringing acts or sharing in the proceeds
15 therefrom. True and correct photocopies of the INFRINGING
16 ANTHOLOGY jacket artwork and excerpts from the accompanying
17 booklet, identifying the INFRINGING MASTER as Disc No. 1, Track
18 No. 13, and the INFRINGING INSTRUMENTAL REMIX as Disc No. 2,
19 Track No. 6, are attached hereto as Exhibit "K," and
20 incorporated herein by this reference.
21

22 49. Plaintiff further alleges that on or about November
23 21, 2000 following Plaintiff's commencement of litigation in
24 this matter, Defendants willfully authorized and the
25 manufacture, reproduction and distribution of the INFRINGING

1 ANTHOLOGY in a limited edition vinyl format ("INFRINGING VINYL
2 ANTHOLOGY"). This INFRINGING VINYL ANTHOLOGY is sold in retain
3 stores for a sum in excess of \$120. Plaintiff alleges that the
4 adaptation, publication, reproduction, distribution and/or
5 performance of the INFRINGING VINYL ANTHOLOGY constitutes a
6 separate violation of Plaintiff's exclusive rights under the
7 Copyright Act.

8
9 50. On information and belief, Plaintiff alleges that from
10 approximately 1992 through the present, Plaintiff's recording of
11 his COMPOSITION was, and continues to, be incorporated by
12 Defendants DIAMOND, HOROVITZ, YAUCH and BEASTIE BOYS into
13 derivative live, choreographed, concert performances of *Pass the*
14 *Mic* (the "INFRINGING LIVE PERFORMANCE"). Plaintiff alleges that
15 from 1992 through the present said Defendants have earned
16 millions of dollars from live concert performances incorporating
17 said INFRINGING LIVE PERFORMANCE, and that each unauthorized
18 INFRINGING LIVE PERFORMANCE constitutes a separate violation of
19 Plaintiff's exclusive rights under the Copyright Act.

20 51. Plaintiff further alleges that a digital audio
21 recording of at least one INFRINGING LIVE PERFORMANCE (the
22 "INFRINGING LIVE RECORDING") has been published, reproduced,
23 distributed and performed over the Beastie Boys Internet website
24 (<http://www.beastieboys.com>) with the authorization and consent
25 of Defendants, and each of them. A true and correct printout of

1 the BEASTIE BOYS' webpage dated April 17, 2000 containing the
2 INFRINGING LIVE RECORDING is attached hereto as Exhibit "L," and
3 incorporated herein by this reference. A true and correct copy
4 of the INFRINGING LIVE RECORDING is attached hereto on the
5 accompanying CD-R as Exhibit "E," Track 5, and incorporated
6 herein by this reference. Plaintiff contends that the
7 adaptation, publication, reproduction, distribution and/or
8 performance of the INFRINGING LIVE RECORDING constitutes a
9 separate violation of Plaintiff's exclusive rights under the
10 Copyright Act.
11

12 52. Plaintiff further alleges, on information and belief,
13 that other audio and/or audio-visual recordings of the
14 INFRINGING MASTER, and/or INFRINGING REMIX, and/or INFRINGING
15 INSTRUMENTAL REMIX have been published, reproduced, distributed
16 and/or performed over the Internet and/or over the BEASTIE BOYS
17 website (<http://www.beastieboys.com>) with the authorization and
18 consent of Defendants, and each of them. True and correct black
19 and white printouts of a Listen.com webpage dated April 17,
20 2000, a RollingStone.com webpage dated April 17, 2000, and a
21 Launch.com webpage dated April 17, 2000 showing the unauthorized
22 distribution of the INFRINGING VIDEO over the Internet are
23 attached hereto as Exhibit "L," and incorporated herein by this
24 reference. Plaintiff alleges that the adaptation, publication,
25 reproduction, distribution and performance of the INFRINGING

1 MASTER and INFRINGING VIDEO over the Internet as set forth above
2 constitutes a separate violation of Plaintiff's rights under the
3 Copyright Act.

4 53. On or about November 21, 2000, following the
5 commencement of litigation in this matter, Defendants DIAMOND,
6 YAUCH, HOROVITZ, CAPITOL, UNIVERSAL POLYGRAM, BROOKLYN DUST,
7 GRAND ROYAL, CALDATO, JANUS, CRITERION and VOYAGER willfully
8 authorized the manufacture, reproduction and distribution of an
9 interactive DVD entitled "Beastie Boys: The Criterion
10 Collection" (INFRINGING DVD), containing remixed versions of the
11 INFRINGING MASTER, the INFRINGING REMIX in tandem with the
12 INFRINGING VIDEO. Said INFRINGING DVD also contains a
13 previously unreleased remix of the INFRINGING MASTER comprised
14 solely of Plaintiff's recording of his COMPOSITION, coupled with
15 a drum rhythm and sporadic turntable noise (the INFRINGING DVD
16 REMIX). A true and correct copy of the INFRINGING DVD REMIX is
17 attached hereto on the accompanying CD-R as Exhibit "E," Track
18 6. Plaintiff alleges the remixed INFRINGING MASTER, the remixed
19 INFRINGING REMIX and INFRINGING DVD REMIX each constitutes a
20 separate violation of Plaintiff's exclusive rights under the
21 Copyright Act.
22

23 54. Plaintiff further alleges that from approximately 1992
24 through the present, Defendants BMG, SONY and COLUMBIA caused to
25 be manufactured, distributed and sold through their record

1 "clubs" copies of the INFRINGING CD, the INFRINGING ANTHOLOGY
2 and/or INFRINGING DVD each in violation of Plaintiff's statutory
3 copyright in and to his COMPOSITION. Plaintiff alleges that the
4 manufacture, reproduction and distribution of the INFRINGING CD,
5 INFRINGING ANTHOLOGY and INFRINGING DVD by Defendants BMG, SONY
6 and COLUMBIA as set forth above constitutes a separate violation
7 of Plaintiff's rights under the Copyright Act.

8
9 55. Notwithstanding the above unauthorized uses of
10 Plaintiff's COMPOSITION by Defendants, Plaintiff did not
11 discover such use until approximately January 2000, when
12 Plaintiff was asked by a student taking his U.C. Irvine course
13 entitled "Charles Mingus Chamber Jazz Ensemble," whether
14 Plaintiff had ever recorded with the BEASTIE BOYS. After
15 responding he had never recorded with the BEASTIE BOYS,
16 Plaintiff was told by the student that his name was included in
17 the liner notes of INFRINGING CD. Approximately one week later,
18 said student provided Plaintiff with a copy of the INFRINGING
19 CD, at which time Plaintiff discovered Defendants' use of his
20 name and the COMPOSITION on liner notes to the INFRINGING CD.
21 With reference to Plaintiff, the INFRINGING CD liner notes
22 state: "We'd like to 'knowledge' the following artists and
23 sources of inspiration for their contributions. Thanks. . . .
24 James Newton for 'Choir' (ASCAP) Courtesy of ECM Records." (See
25 Exhibit I, page 3).

1 56. Upon discovering Defendants' unauthorized use of his
2 COMPOSITION, Plaintiff became visibly distressed in front of his
3 U.C. Irvine class and immediately thereafter Plaintiff explained
4 to his class that he should have been paid for the derivative
5 use of his COMPOSITION pursuant to music industry custom and
6 practice. Immediately thereafter, Plaintiff sought and obtained
7 counsel, and prior to the commencement of this litigation
8 contacted Defendants concerning their unauthorized use of his
9 COMPOSITION.
10

11 57. Plaintiff alleges that each publication, reproduction,
12 distribution and/or performance of the INFRINGING MASTER as set
13 forth above, constitutes a separate infringement of the
14 COMPOSITION under the Copyright Act, and that Plaintiff is
15 entitled to recover statutory damages in connection with each
16 such infringing act pursuant to 17 U.S.C. § 504, based on
17 Plaintiff's registration of the COMPOSITION with the Register of
18 Copyrights prior to the commencement of Defendants' infringing
19 acts as set forth above.
20

21 58. Plaintiff further alleges that it is common practice
22 and custom in the music industry to obtain both a license to
23 utilize a pre-existing sound recording and a license to use a
24 pre-existing musical composition embodied in such sound
25 recording whenever excerpts of a sound recording are "sampled,"
Defendants, and each of them, were aware that a sample license

1 should have been obtained from Plaintiff in connection with the
2 derivative use of the COMPOSITION. The deliberate and
3 intentional refusal of Defendants, and each of them, to contact
4 Plaintiff to obtain a sample license with respect to the
5 derivative use of Plaintiff's COMPOSITION constitutes willful
6 infringement as defined under the Copyright Act. Accordingly,
7 Plaintiff is entitled to recover the maximum amount of statutory
8 damages available under the Copyright Act based upon Defendants'
9 deliberate and willful infringement of Plaintiff's exclusive
10 rights.
11

12 59. Plaintiff has complied with all statutory requirements
13 and applied to secure federal statutory copyright for said
14 COMPOSITION under the copyright laws of the United States. Each
15 instance cited above of the unauthorized and unconsented use of
16 Plaintiffs' work constitutes a separate violation of the
17 copyright Plaintiff has retained in said COMPOSITION in
18 accordance with provisions 17 U.S.C. §500 et seq. As a direct
19 and proximate result of these violations, Plaintiffs has
20 suffered actual damages and Defendants have profited from the
21 unauthorized use of Plaintiff's work in violation of his
22 copyright. The exact extent of actual damage suffered by
23 Plaintiff and profited by Defendants is as yet not ascertained,
24 as the total nature and extent of all unauthorized uses by
25 Defendants is presently unknown. However, Plaintiff alleges

1 that Defendants, and their contractors and agents, have
2 commercially utilized, sold and licensed to others derivative
3 recordings and compositions embodying Plaintiff's COMPOSITION as
4 enumerated above, both in the United States and throughout the
5 World. Plaintiff prays leave to amend this Complaint to set
6 forth additional unauthorized uses of the COMPOSITION by
7 Defendants, and the exact nature of actual damages suffered and
8 the gross revenues received by Defendants in connection with
9 such unauthorized uses, in an amount according to proof at
10 trial.
11

12 **CLAIM TWO**
13 **INFRINGEMENT OF PLAINTIFF'S INTERNATIONAL COPYRIGHT**
14 **(ALL DEFENDANTS)**

15 60. Plaintiff repeats and realleges each of the
16 allegations set forth in Paragraphs 1 through 59 inclusive, and
17 by this reference incorporates the same as though fully set
18 forth herein.

19 61. The United States has entered into international
20 copyright relations with various countries of the world,
21 including through the Universal Copyright Convention.

22 62. Upon information and belief, from time to time
23 subsequent to February 1992, BEASTIE BOYS recordings and
24 compositions entitled *Pass the Mic*, *Pass the Mic (Pt. 2, Skills*
25 *to Pay the Bills)* and *Dub the Mic* were reproduced, distributed
and publicly performed in various territories of the world

1 outside the United States, including Canada, the United Kingdom
2 and Australia, in direct violation of Plaintiff's international
3 copyright.

4 63. Upon information and belief, from time to time
5 subsequent to February 1992, phonorecords serving to reproduce
6 mechanically the BEASTIE BOYS recordings of *Pass the Mic*, *Pass*
7 *the Mic (Pt. 2, Skills to Pay the Bills)* and *Dub the Mic* were
8 sold in various territories of the world outside the United
9 States, including Canada, the United Kingdom and Australia, in
10 direct violation of Plaintiff's international copyrights.

11 64. By reason of the foregoing, Defendants have infringed
12 Plaintiff's international copyright to an extent to be more
13 fully specified following discovery of Defendants' business
14 records.
15

16 **WHEREFORE**, Plaintiff prays judgment against Defendants
17 DIAMOND, HOROVITZ, YAUCH, BEASTIE BOYS, CALDATO, CAPITOL, GRAND
18 ROYAL, UNIVERSAL, BOOKLYN DUST, JANUS, CRITERON, BMG, SONY and
19 COLUMBIA HOUSE as follows:

20 1. That this Court grant a permanent injunction forever
21 enjoining Defendants, Defendants' servants, and agents, and
22 anyone acting on behalf of Defendant, from directly or
23 indirectly using Plaintiff's COMPOSITION or any other work based
24 upon Plaintiff's COMPOSITION in any manner which infringes upon
25 the copyright in said COMPOSITION.

1 2. Direct Defendants to file with the Court and serve on
2 Plaintiff a report setting forth the manner and form in which
3 compliance with said permanent injunction against infringement
4 has been made.

5 3. At the election of Plaintiff, said election to be made
6 at any time before entry of final judgment, as authorized by 17
7 U.S.C. §504, that Defendant be required to pay damages to
8 Plaintiff of either:

9 (a) Such actual damage as Plaintiff has sustained as
10 a consequence of Defendant's infringement of Plaintiff's
11 copyright, together with any profits of Defendant that are
12 attributable to said infringement and are not taken into account
13 in computing said actual damages pursuant to 17 U.S.C. §504(b);
14 or
15

16 (b) Statutory damages in the sum of one hundred and
17 fifty thousand dollars (\$150,000.00) for each willful
18 infringement by Defendants of Plaintiff's copyright and
19 Plaintiff's COMPOSITION, as authorized by 17 U.S.C. §504(c)(2).

20 4. That Defendant be ordered to render an accounting to
21 Plaintiff of the gross receipts obtained with respect to each
22 use of the INFRINGING MASTER, INFRINGING REMIX, INFRINGING
23 INSTRUMENTAL REMIX and other derivatives based thereon, in which
24 Plaintiff's copyrighted COMPOSITION was commercially utilized,
25 through the date that Defendants ceased their infringing use.

