

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
THE WILLIAM J. BASIE TESTAMENTARY TRUST :
as successor in interest to WILLIAM "COUNT"
BASIE; THE ESTATE OF SARAH VAUGHAN; :
KEEP SWINGIN' INC. as successor in interest to :
WOODY HERMAN; PATTI PAGE; KITTY :
KALLEN; JOHN MILLS O/B/O THE MILLS :
BROTHERS; THE CLAIRE AND LESTER BROWN :
TESTAMENTARY TRUST as successor in interest to :
LES BROWN; THE ESTATE OF JERRY MURAD; :
THE ESTATE OF SISTER ROSETTA THARPE; :
MARCIA LAINE as successor in interest to FRANKIE :
LAINE; TONY MARTIN; THE ESTATE OF BENNY :
GOODMAN; DICK HYMAN and RICHARD :
HAYMAN :

Plaintiffs,

v.

UMG RECORDINGS, INC. and UNIVERSAL
MUSIC GROUP, INC.

Defendant. :
-----X

Index No.

: Date Purchased

SUMMONS

: With Notice

: Plaintiffs reside in County of New
York

08600461

FILED
FEB 14 2008
COUNTY CLERK'S OFFICE
NEW YORK

To the above named Defendants:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with the summons, to serve a notice of appearance, on the Plaintiff's Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
February 14, 2008

Troutman Sanders LLP
Attorneys for Plaintiffs

By: 

Oren Warshavsky, Esq.
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
(212) 704-6000

Defendant's Addresses:

UMG Recordings, Inc.
1755 Broadway
New York, NY

And

Universal Music Group, Inc.
1755 Broadway
New York, NY

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

----- X
THE WILLIAM J. BASIE TESTAMENTARY
TRUST as successor in interest to WILLIAM :
"COUNT" BASIE; THE ESTATE OF SARAH :
VAUGHAN; KEEP SWINGIN' INC. as successor :
in interest to WOODY HERMAN; PATTI PAGE; :
KITTY KALLEN; JOHN MILLS O/B/O THE :
MILLS BROTHERS; THE CLAIRE AND :
LESTER BROWN TESTAMENTARY TRUST as :
successor in interest to LES BROWN; THE :
ESTATE OF JERRY MURAD; THE ESTATE OF :
SISTER ROSETTA THARPE; MARCIA LAINE :
as successor in interest to FRANKIE LAINE; :
TONY MARTIN; THE ESTATE OF BENNY :
GOODMAN; DICK HYMAN and RICHARD :
HAYMAN :

Plaintiffs,

vs.

UMG RECORDINGS, INC. and UNIVERSAL
MUSIC GROUP, INC.

Defendants.
----- X

Index No. _____

08600461

FILED

FEB 14 2008

COUNTY CLERK'S OFFICE
NEW YORK

CIVIL COMPLAINT

Plaintiffs through their undersigned attorneys, Troutman Sanders LLP, hereby complain
of Defendants as follows:

Nature Of The Action

By this action, a group of the world's most well known recording artists and cultural
icons of the Twentieth Century, and the backbone to popular music from the 1930's until today -
- including such luminaries as Count Basie, Sarah Vaughan, Woody Herman, Benny Goodman,

Patti Page, Kitty Kallen, The Mills Brothers, Jerry Murad, Sister Rosetta Tharpe, Frankie Laine, Tony Martin and Les Brown -- seek damages and equitable relief arising out of Defendants' continuous systematic and callous disregard of Plaintiffs' rights. Despite a relationship based on trust and manifold contractual obligations, and despite the fact that Defendants realized an overwhelming windfall to both its finances and reputation as a result of this relationship -- Defendants have utterly failed to live up to their agreements and other legal obligations to plaintiffs. Even worse, Defendants have engaged in pervasive and systemic acts of issuing false statements with the hope of suppressing Plaintiffs' earnings solely to benefit Defendants. Because Defendants have failed to remedy their wrongdoing despite Plaintiffs' repeated requests, Plaintiffs have been forced to bring this lawsuit to protect their rights.

Parties

1. Plaintiff The William J. Basic Testamentary Trust (the "**Basic Trust**") is a New York Trust which is the successor in interest to the musician William "Count" Basic ("**Count Basic**" or "**Basic**").
2. Plaintiff The Estate of Sarah Vaughan (the "**Vaughan Estate**") is a California estate which is the successor in interest to the musician Sarah Lois Vaughan ("**Sarah Vaughan**" or "**Vaughan**").
3. Plaintiff Keep Swingin' Inc. (the "**KSI**") is a Tennessee corporation which is the successor in interest to the musician Woodrow "Woody" Herman ("**Woody Herman**" or "**Herman**").
4. Plaintiff Patti Page ("**Patti Page**" or "**Page**") is a citizen of the State of California.

5. Plaintiff Kitty Kallen ("**Kitty Kallen**" or "**Kallen**") is a citizen of the State of New Jersey.

6. Plaintiff John Mills o/b/o the Mills Brothers ("**The Mills Brothers**") is a citizen of the State of California.

7. Plaintiff The Estate of Jerry Murad (the "**Murad Estate**") is an Illinois estate which is the successor in interest to the musician Jerry Muradian p/k/as Jerry Murad and the Harmonicats ("**Murad**").

8. Plaintiff The Estate of Sister Rosetta Tharpe (the "**Tharpe Estate**") is an Illinois estate which is the successor in interest to the musician Rosetta Tharpe p/k/a Sister Rosetta Tharpe ("**Sister Rosetta Tharpe**" or "**Tharpe**").

9. Plaintiff Marcia Laine ("**ML**") is the successor in interest to the musician Frankie Laine ("**Frankie Laine**" or "**Laine**").

10. Plaintiff Tony Martin ("**Tony Martin**" or "**Martin**") is a citizen of California.

11. Plaintiff The Claire and Lester Brown Testamentary Trust (the "**Brown Trust**") is a California Estate and the successor in interest to the musician Les Brown ("**Les Brown**" or "**Brown**").

12. Plaintiff The Estate of Benny Goodman (the "**Goodman Estate**") is an Estate established under the laws of Connecticut and the successor in interest to the musician Benny Goodman ("**Benny Goodman**" or "**Goodman**").

13. Plaintiff Dick Hyman ("**Dick Hyman**" or "**Hyman**") is a citizen of Florida.

14. Plaintiff Richard Hayman ("**Richard Hayman**" or "**Hayman**") is a citizen of Florida.

15. Upon information and belief, Defendant Universal Music Group, Inc. (hereinafter "**Universal Music**"), is a corporation organized under the laws of the State of Delaware and maintains an office at 1755 Broadway, New York, New York. Upon information and belief, **Universal** does substantial business within the state of New York, and attains significant benefits from the state of New York and its citizens.

16. Upon information and belief, Defendant UMG Recordings, Inc. (hereinafter "**UMG**"), is a corporation organized under the laws of the State of Delaware and maintains an office at 1755 Broadway, New York, New York. Upon information and belief, **UMG** is registered to do business in the State of New York, does substantial business within the state of New York, and attains significant benefits from the state of New York and its citizens.

17. Upon information and belief, for all purposes herein **Universal Music** and **UMG** (collectively "**Universal**") are effectively the same entity, and the acts, omissions, rights, obligations and responsibilities of **Universal Music** are the acts, omissions, rights and responsibilities of **UMG**, and vice versa.

Facts Common To All Causes Of Action – Part One:
The Personalities And Recordings At Issue

18. **Basie, Vaughan, Herman, Page, Kallen, The Mills Brothers, Murad, Tharpe, Laine, Brown, Martin, and Goodman** (collectively, the "Subject Artists") are among the most successful in the history of the music industry.

WILLIAM "COUNT" BASIE

19. **Count Basie** was among the most important bandleaders of the swing era and was considered the epitome of swing and became broadly influential on jazz. With the exception of a brief period in the early 1950s, **Basie** led a big band from 1935 until his death almost 50 years later. **Count Basie's** orchestra was characterized by a light, swinging rhythm section that **Basie** led from the piano, lively ensemble work, and generous soloing.

20. **Basie** began working as a professional musician in the 1920's and commenced leading a band, initially called the Barons of Rhythm, in 1935. **Basie's** band gained a residency at the Reno Club in Kansas City and began broadcasting on the radio.

21. In 1936, **Basie** accepted an engagement at the Grand Terrace in Chicago.

22. In January 1937, **Basie** and his band made their first recording, which included the recording "One O' Clock Jump," which became its first chart entry in September 1937. "One O' Clock Jump" became **Basie's** band's theme song and it was later inducted into the Grammy Hall of Fame.

23. Over the next several years, **Basie** became a household name, scoring such top ten hits as "Stop Beatin' Round the Mulberry Bush," "Jumpin' at the Woodside," "I Didn't Know About You," "Red Bank Blues," "Rusty Dusty Blues," "Jimmy's Blues," "Blue Skies," "Open the Door," "Richard," "Free Eats," "One O' Clock Boogie," and "I Ain't Mad at You (You Ain't Mad at Me)." Likewise, **Basie** appeared in such feature films as Hit Parade of 1943, Reveille with Beverly, Stage Door Canteen, Top Man, and Crazy House.

24. In the 1950's **Basie** continued to tour, and continued to find success with various recordings including "Every Day (I Have the Blues)," which reached the Top Five of the R&B charts and was later inducted into the Grammy Hall of Fame, "April in Paris" that made the pop Top 40 and the R&B Top Ten in early 1956 and also was enshrined in the Grammy Hall of Fame.

25. At the first Grammy Awards ceremony, **Count Basie** won the 1958 awards for Best Performance by a Dance Band and Best Jazz Performance, Group. **Basie's** Grammy success continued the following year as his "Breakfast Dance and Barbecue" was nominated for a Grammy Award in 1959, and in 1960 **Basie** won a Grammy Award for *Dance with Basie*, and received two more nominations for *The Count Basie Story*. **Basie** received Grammy nominations for *Basie at Birdland* in 1961 and *The Legend* in 1962.

26. **Basie's** album *Sinatra-Basie* reached the Top Five in early 1963 and was followed by the album *This Time by Basie! Hits of the 50's and 60's*, which reached the Top 20 and won a 1963 Grammy Award.

27. Throughout the 1960's, **Basie** continued to team with other well known artists, such as Frank Sinatra, Sammy Davis, Jr., Ella Fitzgerald, Jackie Wilson and **The Mills Brothers**.

28. **Basie's** fifth and sixth decades in the music industry saw a great deal of Grammy awards and nominations, starting with a Grammy Award nomination for the album *Standing Ovation* in 1969 and another in 1971 for the album *Afrique*. **Basie's** album *Basie Jam* earned a 1975 Grammy Award and in 1976, his album *Basie and Zoot* won one Grammy Award and was nominated for another. In 1977 **Basie's** album *Prime Time* won a Grammy Award, and his

album *The Gifted Ones* (with Dizzy Gillespie) was nominated for a 1979 Grammy Award. **Basie** again won a Grammy Award in 1980 for *On the Road* and in 1982 for *Warm Breeze*, earned a nomination in 1983 for *Farmer's Market Barbecue* in 1983, and winning a final time, for his ninth career Grammy Award, in 1984 for *88 Basie Street*.

29. **Basie** died on April 26, 1984.

SARAH VAUGHAN

30. Possessor of one of the most wondrous voices of the 20th century, **Sarah Vaughan** ranked in the very top echelon of female jazz singers. She often gave the impression that with her wide range, perfectly controlled vibrato, and wide expressive abilities, she could do anything she wanted with her voice. **Sarah Vaughan's** legacy as a performer and a recording artist will be very difficult to match in the future.

31. After **Vaughan** won an amateur contest at the Apollo Theater, she was hired for the Earl Hines big band as a singer and second vocalist. Other than a few months with John Kirby from 1945-46, **Sarah Vaughan** spent the remainder of her career as a solo star.

32. Many of **Vaughan's** early recordings from the 1940's became quite well-known among jazz aficionados and critics, including "If You Could See Me Now," "Don't Blame Me," "I've Got a Crush on You," "Everything I Have is Yours," and "Body and Soul," "Tenderly," "It's Magic" (from the Doris Day film Romance on the High Seas), and "Nature Boy."

33. **Vaughan** also achieved substantial critical acclaim. She won Esquire's New Star Award for 1947 as well as awards from Down Beat magazine continuously from 1947 through 1952, and from Metronome magazine from 1948 through 1953.

34. **Vaughan's** commercial success continued with such hits in the 1950's, "Make Yourself Comfortable," "How Important Can It Be" (with **Count Basie**), "Whatever Lola Wants," "The Banana Boat Song," "You Ought to Have A Wife" and "Misty," "Broken Hearted Melody," and "Passing Strangers."

35. The latter half of the 1950s often found **Vaughan** in the company of a veritable who's who of jazz as she followed a schedule of almost non-stop touring. **Vaughan** was featured at the first Newport Jazz Festival in the Summer of 1954 and would star in subsequent editions of that festival at Newport and in New York City for the remainder of her life. In the Fall of 1954, she performed at Carnegie Hall with the **Count Basie** Orchestra

36. **Vaughan** continued to perform and record throughout the 1960's and 1970's, scoring more than twenty pop hits and even performing at the White House for President Lyndon Johnson and in Martinique for President Gerald Ford and French President Giscard d'Estaing.

37. **Vaughan** remained quite active as a performer during the 1980's and began receiving awards recognizing her contribution to American music. In the Summer of 1980, **Vaughan** received a plaque on 52nd Street outside the CBS Building (Black Rock), and a performance of her symphonic Gershwin program with the New Jersey Symphony won her an Emmy Award in 1981.

38. In 1982, **Vaughan** won a Grammy award for Best Jazz Vocal Performance, Female and in 1985 **Vaughan** received a star on the Hollywood Walk of Fame. In 1988 **Vaughan** was inducted into American Jazz Hall of Fame. **Vaughan's** album *Sarah Vaughan with Clifford Brown* was inducted into the Grammy Hall of Fame, as was her recording "If You Could See Me Now." **Vaughan** continued to receive recognition posthumously, including the

cities of San Francisco and Berkeley, California, making March 27 "**Sarah Vaughan Day**" in their respective cities, and the New Jersey Transit designing adorning its Newark Light Rail stations with the lyrics to one of her signature songs, "Send in the Clowns."

39. **Vaughan** died on April 3, 1990.

WOODY HERMAN

40. **Woody Herman** was an American jazz clarinetist, alto and soprano saxophonist, singer, and big band leader.

41. **Herman** began performing as a child, singing in vaudeville, and commenced playing in the big bands of Tom Gerun, Harry Sosnik, and the Isham Jones orchestra. When Isham Jones decided to break up his orchestra in 1936, **Herman** formed his own orchestra out of the remaining nucleus.

42. Although many of **Herman's** early recordings feature the bandleader as a ballad vocalist, it was his instrumentals that gained the most notoriety, leading to his group being known as "the Band That Plays the Blues." The classic "At the Woodchopper's Ball" became **Woody Herman's** first hit in 1939.

43. **Herman's** popular swing band took off and was listed number three in the country in a popularity poll by Down Beat magazine in 1940. **Herman's** band was referred to as "Herman's Herd" and the "First Herd" was gradually taking place in the early nineteen forties. Throughout this period **Herman** continued to record and tour, and **Woody Herman** and the First Herd was considered the most exciting new big band in jazz. Indeed, in 1946 the band won polls for best band in Down Beat, Metronome, Billboard magazines as well as the Silver Award by

Esquire magazine, and opened *The Ebony Concerto*, composed by Igor Stravinsky, at Carnegie Hall.

44. In mid-1947, **Herman** organized a new orchestra, the "Second Herd," which was also soon known as the "Four Brothers band," featuring **Herman**, the three cool-toned tenors of Stan Getz, Zoot Sims, and Herbie Steward and baritonist Serge Chaloff forming a nucleus. **Herman's** Second Herd recorded popular hits such as "Four Brothers," "The Goof and I," and "Early Autumn" and appeared in the movie *New Orleans* with Billie Holliday and Louis Armstrong. In 1947, **Herman** Second Herd again won the Silver Award by Esquire magazine.

45. Throughout the 1940's **Herman** scored no less than 20 top-20 hits, including "Blues in the Night," "Caldonia," "Laura" and "Sabre Dance," among others.

46. **Herman** formed the Third Herd which performed and recorded from 1950-1956, and won the Metronome magazine poll for best band in 1953. After some short-lived small groups (including a sextet with Nat Adderley and Charlie Byrd), **Herman's** New Thundering Herd was a hit at the 1959 Monterey Jazz Festival.

47. **Herman** was able to lead a big band successfully throughout the 1960's, 1970's and 1980's, always working with new younger talent as well as having reunions with prior band members, and remained a launching pad for many notable musicians through the years. Indeed, in addition to numerous noted jazz musicians, **Woody Herman** worked with everyone from classical composers such as Igor Stravinsky, to pop-stars Frank Sinatra and Bing Crosby, rock and blues musicians such as Michael Bloomfield, jazz fusion musicians such as Chick Corea and rock-n-roll mainstays such as Steely Dan.

48. **Herman** had twelve separate albums that charted, won three Grammy Awards for albums in 1963, 1973 and 1974 and a lifetime achievement Grammy in 1987. The recognition of **Woody Herman's** achievements include, among others, a star on the Hollywood Walk of Fame and induction into The American Jazz Hall of Fame, the Downbeat Hall of Fame, The Big Band Jazz Hall of Fame and the ASCAP Jazz Wall of Fame.

49. **Herman** died on November 2, 1987.

PATTI PAGE

50. The best-selling female singer during the 1950's, **Patti Page** is one of the best-known female singers in traditional pop music, was among the first to cross over from country music to pop music and is one of America's true musical icons.

51. **Page**, a true living legend, who recorded over 100 albums and 160 singles, has had a staggering 111 hits, 15 gold records and four gold albums, and has sold well in excess 100 million records, is one of the biggest selling female recording artists in history.

52. **Page's** career gained note in 1947 when she recorded a song called "Confess" which had a portion requiring one singer to answer another. Because of a low budget, a second singer could not be hired, so **Page** sang each part - recording the first pop recording with a singer overdubbing her own vocals - which resulted in the song becoming a Top 20 hit. This was the first of many.

53. **Page** gained her first million-seller in 1950 for "With My Eyes Wide Open I'm Dreaming," and also in 1950, "All My Love" became **Page's** first number one hit and spent several weeks at the top. That same year produced the best selling hit of **Page's** career, "The

Tennessee Waltz," which was notched at number one for months, had the distinction of being in the top spot on the Pop, Country and R&B charts at the same time, and has sold more than 20 million copies.

54. During 1952-1953, **Patti Page** scored two more huge hits with "I Went to Your Wedding," and "The Doggie in the Window," both of which spent more than two months at number one. **Page** had other hit singles and albums over the next few years, and her popularity continued to soar.

55. **Page's** popularity was such that she was signed by NBC Television to star in Scott Music Hall Presents Patti Page, a summer replacement series that gave birth to the twice-weekly syndicated Oldsmobile Presents...Patti Page. The success of that enterprise and the dominance of **Patti Page** on the hit lists brought **Page** to CBS-TV and the big budgeted weekly extravaganza, The Big Record. When that concluded its run, ABC-TV brought **Patti Page** to its studios for The Patti Page Show, thus making her the only performer to have shows bearing her name on all three major television networks. Indeed, until recently, **Page** was also host of a weekly Sunday program on the Music of Your Life radio network (now distributed to individual radio stations via satellite).

56. **Patti Page** also proved more resilient to the rise of rock & roll than most of her contemporaries, hitting big in 1956 with "Allegheny Moon" and "Old Cape Cod" the next year. Indeed, **Patti Page** kept reaching the charts throughout the 1960's, and even having chart success for new recordings into the 1980's.

57. **Page's** place in history has been cemented by a legion of awards and honors, including Women's International Center 1992 Living Legacy Award Honoree and Recipient; her

own star on the Hollywood Walk of Fame and the Country Music Walk of Fame in Nashville; the prestigious Pioneer Award from the Academy of Country Music; membership in the Oklahoma State Hall of Fame and the Songwriter's Hall of Fame; being the first female to be inducted into the Oklahoma Music Hall of Fame; the Living Legend Award from the Jazz Hall of Fame; and even a Grammy Award in 1998.

58. **Page's** accomplishments remain unique, and she continues to tour and record new albums, using her sweet, tranquil voice to touch the hearts of many generations.

KITTY KALLEN

59. **Kitty Kallen** was a band singer, and later a soloist, who lit up bandstands across the country.

60. In her early years, **Kallen** was a gifted mimic who won talent shows and also appeared on children's radio shows by the mid-1930's. Kallen was still a teenager when she began singing with some of the top big bands, including Jan Savitt and Artie Shaw, and she earned her first full-time role in 1940 with Jack Teagarden's Orchestra.

61. After recording such songs as "I'm Taking My Time With You" and "I Wanna Hat With Cherries" with Teagarden, **Kallen** moved to the Jimmy Dorsey Orchestra and was a vocalist on many tunes including the band's big hit recordings including "They're Either Too Young Or Too Old," "Star Eyes" and the number one and million selling "Besame Mucho." And in 1943, **Kallen** appeared in the film I Dood It.

62. **Kitty Kallen** left the Jimmy Dorsey band in late 1944 but soon was back in the spotlight, this time as vocalist with the band of trumpet ace Harry James. She sang on two

million sellers in 1945 with James - "I'm Beginning to See the Light" and the anthem from the end of World War II, "It's been a Long Long Time." Two additional hits followed -- "I Guess I'll Hang My Tears Out to Dry" and "I'll Buy That Dream" -- both of which were in the same mold as her previous features.

63. By 1946 **Kitty Kallen** did much work on radio such as the programs The Danny Kaye Show on CBS network, The David Rose Show also on CBS, and Alec Templeton Time on NBC. **Kallen** also landed appearances on television in the late 1940's and continued to tour throughout the country as a soloist.

64. In 1949, **Kitty Kallen** had her first chart hit under her own name with "Kiss Me Sweet" which was followed by "Juke Box Annie," another best seller and "Our Lady of Fatima" recorded with singer Richard Hayes, was a top ten seller that remained on the charts for three months. In early 1951 another duet with Hayes did even better, with a song from the film Two Weeks With Love called "The Aba Dabba Honeymoon."

65. In the spring of 1954 **Kallen** recorded "Little Things Mean A Lot," which became a huge hit - one of the biggest of the post war era that stayed at the number one spot for nine consecutive weeks and remained on the charts for close to seven months. "Little Things Mean A Lot" sold more than two million copies. A few months later **Kallen** had another million selling national hit -- "In The Chapel In The Moonlight." For extra measure "I Want You All To Myself" closed out the year for **Kallen** by reaching the number 23 position on the best sellers chart. Not only was "Little Things Mean A Lot" voted the most popular song of 1954, but **Kallen** was voted most popular female singer in both Billboard and Variety.

66. **Kallen** continued to record and have hits throughout the 1950's and the early 1960's, with such songs as "Go On With The Wedding," "If I Give My Heart To You," and "My Coloring Book."

67. **Kallen**, who today lives in New Jersey, has received numerous awards for her achievements, including receiving a star on the Hollywood Walk of Fame.

THE MILLS BROTHERS

68. John C. Mills, Herbert B. Mills, Harry F. Mills and Donald F. Mills – **The Mills Brothers** began their career in the 1920's in their native Piqua, Ohio, when they were still children. **The Mills Brothers'** sound was a unique one, as they would sing and imitate instruments such as the tuba, the bass, trumpet and trombone.

69. In 1925, after playing May's Opera House in Piqua between *Rin-Tin-Tin* features, they audition for and were hired by Cincinnati radio station WLW. Shortly thereafter, **The Mills Brothers** performed for Duke Ellington, who was so impressed that he helped arrange for the group to come to New York.

70. In 1930, broadcasting executive William S. Paley, heard **The Mills Brothers'** performance, and signed them to a three-year contract. **The Mills Brothers** became the first African-Americans to have a network show on radio.

71. After signing with CBS, **The Mills Brothers** became a national sensation, recording "Tiger Rag" which became a nation wide seller and the only record at that time to sell more than a million copies. Other hits quickly followed -- "Goodbye blues," their theme song,

"You're Nobody's Sweetheart Now," "Ole Rockin' Chair," "Lazy River," "How'm I doin'," and others.

72. **The Mills Brothers** also began appearing in films. Their first, The Big Broadcast was an all star radio revue that included Bing Crosby, Cab Calloway, and the Boswell Sisters. In 1934, **The Mills Brothers** starred with Crosby for Woodbury Soap, and recorded their classics "Lazy Bones," "Sweet Sue," "Lulu's Back in Town," "Bye-Bye Blackbird," "Sleepy Head," and "Shoe Shine Boy." Additional film appearances included Twenty Million Sweethearts and Broadway Gondolier – in all they appeared in thirteen separate feature films. **The Mills Brothers'** popularity was not restricted to the United States, and they became the first African-Americans to give a command performance before British royalty.

73. John C. Mills died in 1936, and the group was joined by their father, John H. Mills. For the 1930's and early 1940's, **The Mills Brothers** continued to tour overseas and recorded a variety of songs, including "Someday You'll Want Me to Want You," "Swing Is the Thing," "Long About Midnight," "Organ Grinders Swing," and "The Song is Ended." They then produced a series of classic recordings; "South of the Border," "Ain't Misbehavin'," "It Don't Mean a Thing," "Jeepers Creepers," "Three Little Fishes," and "Basin Street Blues."

74. In 1941, **The Mills Brothers** recorded "I'll be Around," which became a popular hit. Donald Mills' chose "Paper Doll" as the B-side of that record, and at some point "Paper Doll," recorded in just fifteen minutes, became a smash hit. "Paper Doll" sold six million copies and became **The Mills Brothers'** biggest hit. Also during the 1940's, while Harry was serving his country in the armed forces, the remaining members of **The Mills Brothers** helped the

country by raising war bonds and performing for the troops, for which they were honored by the U.S. government.

75. The rise of rock and roll in the early fifties did little to diminish the Mills Brothers popularity. "Glow Worm" rose to number one on the pop charts in 1952. "Opus One," an updated version to the Tommy Dorsey hit was soon keeping it company followed by "You're Nobody 'Til Somebody Loves You," "Yellow Bird," "Standing on the Corner," and "If I had My Way."

76. In 1957, John Sr. reluctantly stopped touring with the group. He was seventy-five, but his retirement did not stop the Brothers. As a trio, the Mills Brothers continued to record and were frequent guests on The Jack Benny Show, The Perry Como Show, The Tonight Show, and Hollywood Palace. "Cab Driver," recorded in 1968, was their last great hit. However, **The Mills Brothers** continued to perform and remained active by, for instance, being featured in an American Express commercial.

77. Harry Mills died in 1982. For a few years after Harry's death, Donald Mills and his son John H. Mills II, continued to perform under the name of the Mills Brothers. In 1999, Donald Mills, the last remaining original Mills brother passed away. Today, John H. Mills, II continued to tour under the name **The Mills Brothers** with onetime Platters lead vocalist Elmer Hopper. **The Mills Brothers** have been honored by, *inter alia*, monuments in their home towns; the lifetime achievement award by the National Academy of Recording and Sciences; "Paper Doll" was included in the Grammy Hall of Fame.

LES BROWN

78. The leader of a first-class jazz-oriented dance band for over 60 years, **Les Brown** a big-band mainstay with widespread audience appeal, was a true holdover from the era of the big bands that was able to continue his success beyond the Second World War.

79. After attending the Ithaca Conservatory of Music, where **Brown** studied music theory, harmony, and composition, **Les Brown** attended Duke University, where he joined the Duke Blue Devils, the university's official dance band. **Brown** made his first recordings as a member of the Blue Devils in 1936, but by the following year the group split.

80. **Brown** went to New York and worked for Jimmy Dorsey, Isham Jones, and Larry Clinton, and in 1938 **Brown** was able to book himself with a 12-piece outfit playing at the Hotel Edison. A series of regular live radio broadcasts of the band soon had their reputation spreading far beyond the ranks of the hotel's dance patrons.

81. **Brown** and his group (**Les Brown** and the Band of Renown) were doing well as the 1930's closed out, drawing a healthy dance audience and a substantial listenership. In the late 1930's, most of their sound was built on ensemble playing, and they displayed a rich, full tone that came off well, both in person and over the air as well as on record. **Brown** insisted on a polished, precise sound and audiences seemed to devour it.

82. Starting in 1940, **Brown** began altering the sound by allowing room for his soloists to go to work doing that they did best, and audiences liked it even better. Then **Brown** hired his first vocalist, a teenager named Doris Day, who sang with a depth and level of sophistication far beyond her 17 years, and their popularity soared. Day's first stay with the

group wasn't long -- less than a year. Her replacement, Betty Bonney, was aboard when Brown cut a song devoted to the then-current phenomenon of Joe DiMaggio's hitting streak -- "Joltin' Joe DiMaggio" became their first chart hit. When the smoke cleared, the band found itself ranked among the top ten most popular performing outfits in the country.

83. In 1943 **Brown** persuaded Day to return to the band, which resulted in two national number one hit records: "Sentimental Journey" and "My Dreams Are Getting Better All The Time." "Sentimental Journey" was not only one of the most enduring hits of the Second World War, but also became one of the defining hits of the big-band era. This song also **Brown's** signature tune and, to a lesser degree, Day's signature tune. For the next 50 years and even in the 21st century the song has become identified with both of them.

84. In 1946, a two sided hit featuring a Doris Day vocal "Come To Baby Do" and "You Won't Be Satisfied" was a big top five hit and remained on the hit parade for four months. Butch Stone was the vocalist on the next top ten hit for the band-a cover of Betty Hutton's number one record of a song from the film The Stork Club called "Doctor, Lawyer, Indian Chief". Doris Day returned for two vocals "Day By Day" and "I Got The Sun In The Morning (And The Moon At Night)". Another two sided hit for the band late in 1946 featured Jack Haskel on "I Guess I'll Get The Papers And Go Home" and Doris Day with "The Whole World Is Singing My Song". Butch Stone closed out the big year for the band with "The Best Man."

85. In 1947 **Les Brown** made a few important moves. **Brown** took a series of gigs at the Hollywood Bowl. More important, **Brown** formed a show business alliance with mega-star Bob Hope that would last for decades on radio, television, and the famous USO military tours and Christmas shows.

86. It would be close to two years before the **Les Brown** band would appear on the record charts. But when it did it was with an all time blockbuster. The arrangement by Skip Martin of the song "I've Got My Love to Keep Me Warm" went all the way to number one, rare for a big band instrumental in 1948. This record has been called the swan song of the big band era, the last great instrumental tune.

87. In addition to working with Bob Hope, **Les Brown** and his bound of renown was the band on the Steve Allen Show on Sunday evenings, always entering to their great theme song "Leapfrog".

88. In the late 1950's, **Brown** became one of the founding members of the Recording Academy and enjoyed a fresh string of hit singles and successful LPs through the end of the decade.

89. **Brown** continued to tour even performing within a year of his death on January 4, 2001, at the age of 88. His son, Les Brown, Jr., a musician who was primarily known as an actor, took over the Band of Renown during the 21st century and has kept it going since.

JERRY MURAD

90. **Jerry Murad** formed a harmonica trio, called the Harmonicats with Al Fiore on chording, and Don Les on bass. Applying their harmonica arrangements mostly to popular standards, the sound of **Murad's** Harmonicats was unusual for that (or indeed any) era, achieving a full ensemble effect via instruments that are rarely used in tandem in popular music.

91. **Murad** had a massive number one hit in 1947 with "Peg O' My Heart," which was the number one hit of that year. On the heels of that success, **Murad** and his band received three Hollywood offers -- plus requests for radio work and personal appearances.

92. **Murad** and the Harmonicats toured through the United States and had to make special arrangements due to their popularity. **Murad's** stint at the Oriental Theater in Chicago for a one week engagement was held over for four weeks, and a two week stint at New York's Roxy was stretched to five.

93. **Murad's** Harmonicats remained popular through the 1950s, even getting a Top 20 album (Cherry Pink and Apple Blossom White) as late as 1961.

94. **Murad** still was recording in the late 1960's and tried contemporary material like "Blowin' in the Wind" and "Get Off of My Cloud" on their 1966 LP What's New, Harmonicats?

95. The Harmonicats continued performing until **Murad's** death in 1996.

SISTER ROSETTA THARPE

96. Alongside Willie Mae Ford Smith, **Sister Rosetta Tharpe** is widely acclaimed among the greatest Sanctified gospel singers of her generation; a flamboyant performer whose music often flirted with the blues and swing, she was also one of the most controversial talents of her day, shocking purists with her leap into the secular market -- by playing nightclubs and theatres, she not only pushed spiritual music into the mainstream, but in the process also helped pioneer the rise of pop-gospel.

97. After signing a recording contract in 1938, **Sister Rosetta Tharpe** became a virtual overnight sensation; her first records, including "Rock Me" and "This Train," were smash hits, and quickly **Tharpe** was performing in the company of mainstream superstars including Cab Calloway and **Benny Goodman**.

98. **Tharpe** led an almost schizophrenic existence, remaining in the good graces of her core audience by recording material like "Precious Lord," "Beams of Heaven" and "End of My Journey" while also appealing to her growing mainstream audience by performing rearranged, up tempo spirituals including "Didn't It Rain" and "Down by the Riverside."

99. During World War II, **Tharpe** was so popular that she was one of only two black gospel acts to record V-Discs for American soldiers overseas; she also toured the nation in the company of the Dixie Hummingbirds, among others. In 1944, she began recording with boogie-woogie pianist Sammy Price; their first collaboration, "Strange Things Happening Every Day," even cracked Billboard's Top Ten, a rare feat for a gospel act and one which she repeated several more times during the course of her career.

100. In 1946 **Tharpe** teamed with the Newark-based Sanctified shouter Madame Marie Knight, whose simple, unaffected vocals made her the perfect counterpoint for **Tharpe's** theatrics; the duo's first single, "Up Above My Head," was a huge hit, and over the next few years they played to tremendous crowds across the church circuit.

101. **Tharpe** continued touring even after suffering a major stroke in 1970, and eventually passed away in Philadelphia on October 9, 1973.

FRANKIE LAINE

102. Often billed as America's Number One Song Stylist, **Frankie Laine** was one of the most successful American singers of the twentieth century. **Laine's** career as an entertainer spanned approximately 75 years, from 1930 (when he sang in between sets with a marathon dance company) to 2005 (when he sang "That's My Desire" in a PBS special).

103. Although he had already recorded a variety of songs, **Laine's** big break came when he dusted off a fifteen-year old song that few people remembered in 1946: "That's My Desire," which quickly took the number one spot on the R&B charts and made it to the #4 spot on the Mainstream charts. "Desire" became **Frankie Laine's** first Gold Record, and established him as a force in the music world. A series of hit singles quickly followed, including "Black and Blue", "Mam'selle", "Two Loves Have I", "Shine", "On the Sunny Side of the Street", "Monday Again", and many others.

104. **Laine** next teamed up with Mitch Miller, and their first collaboration, "That Lucky Old Sun", became the number one song in the country three weeks after its release. It was also **Laine's** fifth Gold Record. The song was knocked down to the number two position by **Laine** and Miller's second collaboration, "Mule Train" which proved to be an even bigger hit, making **Frankie Laine** the first artist to ever simultaneously hold the Number One and Two positions on the charts.

105. The **Laine/Miller** collaboration was one of the most fruitful in the history of popular music, producing a seemingly endless run of top forty hits that lasted into the early years of the rock 'n' roll era. Other **Laine/Miller** Mercury hits included "Shine", "On the Sunny Side of the Street," "Dream a Little Dream of Me," "All of Me," "Georgia on My Mind," "Blue Turning

Grey Over You," "Stars and Stripes Forever," "Nevertheless," "The Cry of the Wild Goose," "Swamp Girl," "Satan Wears a Satin Gown," and "Music, Maestro Please."

106. In the 1950's **Laine** scored such hits as "Jezebel," "Rose, Rose, I Love You," "High Noon (Do Not Forsake Me)", "Jealousy (Jalousie)", "The Girl in the Woods", "When You're in Love", "Way Down Yonder in New Orleans" (with Jo Stafford), "Your Cheatin' Heart", "Granada", "Hey Joel", "The Kid's Last Fight", "Cool Water", "Some Day", "A Woman in Love", "Love is a Golden Ring" (with The Easy Riders), and "Moonlight Gambler."

107. A consummate duettist, **Laine** teamed up with and scored hits with **Patti Page** ("I Love You for That"), **Doris Day** ("Sugarbush"), **Jo Stafford** ("Hey, Good Lookin'", "Gambella (The Gambling Lady)", "Hambone", "Floatin' Down to Cotton Town", "Settin' the Woods on Fire", and many others), **Jimmy Boyd** ("Tell Me a Story", "The Little Boy and the Old Man"), the **Four Lads** ("Rain, Rain, Rain") and **Johnnie Ray** ("Up Above My Head (I Hear Music in the Air)").

108. In 1953 **Laine** set two more records (this time on the UK charts): weeks at No 1 for a song ("I Believe", which held the number one spot for 18 weeks), and weeks at No 1 for an artist in a single year (27 weeks: a little over half the year, when "Hey Joe!" and "Answer Me, O Lord" became number one hits as well). In spite of the popularity of rock 'n' roll artists like **Elvis Presley** and **The Beatles**, fifty-plus years later, both of **Laine's** records still hold. Indeed, throughout the 1950's he remained far ahead of **Elvis Presley** as the most successful artist on the British charts and "I Believe" is still listed as the second most popular song of all time on the British charts.

109. Although **Laine** was one of the most popular acts of the 1950's, he continued to find chart success in the 1960s, with such songs as "I'll Take Care of Your Cares," "Making Memories", "You Wanted Someone to Play With", "Laura, What's He Got that I Ain't Got", "To Each His Own" "Born to be with You", "I Found You", and "Lord, You Gave Me A Mountain."

110. **Laine** also starred in over a half dozen backstage musicals including: Make Believe Ballroom, When You're Smiling, Sunny Side Of The Street, Rainbow 'Round My Shoulder, Bring Your Smile Along, He Laughed Last and Meet Me In Las Vegas. - MGM,

111. On television **Laine** hosted three variety shows: The Frankie Laine Hour in 1950, The Frankie Laine Show (with Connie Haines) 1954-55, and Frankie Laine Time in 1955-56. In the 1960's, **Laine** continued appearing on variety shows but also took on several serious guest-starring roles in shows like Rawhide, Burke's Law, and Perry Mason. His theme song for Rawhide proved to be popular and helped to make the show.

112. Along with opening the door for many non-white R&B performers with his variety show, **Laine** played a significant role in the civil rights movements of the 1950's and 1960's. When Nat King Cole's television show was unable to get a sponsor, **Laine** crossed the color line, becoming the first white artist to appear as a guest. **Frankie Laine** joined several African American artists who gave a free concert for Martin Luther King's supporters during their Selma to Montgomery marches on Washington DC.

113. Over his career, **Laine** recorded 70 songs that appeared on the U.S. pop charts, and another 16 that appeared on the British pop charts.

114. **Frankie Laine** passed away on February 6, 2007.

TONY MARTIN

115. A popular crooner and entertainer of the 1940's and 1950's, **Tony Martin's** deliberate delivery and romantic ballads were vintage classics.

116. In 1934 **Tony Martin** first started leading his own band and played some dates in and around Chicago during the 1934 World's Fair. Shortly thereafter, however, he went to Hollywood and had parts in a number of late-1930's musicals such as Follow The Fleet and Sing Baby Sing.

117. During the late 1930's and early 1940's, **Tony Martin** had six records that made the hit parade including two big sellers - "It's A Blue World" and "Tonight We Love." However, just as his career was beginning to hit the big time World War II intervened and Martin joined the U.S. military.

118. In 1946 **Martin** had two top ten hits. The first was "To Each His Own" and spent four months on the top sellers list and got to the number four position in the country and became his first million seller. The second was "Rumors Are Flying" which reached the ninth position. **Martin** also tried his hand on the medium of radio during the year with his own musical variety show.

119. In 1947 **Martin's** song "I'll Dance At Your Wedding" was a top 25 seller and he was featured in the motion picture As The Clouds Roll By the story of composer Jerome Kern which starred Robert Walker.

120. In 1948 **Martin** had the starring role in the film Algiers and then another movie called Casbah. **Martin** recorded two songs from Casbah that made the best sellers list - "Hooray For Love" and "For Every Man There's A Woman" which won the academy award for best song of the year. Also during the year **Martin's** recording of "Confess" made the top 25 and finally **Martin's** biggest seller of the year was another movie tune "It's Magic" from the Doris Day film Romance On The High Seas.

121. It would be three years before the next movie role for **Martin** and so he concentrated on personal appearances in night clubs and on stage often with his wife, Cyd Charisse, an accomplished dancer and entertainer. Another song from the movies, "If You Stub Your Tie On The Moon," provided a hit record for **Martin** in 1949. Later that year a version of the melody of "O Sole Mio" which was titled "There's No Tomorrow" was a runaway hit for **Tony Martin**. The record remained on the best seller charts for almost eight months and sold more than one million copies.

122. The year 1950 would provide **Tony Martin** with four strong sellers: "Marta (Rambling Rose of the Wildwood)," which was a top fifteen hit; "I Said My Pajamas (And Put On My Pray'rs)" was a top three seller; "Valencia" was a top twenty seller; and "La Vie En Rose" a mainstay of the best sellers list for more than four months.

123. In 1951 **Martin** scored a top-twenty hit with "Would I Love You" (a cover of the **Patti Page** hit) and then his most successful song "I Get Ideas," which remained on the hit parade for an incredible thirty consecutive weeks and sold over two million copies.

124. **Martin** continued to have hit recordings from 1951 through the 1960's, including "Kiss Of Fire," "The Vagabond King," "Luna Rossa (Blushing Moon)," "Dance Of Destiny,"

"Stranger in Paradise," "Sorta on the Border," "Here" and "Walk Hand In Hand." Likewise, **Martin** continued to star in movies such as Here Come The Girls, Easy To Love, Deep In My Heart, Hit The Deck, Meet Me In Las Vegas and Let's Be Happy.

125. In 1976 the book "The Two of Us" chronicled **Martin's** life with that of his long time wife and show business partner Cyd Charisse.

126. **Tony Martin** continues to make many personal appearances on stage in concerts and in night clubs around the country – and even performed in New York City earlier this year.

BENNY GOODMAN

127. **Benny Goodman** was the first celebrated bandleader of the Swing Era, dubbed "The King of Swing," his popular emergence marking the beginning of the era. He was an accomplished clarinetist whose distinctive playing gave an identity both to his big band and to the smaller units he led simultaneously. The most popular figure of the first few years of the Swing Era, he continued to perform until his death 50 years later.

128. Goodman first made recordings under his own name with pickup bands, first reaching the charts with "He's Not Worth Your Tears" in 1931. **Goodman** then reached the top- ten again in the early part of 1934 with "Ain't Cha Glad?," "Riffin' the Scotch," "Ol' Pappy" and "I Ain't Lazy, I'm Just Dreamin'." **Goodman's** instrumental recording of "Moon Glow" hit number one in July 1934, and he scored two more Top Ten hits in the fall with the instrumentals "Take My Word" and "Bugle Call Rag." After a four-and-a-half-month stay at the Billy Rose's Music Hall, **Goodman** was signed for the Saturday night Let's Dance program on

NBC radio, playing the last hour of the three-hour show. During the six months he spent on the show, **Goodman** scored another eleven Top Ten hits.

129. **Goodman** scored 15 Top Ten hits in 1936, including the chart-toppers "It's Been So Long," "Goody-Goody," "The Glory of Love," "These Foolish Things Remind Me of You," and "You Turned the Tables on Me." **Goodman** became the host of the radio series The Camel Caravan, which ran until the end of 1939, and in October 1936, the orchestra made its film debut in The Big Broadcast of 1937.

130. **Goodman's** next number one hit, in February 1937, featured Ella Fitzgerald on vocals and was the first of six Top Ten hits during the year, including the chart-topping "This Year's Kisses." In December, the band appeared in another film, Hollywood Hotel.

131. 1938 saw **Goodman** score 14 Top Ten hits during the year, among them the number ones "Don't Be That Way," "I Let a Song Go out of My Heart," and "Sing, Sing, Sing (With a Swing)," which later was inducted into the Grammy Hall of Fame. And in 1939, **Goodman** managed eight more Top Ten hits, including the chart-topper "And the Angels Sing," another inductee to the Grammy Hall of Fame. He returned to Columbia Records in the fall.

132. In 1940, **Goodman** appeared in the Broadway musical Swingin' the Dream, and had three Top Ten hits, including "Darn That Dream," which reached number one. **Goodman** continued to achieve remarkable success, with two Top Ten hits in 1941, one of which was the chart-topper "There'll Be Some Changes Made," three Top Ten hits in 1942 including the number ones "Somebody Else Is Taking My Place" and "Jersey Bounce."

133. Although **Goodman** did not record during World War II, in April 1945, his compilation album *Hot Jazz* reached the Top Ten on the album charts. He reorganized his big band and scored three Top Ten hits during the year.

134. Although popular music had largely passed Goodman by as of 1950, his audience was not tired of listening to his vintage music. A recording that had been made of a 1938 Carnegie Hall concert released as *Carnegie Hall Jazz Concert, Vol. 1 & 2*, spent a year on the charts, becoming the best-selling jazz album ever up to that time, and was later inducted into the Grammy Hall of Fame. A follow-up album of air checks, *Benny Goodman 1937-1938: Jazz Concert No. 2*, hit number one in December 1952.

135. After a tour of the Far East in 1956-1957, **Goodman** increasingly performed overseas. His 1962 tour of the U.S.S.R. resulted in the chart album *Benny Goodman in Moscow*. In 1963, RCA Victor staged a studio reunion of the Benny Goodman Quartet of the 1930s, featuring Goodman, Gene Krupa, Teddy Wilson, and Lionel Hampton. The result was the 1964 chart album *Together Again!* Goodman recorded less frequently in his later years, though he reached the charts in 1964 with *Together Again* and in 1971 with *Benny Goodman Today*. His last album to be released before his death from a heart attack at 77 was *Let's Dance*, which earned a Grammy nomination.

136. **Goodman's** success was overwhelming, and included such recognition as: being recognized as a pioneer for integrating bands in the 1930's; being the first jazz band to play Carnegie Hall; election to All-Time Jazz Hall of Fame by Down Beat Magazine; Honorary doctorates from Union College, University of Illinois, Bard College, Columbia University, Yale and Harvard; a Kennedy Center Award in 1982; Lifetime Achievement Award from Howard

University; First Annual Distinguished Service Award from Hull House, Chicago in 1985; Lifetime Achievement Award from the National Academy of Recording Arts and Sciences in 1986; a Lifetime Achievement Grammy Award; a posthumous Grammy awards for "And The Angels Sing" and "Moonglow"; election to the Emerson Radio Hall of Fame; honored as part of a US commemorative postage stamp collection entitled 'Legends of American Music series; and election to the ASCAP Jazz Wall of Fame.

DICK HYMAN

137. Throughout a busy musical career that got underway in the early 1950s, **Dick Hyman** has functioned as pianist, organist, arranger, music director, and composer. **Hyman's** versatility in all of these areas has resulted in film scores, orchestral compositions, concert appearances and well over 100 albums recorded under his own name.

138. While developing a masterful facility for improvisation in his own piano style, **Hyman** has also investigated ragtime and the earliest periods of jazz and has researched and recorded the piano music of Scott Joplin, Jelly Roll Morton, James P. Johnson, Zez Confrey, Eubie Blake and Fats Waller, which he often features in his frequent recitals. Other solo recordings include the music of Irving Berlin, Harold Arlen, Cole Porter, George Gershwin, Richard Rodgers and Duke Ellington.

139. In a different vein, **Hyman** was one of the first to record on the Moog synthesizer, and his Minotaur landed on the Billboard charts.

140. **Hyman's** versatility in Jazz piano was the result of influences as straightforward as jazz, and as eclectic as ragtime. **Hyman** served as artistic director for the Jazz in July series at

New York's 92nd Street Y for twenty years, a post from which he stepped down in 2004. He continues his Jazz Piano at the Y series as well as his post as jazz advisor to The Shedd Institute's Oregon Festival of American Music.

141. In 1995 **Hyman** was recognized by the Jazz Hall of Fame of the Rutgers Institute of Jazz Studies and the New Jersey Jazz Society. Since then **Hyman** has received honorary doctorates from Wilkes University, Five Towns College, Hamilton College and the University of South Florida at Tampa.

142. Hyman was also a highly sought-after session player – winning the “Most Valuable Player Award” from the National Academy of Recording Arts and Sciences a staggering seven times. Additionally, he acted as music director for such television programs as Benny Goodman's final appearance (on PBS) and for In Performance at the White House.

143. **Hyman** also received an Emmy for his original score for Sunshine's on the Way, a daytime drama, and another for musical direction of a PBS Special on Eubie Blake.

144. **Hyman** continues to be a frequent guest performer with The Jim Cullum Jazz Band on the long-running public radio series Riverwalk Jazz, and has been heard on Terry Gross' Fresh Air.

145. **Hyman** also has served as composer/arranger/conductor/pianist for the Woody Allen feature motion pictures Zelig, The Purple Rose of Cairo, Broadway Danny Rose, Stardust Memories, Hannah and Her Sisters, Radio Days, Bullets Over Broadway, Mighty Aphrodite, Everyone Says "I Love You", Sweet and Lowdown, The Curse Of The Jade Scorpion and Melinda and Melinda.

146. Other feature film scored by **Hyman** include Moonstruck, Scott Joplin King of Ragtime, The Lemon Sisters, and Alan and Naomi. **Hyman's** music has also been heard in The Mask, Billy Bathgate, Two Weeks Notice and other films.

147. Not merely relegated to Jazz, **Hyman's** legacy has touched the Classical music genre as well. **Hyman's** concert compositions for orchestra include his "Piano Concerto," "Ragtime Fantasy," "The Longest Blues in the World," and "From Chama to Cumbres by Steam," a work for orchestra, jazz combo, and prerecorded railroad sounds. A cantata based on the autobiography of Mark Twain was premiered in 2004.

148. In the dance field, **Hyman** composed and performed the score for the Cleveland/San Jose Ballet Company's *Piano Man*, and Twyla Tharp's *The Bum's Rush* for the American Ballet Theater. **Hyman** also was the pianist/conductor/arranger in Tharp's *Eight Jelly Rolls*, *Baker's Dozen*, and *The Bix Pieces* and similarly arranged and performed for Miles Davis: *Porgy and Bess*, a choreographed production of The Dance Theater of Dallas. In 2007 **Hyman's** *Adventures of Tom Sawyer*, commissioned by The John G. Shedd Institute for the Arts and set by Toni Pimble of Eugene Ballet was premiered in Eugene, Oregon.

RICHARD HAYMAN

149. **Richard Hayman**, is an American conductor, harmonica player, arranger, and composer.

150. In 1938, at the age of 18, **Hayman** launched his career as a harmonica player. Within a few years, **Hayman** began working as a composer and arranger for Hollywood film studios. Early in his career, while orchestrating and arranging for various singers and performers

in the Las Vegas and Hollywood areas, **Hayman's** unique style of writing and arranging caught on and he arranged the music for such feature films as Girl Crazy (with Judy Garland and Mickey Rooney), Meet Me in St. Louis (again with Garland) and As Thousands Cheer. Along with arranging some of the music, he also appeared in the films Coney Island, Sweet Rosie O'Grady (both starring Betty Grable) and Always In My Heart (with Walter Houston and Kay Francis).

151. **Richard Hayman** next joined the then-popular Vaughn Monroe Orchestra as musical director for Monroe's recordings and television and radio show, a very successful collaboration that lasted five years (1945-1950). During this time, **Hayman** also began to direct the musical activities of various recording artists.

152. The successful recordings that followed being signed as an individual artist to Mercury Records soon placed the young maestro in the musical major leagues. **Hayman's** recording of the theme for the motion picture *Ruby Gentry*, zoomed to the top of the hit parade all over the world.

153. In the 1950's, in addition to being signed to Mercury Records, Mercury appointed **Hayman** as its Artists and Repertoire Chief in New York, and musical director for the recording activities of their many artists (including Vic Damone and **Patti Page**), a post he held until 1965. During this time, **Richard Hayman** was presented on 23 albums and 27 hit singles by Mercury.

154. **Hayman** continue recording diverse tracks and albums, including strings album with jazz saxophonist Julian "Cannonball" Adderley, as well as the much-coveted early Moog album, *The Genuine Electric Latin Love Machine*.

155. Considered as America's favorite "Pops" conductor, **Richard Hayman** is Principal Pops Conductor of the Grand Rapids Symphony and Conductor of Florida's Sunshine Pops. He has also held Principal Pops Conductor posts with the Saint Louis, Detroit and Hartford Symphony Orchestras, the Calgary Philharmonic and Orchestra London Canada. **Hayman's** original compositions are standards in the repertoire of these ensembles, as well as frequently performed selections for many bands and orchestras throughout the world. For over thirty years, **Hayman** served as the chief arranger for the Boston Pops Orchestra. Under John Williams' and Keith Lockhart's direction, the orchestra continues to program his award-winning arrangements and orchestrations.

156. In 1960, **Richard Hayman** was honored with his own star in Hollywood's Walk of Fame. Other awards honoring **Hayman** have included a Certificate of Recognition from Cosmopolitan Magazine for Achievement in Bettering Popular Music, a Certificate of Merit for the Secretary of the Navy, the Edison Award for Creative Achievement in Recorded Arts from the Academy of Musical Recorded Arts and Science, the National TV Festival and Forum Award, and the Maile Award from the State of Hawaii.

157. During the past several years, **Richard Hayman** has been concentrating most of his time on guest-conducting special Pops concerts. Season after season he is re-invited by all of the leading orchestras across the continent to conduct these popular entertainments during their regular seasons, as well as for their summer festivals.

Facts Common to All Causes of Action Part 2:
Contracts Between Plaintiffs and Defendants

158. Between 1950 and the late 1960s, **Count Basie** entered into various agreements with Decca Records, ABC Records, Inc. and Brunswick Records. On or about January 1, 1992, **The Basie Trust** entered into an agreement with MCA Records, Inc., which terms superseded the previous agreements with Decca Records, ABC Records, Inc. and Brunswick Records. This agreement gave MCA Records, Inc. the right to manufacture and sell recordings embodying the performances and musical compositions of **Count Basie** recorded pursuant to the prior agreements. In return, MCA Records, Inc. promised to pay **The Basie Trust** for all recordings made. This agreement also purported to settle **The Basie Trust's** claims with regard to prior reports and royalty payments by MCA Records, Inc. and its predecessors-in-interest. **Universal** is the successor-in-interest to MCA Records, Inc.

159. On or about January 7, 1952, **Count Basie** entered into an agreement with Clef Records to record certain musical compositions. Pursuant to the agreement, Clef Records was authorized to distribute records containing **Count Basie's** performances and musical compositions recorded under this agreement and agreed to pay royalties to **Count Basie** on recordings made. **Universal** is the successor-in-interest to Clef Records.

160. On or about April 5, 1962, May 1, 1964, October 7, 1965 and December 20, 1965, **Count Basie** entered into agreements with MGM Records in which he agreed to record a number of musical compositions and, in turn, MGM Records agreed to pay royalties to **Count Basie** on recordings made. **Universal** is the successor-in-interest to MGM Records.

161. On or about November 10, 1953, April 1, 1956, May 3, 1960 and December 2, 1961 **Sarah Vaughan** entered into agreements with Mercury Records. These agreements gave Mercury Records the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreements. In return, Mercury Records promised to pay **Sarah Vaughan** royalties on all recordings made. **Universal** is the successor-in-interest to Mercury Records.

162. On or about November 13, 1936, **Woody Herman** entered into an agreement with Decca Records, Inc. This agreement gave Decca the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreements. In return, Decca promised to pay **Woody Herman** royalties on all recordings made. **Universal** is the successor-in-interest to Decca.

163. On or about May 24, 1939, **Woody Herman** entered into another agreement with Decca Records, Inc., and this agreement was superseded by a series of agreements entered into on March 2, 1941 and December 19, 1941. These agreements gave Decca the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreements. In return, Decca promised to pay **Woody Herman** royalties on all recordings made. **Universal** is the successor-in-interest to Mercury Records.

164. Between August 7, 1944 and October 24, 1975, **Patti Page** entered into various agreements and amendments with Mercury Records, Inc. These agreements gave Mercury the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreements. In return, Mercury promised to pay **Patti Page** royalties on all recordings made. On or about July 29, 1997, **Patti Page** entered into a settlement agreement with Mercury which

superseded all prior agreements and provided for new royalty rates for all recordings effective July 1, 1997. **Universal** is the successor-in-interest to Mercury Records.

165. On or about July 1, 1953, **Kitty Kallen** entered into an agreement with Decca Records, Inc., and this agreement was superseded by an agreement entered into on November 26, 1954. These agreements gave Decca the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreements. In return, Decca promised to pay **Kitty Kallen** royalties on all recordings made. **Universal** is the successor-in-interest to Decca.

166. On or about December 17, 1936, October 15, 1941, and March 22, 1945, June 24, 1946 and July 1, 1949, **The Mills Brothers** entered into a series of agreements with Decca Records, Inc. These agreements gave Decca the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreements. In return, Decca promised to pay **The Mills Brothers** royalties on all recordings made. On or about June 6, 1952 **The Mills Brothers** entered into an agreement with Decca which modified the royalty terms in all prior agreements. **Universal** is the successor-in-interest to Decca.

167. On or about September 20, 1957, September 21, 1959, August 16, 1962, September 21 1962, and September 20, 1967 **The Mills Brothers** entered into various agreements with Dot Records, Inc. These agreements gave Dot the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreements. In return, Dot promised to pay **The Mills Brothers** royalties on all recordings made. **Universal** is the successor-in-interest to Dot.

168. On or about September 21, 1970 and October 6, 1972, **The Mills Brothers** entered into agreements with Famous Music Corporation. These agreements gave Famous the

right to manufacture and sell recordings embodying the performances recorded pursuant to the agreements. In return, Famous promised to pay **The Mills Brothers** royalties on all recordings made. **Universal** is the successor-in-interest to Famous.

169. On or about August 16, 1972, **The Mills Brothers** entered into an agreement with MCA Records, Inc. Upon information and belief, at that time, MCA Records, Inc. was the successor-in-interest to Dot Records, Inc., Decca Records, Inc. and Famous Music Corporation.

170. In the 1980's, a new medium for production of sound recordings, known as compact discs ("CDs"), was developed, and MCA desired to release **The Mills Brothers** recordings on this new medium. MCA acknowledged that the earlier agreements did not cover CDs. In recognition of the fact that it did not have the right to release CDs and to induce **The Mills Brothers** to agree to temporarily accept reduced royalties on CDs, MCA and **The Mills Brothers** entered into a new agreement in which it was agreed, *inter alia*, that if at anytime MCA agreed to pay any artist a royalty exceeding the rate paid to **The Mills Brothers**, then the parties would negotiate a new royalty rate. On January 30, 1989, **The Mills Brothers** entered into a settlement agreement with MCA Records, Inc., in which MCA agreed to not charge **The Mills Brothers'** account with any Container Charges unless specifically provided for in prior agreement. **Universal** is the successor-in-interest to MCA Records, Inc.

171. On or about February 7, 1951, **Les Brown** entered into a contract with Decca Records, Inc. This agreement gave Decca the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreement. In return, Decca promised to pay **Les Brown** royalties on all recordings made. **Universal** is the successor-in-interest to Decca.

172. On or about February 8, 1954, **Les Brown** entered into a new contract with Decca Records, Inc. which was amended on September 20, 1954, February 11, 1955, June 26, 1955 and May 22, 1963. These agreements gave Decca the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreements. In return, Decca promised to pay **Les Brown** royalties on all recordings made. **Universal** is the successor-in-interest to Decca.

173. On or about April 8, 1954 and again on or about January 21, 1959, **Les Brown** entered into a contract with Coral Records, Inc. These agreements gave Coral the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreements. In return, Coral promised to pay **Les Brown** royalties on all recordings made. **Universal** is the successor-in-interest to Coral.

174. On or about February 20, 1959, **Les Brown** entered into an agreement with Kapp Records. This agreement gave Kapp the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreement. In return, Kapp promised to pay **Les Brown** royalties on all recordings made. **Universal** is the successor-in-interest to Kapp.

175. On or about October 23, 1964, **Les Brown** entered into a new contract with Decca Records, Inc. This agreement gave Decca the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreements. In return, Decca promised to pay **Les Brown** royalties on all recordings made. **Universal** is the successor-in-interest to Decca.

176. On or about April 28, 1966 and September 29, 1967, **Les Brown** entered into an agreement with MCA Records, Inc., successor-in-interest to Decca, to record certain musical

compositions. This agreement gave MCA the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreements. In return, MCA promised to pay **Les Brown** royalties on all recordings made. **Universal** is the successor-in-interest to MCA.

177. In the 1980's, MCA, as successor in interest to Decca, acknowledged that the earlier agreements did not cover CDs. In recognition of the fact that it did not have the right to release CDs and to induce **Les Brown** to agree to temporarily accept reduced royalties on CDs, MCA and **Les Brown** entered into a new agreement in which it was agreed that if MCA agreed to pay any artist a royalty exceeding the rate that artist was previously paid, the rate paid to **Les Brown** would be increased by the same proportion as the increase in the other artist's rate.

178. On or about August 1, 1949, August 1, 1953 and August 1, 1957 **Jerry Murad** entered into agreements with Mercury Records, Inc. These agreements gave Mercury the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreements. In return, Mercury promised to pay **Jerry Murad** royalties on all recordings made. **Universal** is the successor-in-interest to Mercury.

179. **Sister Rosetta Tharpe** entered into agreements with **Universal's** predecessors in interest. These agreements gave such predecessors the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreements. In return, **Universal's** predecessors promised to pay **Sister Rosetta Tharpe's** royalties on all recordings made. **Universal** is the successor-in-interest to these contracts.

180. **Frankie Laine** entered into agreements with **Universal's** predecessors in interest. These agreements gave such predecessors the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreements. In return, **Universal's**

predecessors promised to pay **Frankie Laine's** royalties on all recordings made. **Universal** is the successor-in-interest to these contracts.

181. **Tony Martin** entered into agreements with **Universal's** predecessors in interest. These agreements gave such predecessors the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreements. In return, **Universal's** predecessors promised to pay **Tony Martin's** royalties on all recordings made. **Universal** is the successor-in-interest to these contracts.

182. **Benny Goodman** entered into agreements with **Universal's** predecessors in interest. These agreements gave such predecessors the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreements. In return, **Universal's** predecessors promised to pay **Benny Goodman** royalties on all recordings made. **Universal** is the successor-in-interest to these contracts.

183. **Dick Hyman** entered into agreements with **Universal's** predecessors in interest. These agreements gave such predecessors the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreements. In return, **Universal's** predecessors promised to pay **Dick Hyman** royalties on all recordings made. **Universal** is the successor-in-interest to these contracts.

184. **Richard Hayman** entered into agreements with **Universal's** predecessors in interest. These agreements gave such predecessors the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreements. In return, **Universal's** predecessors promised to pay **Richard Hayman** royalties on all recordings made. **Universal** is the successor-in-interest to these contracts.

predecessors promised to pay **Frankie Laine's** royalties on all recordings made. **Universal** is the successor-in-interest to these contracts.

181. **Tony Martin** entered into agreements with **Universal's** predecessors in interest. These agreements gave such predecessors the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreements. In return, **Universal's** predecessors promised to pay **Tony Martin's** royalties on all recordings made. **Universal** is the successor-in-interest to these contracts.

182. **Benny Goodman** entered into agreements with **Universal's** predecessors in interest. These agreements gave such predecessors the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreements. In return, **Universal's** predecessors promised to pay **Benny Goodman** royalties on all recordings made. **Universal** is the successor-in-interest to these contracts.

183. **Dick Hyman** entered into agreements with **Universal's** predecessors in interest. These agreements gave such predecessors the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreements. In return, **Universal's** predecessors promised to pay **Dick Hyman** royalties on all recordings made. **Universal** is the successor-in-interest to these contracts.

184. **Richard Hayman** entered into agreements with **Universal's** predecessors in interest. These agreements gave such predecessors the right to manufacture and sell recordings embodying the performances recorded pursuant to the agreements. In return, **Universal's** predecessors promised to pay **Richard Hayman** royalties on all recordings made. **Universal** is the successor-in-interest to these contracts.

Facts Common to All Causes of Action Part 3:
Record Clubs

185. Upon information and belief, **Universal** entered into agreements with the two major American record clubs, Columbia House and BMG Music Service, which cover the exploitation of all of **Universal's** recording product, including the recordings by the artists at issue here. Upon information and belief, **Universal** receives payments from the record clubs that are concealed from **Plaintiffs** and others similarly situated, which payments should have been reported to and shared with the **Plaintiffs**.

186. Upon information and belief, these concealed payments to **Universal** are part of a broad, long-standing process geared towards improperly suppressing the income due **Plaintiffs**, strictly for the purpose of buttressing **Universal's** own income to the detriment of other things.

187. Upon information and belief, **Universal** receives inflated advances from the record clubs, accepts very low royalties and then retains the difference between the royalties actually earned and written-off advances, which they do not share with **Plaintiffs**.

188. Upon information and belief, **Universal** receives from the record clubs additional payments which are neither advances or otherwise recoupable, which they also do not share with **Plaintiffs**, and are not disclosed to **Plaintiffs**.

189. Upon information and belief, in return for the concealed payments made to **Universal**, the record clubs receives permission to exploit the recordings of, *inter alia*, **Plaintiffs**, at minimal royalty rates (substantially below what would be received from sales of their recordings through normal channels distribution), or for free.

190. Upon information and belief, **Universal** and the record clubs share a mutual interest in the distribution of free goods because they both profit at the expense of, *inter alia*, **Plaintiffs**.

191. Upon information of belief, a portion of the monies paid to **Universal** by the record clubs are in the form of advances against royalties to be paid by record clubs, **Universal's** interest is to maximize the amount of free goods, for which no royalties are paid to, *inter alia*, **Plaintiffs**.

192. Upon information and belief, the net effect of the foregoing is that, *inter alia*, **Plaintiffs** receive minuscule royalties for record club distribution of their recordings, while **Universal** receives a much larger proportion than had the recordings been distributed via normal retail channels of trade.

193. Upon information and belief, **Universal** and the record clubs have done their best to conceal the millions of dollars in concealed payments made to **Universal**.

194. Upon information and belief, although **Universal** purports to grant audit rights to its artists such as **Plaintiffs**, **Universal** refuses to provide to **Plaintiffs'** auditors copies of the record club agreements or disclose the payments or profits received by **Universal**.

195. The precise dates and nature of the agreements between **Universal** and the record clubs are currently unknown to **Plaintiffs**, as this information is in the sole possession, custody and control of **Universal** and, although requested by **Plaintiffs'** representatives and auditors, **Universal** has yet to disclose this information to **Plaintiffs**.

**Facts Common to All Causes of Action Part 4:
Systemic Breaches by Universal**

196. Upon information and belief, in rendering accountings due under the agreements between **Plaintiffs** and/or their predecessors-in-interest on the one hand and **Universal** or predecessors-in-interest on the other detailed above (hereinafter, the "Subject Contracts"), **Universal** has debited **Plaintiffs** with a higher per-unit price when music carriers were returned than it previously credited to **Plaintiffs** when those same units were sold.

197. Upon information and belief, **Universal** has licensed the recordings at issue here to various third parties for third party exploitation of those recordings, such as by release on a compilation album. Upon information and belief, in many instances, **Universal** has failed to properly credit **Plaintiffs'** royalty accounts for such exploitation.

198. Upon information and belief, **Universal** has licensed the recordings at issue here to various third parties for third party exploitation of those recordings, such as by release on a compilation album. Upon information and belief, in many instances, **Universal** has failed to notify or account to or pay **Plaintiffs** for such exploitation.

199. Upon information and belief, in connection with digital distribution of the recordings, such as via iTunes, **Universal** has failed to properly credit **Plaintiffs'** royalty accounts.

200. Upon information and belief, **Universal** has deducted a reserve against royalties for third party exploitations of the recordings at issue, despite no contractual provision allowing for such deductions.

201. Upon information and belief, **Plaintiffs** and/or their predecessors-in-interest (i.e. the artists themselves) are among the most popular recording artists in the history of recorded music. Upon information and belief, **Universal** settled claims against entities such as Napster, Grockster, e-Music, Streamcast, iMesh, eDonkey, Sharman Networks, Limewire and others that provided downloads of the recordings for which **Universal** is required to pay **Plaintiffs**. Upon information and belief, **Universal's** settlements with the aforementioned entities were based upon **Universal's** market share for recordings. Upon information and belief, **Universal** never accounted to **Plaintiffs** for these settlements. Upon information and belief, **Universal** never paid **Plaintiffs** for these settlements.

202. Upon information and belief, **Universal** and/or its licensees have released music carriers containing one or more recording by for which royalties are due **Plaintiffs** and for which **Universal** has failed to provide any information to **Plaintiffs**. Upon information and belief, **Universal** and/or its licensees have authorized the digital distribution of the aforementioned recordings in foreign territories without providing any information regarding the same to **Plaintiffs**.

203. Upon information and belief, **Universal** has collected royalties for the sale of certain empty music carriers under the provisions of the audio home recording act ("AHRA"). Upon information and belief, **Universal** should be paying a portion of the royalties received under the AHRA to **Plaintiffs**. **Universal** has not provided any information to **Plaintiffs** regarding the amount of income due **Plaintiffs** under the AHRA.

Facts Common to All Causes of Action Part 5:
Applicable Period and Tolling

204. The allegations set forth herein cover the accounting periods of July 1, 1998 through the present. By agreement between their respective representatives, **Plaintiffs** and **Universal** agreed that the applicable statute of limitations for the claims asserted herein have been tolled to at least **February 14, 2008**.

FIRST CAUSE OF ACTION

(BREACH OF CONTRACT)

205. To the extent applicable, **Plaintiffs** reallege and incorporate by reference all of the foregoing paragraphs as though fully set forth herein.

206. Under all the aforesaid Subject Contracts, **Universal** is required to report sales and earnings on a semi-annual basis.

207. **Plaintiffs** have performed each and all of the conditions, covenants and obligations imposed upon them under the terms of the Subject Contracts.

208. Upon information and belief, **Universal** has repeatedly breached its obligations to **Plaintiffs** by failing to submit accurate and truthful reports and royalty payments to **Plaintiffs**, by, among other things: inappropriately applying a reduced retail price in calculating royalties due to **Plaintiffs**; imposing a synthetic retail price to calculate royalties in lieu of the actual retail price dictated by the applicable contract(s); failing to report to **Plaintiffs** all payments received from third parties, including record clubs; failing to report to **Plaintiffs** all sales of the relevant recordings by record clubs; applying a reduced price in calculating royalties for sales of the

relevant recording by record clubs; and, failing to provide **Plaintiffs**, when requested, of pertinent information and documentation concerning the licensing of the relevant recordings.

209. **Plaintiffs** have audited the records of **Universal** in an effort to determine whether **Universal** has been paying royalties as required. These audits have shown that **Universal** has systematically underpaid royalties to **Plaintiffs**.

210. **Universal** has refused to provide all records needed to calculate the amount of under payments, but based on the records available, **Plaintiffs'** auditors have estimated that **Universal** owes **Plaintiffs** no less than \$ 6,071,772.08, including interest and fees.

211. As a direct and proximate result of **Universal's** acts and omissions, as alleged herein, **Plaintiffs** have suffered substantial damages, together with accrued interest thereon at the legal rate, in an amount to be proven at trial.

SECOND CAUSE OF ACTION

(DECLARATORY JUDGMENT FOR TERMINATION AND RESCISSION)

212. To the extent applicable, **Plaintiffs** reallege and incorporate by reference all of the foregoing paragraphs as though fully set forth herein.

213. The Subject Agreements have been pervasively and systemically breached by **Universal** and **Universal** has acted in callous disregard to the contractual and other rights of **Plaintiffs**.

214. **Universal** has continually fails to properly account to **Plaintiffs**, and in many cases solely as a result of promoting its own interest.

215. **Universal** has continually required **Plaintiffs** to engage accountants and other professionals to monitor **Universal's** activity, and every examination has proved that **Universal** made errors in its own favor on each occasion.

216. **Universal** knowingly made representations and rendered statements to **Plaintiffs** in a manner directed at convincing **Plaintiffs** that different rates are to be paid and different amounts to be credited than should be credited to **Plaintiffs**. Upon information and belief, **Universal** has known that these statements are false. Upon information and belief, in so doing, **Universal** has made these representations with the hope of having **Plaintiffs** rely on such knowingly false statements.

217. Upon information and belief, despite the knowledge that it is cheating **Plaintiffs** from income they have earned, **Universal** still has not remedied its improper and false accountings, concealments or under payments.

218. By virtue of the foregoing, the Subject Agreements have been materially breached, should be terminated, and should be rescinded. **Universal** has received an overwhelming windfall from the Subject Agreements, far in excess of the amount it could have reasonably expected to receive when its predecessors entered into the Subject Agreements. Nonetheless, **Universal** has continued its systemic and pervasive breaches, which undercut the entire purpose of entering into the Subject Agreements.

219. **Plaintiffs** are entitled to a declaration that the Subject Agreements are rescinded, or at the least terminated as of 1998, with the ownership of the recordings transferred thereunder, as well as the rights therein and thereto, being returned to **Plaintiffs**.

THIRD CAUSE OF ACTION

(BREACH OF THE FIDUCIARY DUTY)

220. To the extent applicable, **Plaintiffs** reallege and incorporate by reference all of the foregoing paragraphs as though fully set forth herein.

221. Commencing as early as the 1920's, and at the latest in the 1950's the Subject Artists and then **Plaintiffs** in their place and stead, had numerous business dealings with **Universal** and its predecessors in interest. For the last fifty (50) years, the **Plaintiffs** and their predecessors in interest have had a special relationship with **Universal** and its predecessors in interest. To this day, the Subject Artists' names and likeness adorn **Universal's** publicity material.

222. **Plaintiffs** and their predecessors in interest entrusted their business to **Universal** and their predecessors in interest.

223. Even after the remarkable success of the Subject Artists here, the **Plaintiffs** continued to rely on **Universal** and its predecessors-in-interest to ensure that the recordings at issue herein were properly administered and ensure that **Plaintiffs** would receive the benefit of the bargains from the contracts and relationships initiated more than fifty (50) years ago.

224. Upon information and belief, **Universal's** improper dealings have significantly depleted the income that **Plaintiffs** would otherwise be entitled to receive.

225. Because of **Universal's** exclusive and total control over the manufacture, distribution, sale, licensing and/or exploitation of the recordings of the Subject Artists, and **Universal's** obligation to accurately and fully account for, report and pay to **Plaintiffs** all

royalties due and owing **Plaintiffs** from said exploitation of the Subject Artists' recordings under the express terms of the Subject Contracts, **Universal** placed itself in a position of trust and confidence with regard to **Plaintiffs**.

226. **Universal** has a duty to account fairly, accurately and promptly for all royalties owed **Plaintiffs** under the aforesaid agreements, not to act in its self-interest to the detriment of **Plaintiffs** or to deprive **Plaintiffs** of the benefits under the Subject Contracts.

227. As a result of **Universal's** assumption of the fiduciary obligation to account and pay royalties to **Plaintiffs**, **Universal** owed a duty to **Plaintiffs** to act in the highest good faith; to perform its duties in a competent and proper manner; to make full disclosure of all material facts to **Plaintiffs**; to refrain from engaging in conduct adverse to **Plaintiffs**; and, to account promptly and accurately for all royalties generated under the aforesaid agreements.

228. In reliance upon the assumption by **Universal** and its predecessors of this special fiduciary relationship, the Subject Artists did place special faith and trust in **Universal** and its predecessors, and did rely upon **Universal** to fully and faithfully carry out all fiduciary obligations.

229. In light of the foregoing and as the administrator of the intellectual property at issue, **Universal** has a fiduciary relationship with **Plaintiffs**.

230. By putting its own needs above that of the **Plaintiffs**, **Universal** has breached its fiduciary duty to **Plaintiffs**.

231. As a direct and proximate result of **Universal's** breach of the fiduciary duty and breach of trust and confidence, **Plaintiffs** have suffered substantial damages, together with accrued interest thereon at the legal rate, to be proven at trial.

FOURTH CAUSE OF ACTION

(ACCOUNTING FOR PROFITS – UNJUST ENRICHMENT)

232. To the extent applicable, **Plaintiffs** reallege and incorporate by reference all of the foregoing paragraphs as though fully set forth herein.

233. Inasmuch as the Subject Contracts will be deemed terminated, the parties are entitled to be placed in the position they would otherwise be in had **Universal** acted in accordance with such termination in 1998.

234. Upon information and belief, **Universal** has already received well in excess of all consideration it provided to **Plaintiffs** under the Subject Agreement.

235. Upon being declared owner of the master recordings made pursuant to the Subject Contracts, **Plaintiffs** are entitled to compensation they would otherwise have received had **Universal** not exercised control over the recordings made pursuant to the Subject Contracts, including all income to **Universal** as a result of such exploitation since 1998.

236. **Plaintiffs** are entitled to an accounting of **Universal's** profits for the exploitation of the recordings made pursuant to the Subject Contracts, and to be awarded the same in amount to be determined at trial.

Prayer for Relief

WHEREFORE, Plaintiffs pray for relief and respectfully request that the Court:

a) Award to plaintiffs:

- (1) actual damages no less than \$ 6,071,772.08;
- (2) full costs for this action, including reasonable attorney fees,
- (3) damages sufficient to compensate **Plaintiffs** for **Universal's** breach of contract;
- (4) damages sufficient to compensate **Plaintiffs** for **Universal's** breach of fiduciary duty;
- (5) prejudgment and post judgment interest on all sums; and
- (6) An exemplary fee in punitive damages.

b) Declare that the Subject Contracts have been materially breached, terminated and that

Plaintiffs are the owners of the recordings made thereunder; and,

c) Award plaintiffs any further relief as justice may require, or as this Court deems necessary.

d) Plaintiffs hereby request a trial by jury for all claims herein.

Dated: February 14, 2007
New York, New York

Respectfully Submitted,

TROUTMAN SANDERS LLP

By: 

Oren J. Warshavsky

The Chrysler Building

405 Lexington Avenue

New York, New York 10174

Telephone: (212) 704.6200

Facsimile: (212) 704.8356

e-mail: Oren.Warshavsky@troutmansanders.com

Attorneys for Plaintiffs