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*Counsel for Plaintiff Zenbu Magazines LLC,
and the Putative Class*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ZENBU MAGAZINES LLC, on behalf of
itself and all others similarly situated,

Plaintiff,

v.

SONY COMPUTER ENTERTAINMENT
AMERICA LLC, and SONY
ENTERTAINMENT NETWORK
INTERNATIONAL LLC,

Defendants.

Case No.: 15-cv-310

CLASS ACTION

COMPLAINT FOR:

**VIOLATION OF CAL. CIV. CODE §
980(a)(2);**

**VIOLATION OF CAL. BUS. & PROF.
CODE §§ 17200 ET SEQ.;**

MISAPPROPRIATION; and

CONVERSION

DEMAND FOR JURY TRIAL

1 Plaintiff Zenbu Magazines LLC (“Zenbu”), on behalf of itself, all others similarly
2 situated, and the general public, by and through its undersigned counsel, hereby brings this
3 action against defendants Sony Computer Entertainment America LLC, and Sony Network
4 Entertainment International LLC (collectively, “Sony”), and alleges the following upon its
5 own knowledge, or where it lacks personal knowledge, upon information and belief including
6 the investigation of its counsel.

7 **INTRODUCTION**

8 1. Sony operates and offers to the general public a streaming music service called
9 Music Unlimited, which is available through the Sony PlayStation video game console,
10 online through an Internet browser, and through applications for certain Android, Apple
11 (iOS), and Windows smartphones and tablets.

12 2. Included in the Music Unlimited library are sound recordings of musical
13 performances that initially were “fixed” (that is, in a tangible medium, i.e., recorded) prior to
14 February 15, 1972, for which Sony has not obtained the recordings’ owners’ authorization to
15 perform, and for which Sony does not and has not paid the recordings’ owners royalties or
16 licensing fees when it performs the recordings.

17 3. Sony has copied tens of thousands of pre-1972 sound recordings to its servers,
18 transmitting and performing them via Music Unlimited to its millions of users on a daily
19 basis, without any authorization. Sony profits from its unauthorized reproduction,
20 distribution, and public performance of pre-1972 recordings by charging subscription fees to
21 its users, without paying royalties or licensing fees for pre-1972 recordings.

22 4. Because Sony operates Music Unlimited without licenses for pre-1972 sound
23 recordings, Sony is liable under California law for violation of Cal. Civ. Code § 980(a)(2),
24 violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*, misappropriation, and conversion.

25 5. Zenbu owns all right, title, and interest in and to a library of pre-1972 sound
26 recordings, several of which Sony has reproduced, distributed, and performed without paying
27 Zenbu any royalties or licensing fees. Zenbu brings this action on behalf of itself and
28

1 similarly-situated owners of pre-1972 recordings that have been reproduced, distributed, and
2 performed by Sony without paying royalties or licensing fees.

3 **THE PARTIES**

4 6. Plaintiff Zenbu Magazines LLC is a New York limited liability company with
5 its principal place of business in Brooklyn, New York.

6 7. Defendant Sony Computer Entertainment America LLC is a Delaware limited
7 liability company with its principal place of business at 2207 Bridgepointe Parkway, San
8 Mateo, California 94404.

9 8. Defendant Sony Entertainment Network International LLC is a Delaware
10 limited liability company with its principal place of business at 6080 Center Drive, 10th Floor,
11 Los Angeles, California 90045.

12 9. The Sony defendants together own and operate Music Unlimited.

13 **JURISDICTION AND VENUE**

14 10. This Court has jurisdiction over this action pursuant to 28 U.S.C. §
15 1332(d)(2)(A), the Class Action Fairness Act, because the matter in controversy exceeds the
16 sum or value of \$5,000,000 exclusive of interest and costs and at least one member of the
17 class of plaintiffs is a citizen of a State different from defendant. In addition, more than two-
18 thirds of the members of the class reside in states other than the state in which defendant is a
19 citizen and in which this case is filed, and therefore any exceptions to jurisdiction under 28
20 U.S.C. § 1332(d) do not apply.

21 11. The Court has personal jurisdiction over defendant pursuant to Cal. Code Civ.
22 P. § 410.10, as a result of defendant's substantial, continuous and systematic contacts with
23 the State, and because defendant has purposely availed itself of the benefits and privileges of
24 conducting business activities within the State.

25 12. Venue is proper in this Northern District of California pursuant to 28 U.S.C. §
26 1391(b) and (c), because defendant resides (i.e., is subject to personal jurisdiction) in this
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1 district, and a substantial part of the events or omissions giving rise to the claims occurred in
2 this district.

3 INTRADISTRICT ASSIGNMENT

4 13. Pursuant to N.D. Cal. Civ. L.R. 3-2(c), (d) & 3-5(b), this action is properly
5 assigned to the San Francisco or Oakland Division because the action arises in San Mateo
6 County in that a substantial part of the events or omissions which give rise to plaintiff's claims
7 occurred in San Mateo, the principal location of defendant Sony Computer Entertainment
8 America LLC.

9 FACTS

10 14. Music Unlimited is provided by Sony to paying and non-paying members of the
11 public throughout the United States. Sony delivers and streams music through its website
12 (www.playstation.com/en-us/explore/playstationnetwork/musicunlimited), through its
13 PlayStation video game consoles, and via downloadable applications for certain Android,
14 Apple (iOS), and Windows smartphones and tablets. In marketing the Sony Music service,
15 Sony represents that subscribers have access to millions of songs.

16 15. Sony provides the Music Unlimited on a one-month free trial basis for new users,
17 and on a subscription basis for \$4.99 per month (the so-called "Access Plan," which allows a
18 subscriber to "enjoy at home," by using the service on a PlayStation or online on a PC or Mac
19 computer), or \$9.99 per month (the so-called "Premium Plan," which allows a subscriber to
20 "listen on the go," by using the service on a PlayStation or Sony Blu-Ray Disc player, online
21 on a PC or Mac, or on certain mobile devices).

22 16. Among the sound recordings that Sony publicly performs, reproduces, and
23 distributes on an ongoing and regular basis are pre-1972 recordings, including recordings
24 owned by Zenbu (the "Zenbu Recordings"), specifically:

25 Artist	26 Album	27 Song(s)	28 Date of Recording
The Flying Burrito Brothers	The Gilded Palace of Sin	Sin City	1969

Artist	Album	Song(s)	Date of Recording
Hot Tuna	Historic Live Tuna (taken from Classic Hot Tuna Acoustic)	New Song (for the Morning)	April 30, 1971
Hot Tuna	Historic Live Tuna (taken from Classic Hot Tuna Acoustic)	Been So Long	April 30, 1971
Hot Tuna	Historic Live Tuna (taken from Classic Hot Tuna Acoustic)	Oh Lord, Search My Heart	April 30, 1971
Hot Tuna	Historic Live Tuna (taken from Classic Hot Tuna Acoustic)	True Religion	April 30, 1971
Hot Tuna	Historic Live Tuna (taken from Classic Hot Tuna Acoustic)	Space Jam	April 30, 1971
Hot Tuna	Historic Live Tuna (taken from Classic Hot Tuna Electric)	Intro by Bill Graham/Rock Me Baby	July 3, 1971
Hot Tuna	Historic Live Tuna (taken from Classic Hot Tuna Electric)	Want You to Know	July 3, 1971
Hot Tuna	Historic Live Tuna (taken from Classic Hot Tuna Electric)	Come Back Baby	July 3, 1971
New Riders of the Purple Sage	Before Time Began	Henry	1968-69
New Riders of the Purple Sage	Before Time Began	All I Ever Wanted	1968-69
New Riders of the Purple Sage	Before Time Began	Last Lonely Eagle	1968-69
New Riders of the Purple Sage	Before Time Began	Cecilia	1968-69

Artist	Album	Song(s)	Date of Recording
New Riders of the Purple Sage	Before Time Began	Garden of Eden	1968-69
New Riders of the Purple Sage	Before Time Began	Superman	1968-69

17. In order to stream music recordings to the public, Sony has reproduced and copied, and continues to reproduce and copy, pre-1972 sound recordings, including to one or more servers and storage devices, and uses technology or systems that result in a copy of pre-1972 recordings being distributed to its subscribers' computers or storage devices.

18. Sony is aware that it does not have any license, right, or authority to reproduce, perform, distribute, or otherwise exploit via Music Unlimited any pre-1972 sound recordings, including the Zenbu Recordings.

19. Sony is also aware which of the recordings it reproduces, performs, and distributes or otherwise exploits via the Music Unlimited are pre-1972 sound recordings.

CLASS ACTION ALLEGATIONS

20. Zenbu seeks to represent a class comprised of all owners of sound recordings of musical performances that initially were "fixed" (*i.e.*, recorded) prior to February 15, 1972, which sound recordings were reproduced, performed, distributed, and/or otherwise exploited by Sony via its Sony Music service, and for which Sony was not authorized or licensed to reproduce, perform, distribute, or otherwise exploit.

21. Numerosity – The members in the proposed class are so numerous that individual joinder of all members is impracticable, and the disposition of the claims of all class members in a single action will provide substantial benefits to the parties and Court.

22. Commonality – Common questions of law and fact exist as to all members of the putative class and subclass, which do not vary from member to member, and which may be resolved without reference to individual facts and circumstances include, without limitation:

- 1 a. Whether Sony reproduced, performed, distributed or otherwise exploited
2 via the Music Unlimited pre-1972 sound recordings;
- 3 b. Whether Sony was authorized by the owners of the sound recording
4 copyrights to reproduce, perform, distribute, or otherwise exploit via
5 Music Unlimited pre-1972 sound recordings;
- 6 c. Whether Sony paid royalties or licensing fees for pre-1972 sound
7 recordings that it reproduced, performed, distributed, or otherwise
8 exploited via the Music Unlimited;
- 9 d. Whether Sony's reproduction, performance, distribution, or other
10 exploitation via the Music Unlimited of pre-1972 sound recordings
11 constitutes a violation of Cal. Civ. Code § 980(a)(2);
- 12 e. Whether Sony's reproduction, performance, distribution or other
13 exploitation via the Music Unlimited of pre-1972 sound recordings
14 constitutes an unfair business practice in violation of Cal. Bus. & Prof.
15 Code §§ 17200, *et seq.*;
- 16 f. Whether Sony's reproduction, performance, distribution or other
17 exploitation via the Music Unlimited of pre-1972 sound recordings
18 constitutes misappropriation;
- 19 g. Whether Sony's reproduction, performance, distribution or other
20 exploitation via the Music Unlimited of pre-1972 sound recordings
21 constitutes conversion;
- 22 h. The proper equitable, injunctive, and prospective relief;
- 23 i. The proper amount of actual or compensatory damages;
- 24 j. The proper amount of restitution or disgorgement;
- 25 k. The proper amount of punitive damages; and
- 26 l. The proper amount of reasonable litigation expenses and attorneys' fees.
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1 23. Typicality – Zenbu’s claims are typical of the claims of members of the class in
2 that they are based on the same underlying facts, events, and circumstances relating to Sony’s
3 conduct. Zenbu’s interests are consistent with, and not antagonistic to, those of the other class
4 members it seeks to represent.

5 24. Adequacy – Zenbu will fairly and adequately represent and protect the interests
6 of the class, has no interests incompatible with the interests of the class, and has retained
7 counsel competent and experienced in class action and music copyright litigation.

8 25. Predominance – Questions of law and fact common to the class predominate
9 over any questions affecting only individual class members.

10 26. Superiority – Class treatment is superior to other options for resolution of the
11 controversy because individual litigation of the claims of all class members is impracticable.
12 The claims of the individual members of the class may range from small sums to larger sums.
13 For those class members with smaller claims, the expense and burden of individual litigation
14 may not justify pursuing the claims individually. Moreover, even if every class member could
15 afford to pursue individual litigation, that would greatly tax the court system, as well as
16 present potential for varying, inconsistent, or contradictory judgments, and magnify the delay
17 and expense to all parties and the court system resulting from multiple trials of the same
18 factual issues.

19 **CAUSES OF ACTION**

20 **FIRST CAUSE OF ACTION**

21 **VIOLATION OF CAL. CIV. CODE § 980(a)(2)**

22 27. Zenbu realleges and incorporates the allegations elsewhere in the Complaint as
23 if fully set forth herein.

24 28. Pursuant to Cal. Civ. Code § 980(a)(2), Zenbu and members of the putative class
25 possess exclusive ownership interests in and to pre-1972 sound recordings, including the
26 artistic performances embodied in those recordings.

1 29. Through its unauthorized reproduction, performance, distribution, or other
2 exploitation via its Music Unlimited of pre-1972 sound recordings (including the Zenbu
3 Recordings), Sony has infringed Zenbu's and the class members' exclusive ownership
4 interests in and to the pre-1972 recordings, in violation of Cal. Civ. Code § 980(a)(2).

5 30. As a direct and proximate consequence of Sony's violation of Cal. Civ. Code §
6 980(a)(2), Sony has received and retained money and value that rightfully belong to Zenbu
7 and members of the class.

8 31. As a direct and proximate consequence of Sony's violation of Cal. Civ. Code §
9 980(a)(2), Zenbu and members of the class have been damaged in an amount that is not yet
10 fully ascertained, but which likely is many millions of dollars.

11 **SECOND CAUSE OF ACTION**

12 **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.**

13 32. Zenbu realleges and incorporates the allegations elsewhere in the Complaint as
14 if fully set forth herein.

15 33. The Unfair Competition Law prohibits any "unlawful, unfair or fraudulent
16 business act or practice." Cal. Bus. & Prof. Code § 17200.

17 **Unfair**

18 34. Sony's conduct as alleged herein was unfair because its conduct was immoral,
19 unethical, unscrupulous, or substantially injurious and the utility of its conduct, if any, did
20 not outweigh the gravity of the harm to its victims.

21 35. Sony's conduct as alleged herein was also unfair because it violates public policy
22 as declared by specific constitutional, statutory, or regulatory provisions, including without
23 limitation Cal. Civ. Code § 980(a)(2).

24 **Unlawful**

25 36. Sony's conduct as alleged herein was "unlawful" within the meaning of the UCL
26 because it was in violation of Cal. Civ. Code § 980(a)(2).

THIRD CAUSE OF ACTION
MISAPPROPRIATION

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3 37. Zenbu realleges and incorporates the allegations elsewhere in the Complaint as
4 if fully set forth herein.

5 38. Pursuant to Cal. Civ. Code § 980(a)(2) and California common law, Zenbu and
6 members of the class possess exclusive ownership interests in and to the pre-1972 sound
7 recordings, including the artistic performances embodied in those recordings.

8 39. Zenbu and members of the class, and their predecessors in interest, invested
9 substantial time and money developing the pre-1972 sound recordings reproduced,
10 performed, distributed, and otherwise exploited by Sony via Music Unlimited.

11 40. Because Sony does not obtain licenses to pre-1972 sound recordings, it does not
12 incur any of the costs that a licensee is otherwise obligated to pay in order to reproduce,
13 perform, distribute or otherwise exploit via the Music Unlimited pre-1972 recordings.

14 41. Sony has misappropriated, and continues to misappropriate, for its own
15 commercial benefit, the exclusive ownership interests in and to the pre-1972 sound
16 recordings, by reproducing, performing, distributing, or otherwise exploiting via the Music
17 Unlimited pre-1972 recordings.

18 42. As a direct and proximate consequence of Sony's misappropriation, Sony has
19 received and retained money and value that rightfully belongs to Zenbu and members of the
20 class.

21 43. As a direct and proximate consequence of Sony's violation of Cal. Civ. Code §
22 980(a)(2), Zenbu and members of the class have been damaged in an amount that is not yet
23 fully ascertained, but which likely is many millions of dollars.

24 44. Sony acted with oppression, fraud, or malice. Sony's conduct was undertaken in
25 conscious disregard of the rights of Zenbu and each member of the class. Accordingly, Zenbu
26 and each member of the class is entitled to an award of punitive damages against Sony in an
27
28

1 amount sufficient to punish and make an example of Sony, so as to discourage Sony and
2 others from engaging in the same behavior in the future.

3 **FOURTH CAUSE OF ACTION**

4 **CONVERSION**

5 45. Zenbu realleges and incorporates the allegations elsewhere in the Complaint as
6 if fully set forth herein.

7 46. Pursuant to Cal. Civ. Code § 980(a)(2) and California common law, Zenbu and
8 members of the class possess exclusive ownership interests in and to the pre-1972 sound
9 recordings, including the artistic performances embodied in those recordings.

10 47. By reproducing, performing, distributing or otherwise exploiting via the Music
11 Unlimited pre-1972 sound recordings, Sony has converted for its own use the property rights
12 of Zenbu and each member of the class, in the pre-1972 recordings, and has dispossessed
13 Zenbu and each member of the class of their property rights.

14 48. As a direct and proximate result of its conversion, Sony has received and
15 retained money and value that rightfully belongs to Zenbu and members of the class.

16 49. As a direct and proximate consequence of Sony's violation of Cal. Civ. Code §
17 980(a)(2), Zenbu and members of the class have been damaged in an amount that is not yet
18 fully ascertained, but which likely is many millions of dollars.

19 50. Sony acted with oppression, fraud, or malice. Sony's conduct was undertaken in
20 conscious disregard of the rights of Zenbu and each member of the class. Accordingly, Zenbu
21 and each member of the class is entitled to an award of punitive damages against Sony in an
22 amount sufficient to punish and make an example of Sony, so as to discourage Sony and
23 others from engaging in the same behavior in the future.

24 **PRAYER FOR RELIEF**

25 51. Wherefore, Zenbu, on behalf of itself, all others similarly situated, and the
26 general public, prays for judgment against Sony as to each and every cause of action,
27 including:
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- 1 a. An Order declaring this action to be a proper class action, appointing
2 Zenbu and its counsel to represent the class, and requiring Sony to bear
3 the cost of class notice;
- 4 b. An Order permanently enjoining Sony from, without license, reproducing,
5 performing, distributing, or otherwise exploiting via the Music Unlimited
6 pre-1972 sound recordings;
- 7 c. An Order permanently enjoining Sony, and its agents, servants, directors,
8 officers, principals, employees, representative, subsidiaries, parents,
9 affiliates, successors, assigns, and those acting in concert with them or at
10 their direction, from infringing, misappropriating, or converting, directly
11 or indirectly, Zenbu's and the class members' exclusive ownership
12 interests in and to the pre-1972 sound recordings, including the artistic
13 performances embodied in those recordings, including without limitation
14 by directly or indirectly reproducing, performing, distributing, or
15 otherwise exploiting via the Music Unlimited the pre-1972 recordings;
- 16 d. An Order requiring Sony to pay Zenbu and the class compensatory
17 damages on any cause of action where such damages are allowable;
- 18 e. An Order requiring Sony to pay Zenbu and the class restitution to restore
19 all funds acquired by means of any act or practice declared by the Court
20 to be unlawful or unfair;
- 21 f. An Order requiring Sony to disgorge or return all monies, revenues, and
22 profits obtained by means of any wrongful or unlawful act or practice;
- 23 g. An Order requiring Sony to pay punitive damages on any causes of action
24 so allowable if Zenbu proves Sony's conduct was knowing, willful,
25 malicious, oppressive, or reckless;
- 26 h. An Order requiring Sony to pay pre- and post-judgment interest on any
27 monetary amounts awarded;
- 28

- 1 i. An Order requiring Sony to pay fees and costs, including reasonable
2 attorneys' fees, incurred in pursuing this action; and
3 j. An Order providing for all other such equitable relief as may be just and
4 proper.

5 **JURY DEMAND**

6 52. Zenbu hereby demands a trial by jury on all issues so triable.
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8

9 Dated: January 22, 2015

/s/ Jack Fitzgerald

By: Jack Fitzgerald

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