

FILED

2014 OCT -2 AM 10:41

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY: _____

1 GRADSTEIN & MARZANO, P.C.
2 HENRY GRADSTEIN (State Bar No. 89747)
3 hgradstein@gradstein.com
4 MARYANN R. MARZANO (State Bar No. 96867)
5 mmarzano@gradstein.com
6 HARVEY W. GELLER (State Bar No. 123107)
7 hgeller@gradstein.com
8 6310 San Vicente Blvd., Suite 510
9 Los Angeles, California 90048
10 Telephone: 323-776-3100

11 EVAN S. COHEN (State Bar No. 119601)
12 esc@manifesto.com
13 1180 South Beverly Drive, Suite 510
14 Los Angeles, California 90035
15 Telephone: 310-556-9800 Facsimile: 310-556-9801

16 Attorneys for Plaintiff
17 FLO & EDDIE, INC.

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 LA CV 14 07648-ODW(SHx)

14 FLO & EDDIE, INC., a California
15 corporation, individually and on behalf
16 of all others similarly situated,

17 Plaintiff,

18 v.

19 PANDORA MEDIA, INC, a Delaware
20 corporation; and DOES 1 through 100,

21 Defendants.

Case No.

22 CLASS ACTION COMPLAINT

- 23 1. VIOLATION OF CALIFORNIA
- 24 CIVIL CODE § 980(a)(2);
- 25 2. MISAPPROPRIATION;
- 26 3. VIOLATION OF CALIFORNIA
- 27 BUSINESS AND PROFESSIONS
- 28 CODE § 17200; and
4. CONVERSION

DEMAND FOR JURY TRIAL

GRADSTEIN & MARZANO, P.C.
6310 SAN VICENTE BLVD, SUITE 510
LOS ANGELES, CALIFORNIA 90048
TELEPHONE: 323-776-3100

1 Plaintiff Flo & Eddie, Inc. ("Flo & Eddie"), on behalf of itself and on behalf
2 of all other similarly situated owners of sound recordings, hereby complain and
3 allege as follows:

4 **PRELIMINARY STATEMENT**

5 1. Defendant Pandora Media, Inc. ("Pandora") is one of the leading
6 operators of an internet radio service in the United States, offering a personalized
7 music experience for each of its 200 million registered users "wherever and
8 whenever they want to listen to radio on a wide range of smart phones, tablets,
9 traditional computers, car audio systems and a range of other internet-connected
10 devices" (the "Music Service").

11 2. Although Pandora readily acknowledges that to "secure the rights to
12 stream music content over the internet, [it] must obtain licenses from, and pay
13 royalties to, copyright owners of both sound recordings and musical works," it
14 nevertheless chose not to obtain licenses from one large category of copyright
15 owners, namely, owners of sound recordings of musical performances that initially
16 were fixed (*i.e.*, recorded) prior to February 15, 1972 ("pre-1972 recordings").

17 3. Pre-1972 recordings comprise the historical backbone of the music
18 industry. From Tin Pan Alley to the Big Band era to the Summer of Love, those
19 recordings have defined generations and include the recordings of legendary artists
20 such as The Turtles, Nat King Cole, Hank Williams, Billie Holliday, and The
21 Beatles.

22 4. Pandora fully understands the value of pre-1972 recordings to its
23 business but has ignored the obligation to obtain licenses to exploit those recordings.
24 Instead, Pandora has simply chosen to copy tens of thousands of pre-1972
25 recordings to its servers and transmit and perform them via streaming to its millions
26 of users on a daily basis without any authorization whatsoever. Pandora profits
27 handsomely from its exploitation of pre-1972 recordings by charging subscription
28 fees to its users and by selling advertisements.

5. Because Pandora has chosen to operate the Music Service without licenses for pre-1972 recordings, Pandora is now liable under California law for violation of California Civil Code § 980(a)(2), misappropriation, violation of California Business & Professions Code § 17200, and conversion for its unauthorized reproduction, distribution, and public performance of those recordings.

THE PARTIES

6. Flo & Eddie is a corporation duly organized and existing under the laws of California, with its principal place of business in Los Angeles, California.

7. Flo & Eddie is owned by Howard Kaylan and Mark Volman, two of the founding members of the enormously popular band The Turtles. The Turtles are widely recognized as one of the most influential bands of the 1960s and are notable for their string of Top 40 hits, including "It Ain't Me Babe," "You Baby," "Happy Together," "She'd Rather Be With Me," "Elenore," and "You Showed Me."

8. Through a series of transactions, Flo & Eddie acquired the exclusive ownership in all of The Turtles' Recordings, the titles of which are specified on the attached Schedule "A" and incorporated herein by reference ("The Turtles' Recordings").

9. Flo & Eddie has been and continues to be engaged in the business of distributing, selling, and/or licensing the reproduction, distribution, sale, and performance of The Turtles' Recordings including in records, audiovisual works, and for streaming (*i.e.*, performing) and downloading over the Internet.

10. Pandora is a corporation duly organized and existing under the laws of Delaware, with its principal place of business in Oakland, California, and Santa Monica, California. Pandora owns and operates the Music Service which it designed to deliver uninterrupted, high quality streams of music tailored and customized to its users' preferences.

11. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants named herein as Does 1 through 100, inclusive, are

1 unknown to Flo & Eddie who therefore sues said Defendants by such fictitious
 2 names. Flo & Eddie will amend this Complaint to allege their true names and
 3 capacities when such have been ascertained. Upon information and belief, each of
 4 the Doe defendants herein is responsible in some manner for the occurrences herein
 5 alleged, and Flo & Eddie's injuries as herein alleged were proximately caused by
 6 such defendants' acts or omissions.

7 12. Flo & Eddie is informed and believes, and on that basis alleges, that at
 8 all times mentioned in this complaint, Pandora and each of the Doe Defendants was
 9 the agent of each other and, in doing the things alleged in this complaint, was acting
 10 within the course and scope of such agency.

11 **JURISDICTION AND VENUE**

12 13. Jurisdiction exists pursuant to 28 U.S.C. § 1332(d)(2) because the
 13 matter in controversy exceeds the sum or value of \$25 million (exclusive of interest
 14 and costs), is a class action in which a member of a class of plaintiffs is a citizen of a
 15 state different from Pandora, and the number of members of the proposed class
 16 exceeds 100.

17 14. This Court has personal jurisdiction over Pandora because: (a) Pandora
 18 is located and has its principal place of business in California, (b) Pandora is
 19 engaged in tortious conduct in California by publicly performing, reproducing, and
 20 distributing pre-1972 recordings within the state, and (c) Pandora's conduct causes
 21 injury to Flo & Eddie and the class and their intellectual property in California.

22 15. Venue in this District exists pursuant to 28 U.S.C. § 1391(b) and (c)
 23 because Pandora resides and is subject to personal jurisdiction in this District and
 24 because a substantial part of the events or omissions giving rise to the claims
 25 occurred in this District.

26 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

27 16. The Music Service is provided by Pandora to paying and non-paying
 28 members of the public in California and elsewhere and delivers and streams music

1 through its website (www.pandora.com) and to smart phones and tablets through its
 2 downloadable Android and iOS App. Among the sound recordings that Pandora
 3 publicly performs, reproduces, and distributes are The Turtles' Recordings.

4 17. According to Pandora, as of December 31, 2013, it had more than
 5 200 million registered users and "more than a 70% share of internet radio among the
 6 top 20 stations and networks in the United States." In the first eleven months of
 7 2013 alone, Pandora streamed 15.31 billion hours of radio time.

8 18. Pandora understands that having a vast range and array of music is
 9 critical to the success of any music service which is why pre-1972 recordings
 10 constitute a significant part of the Music Service. Pandora offers and advertises
 11 stations dedicated to pre-1972 recordings, such as "50s Rock 'n' Roll," "60s
 12 Oldies," "Motown," "Doo-Wop," "70s Folk," "Early Jazz," "Standards," "Classic
 13 Soul," "Jam Bands," and "Classic Rock." Pandora promotes these stations in order
 14 to establish and increase its user base, popularity, and revenue.

15 19. Flo & Eddie is informed and believes, and on that basis alleges, that in
 16 order to populate the Music Service's databases and in order to stream musical
 17 recordings to the public, Pandora has reproduced and copied and continues to
 18 reproduce and copy pre-1972 recordings, including to one or more servers and
 19 storage devices, and uses technology or systems that results in a copy of pre-1972
 20 recordings being distributed to its users' computers or storage devices.

21 20. Pandora is aware that it does not have any license, right, or authority to
 22 reproduce, perform, distribute or otherwise exploit via the Music Service any pre-
 23 1972 recordings (including The Turtles' Recordings). Pandora is also aware which
 24 of the recordings its reproduces, performs, distributes or otherwise exploits via the
 25 Music Service are pre-1972 recordings. Not only does Pandora provide
 26 biographical information about each artist and the artwork for the albums containing
 27 the pre-1972 recordings that it is reproducing, performing, distributing or otherwise
 28 exploiting, but Pandora analyzes each individual song that it streams. Pandora

1 boasts of its “Music Genome Project” that consists of “a database of over 1,000,000
2 uniquely analyzed songs from over 100,000 artists, spanning over 500 genres and
3 sub-genres, which we develop one song at a time by evaluating and cataloging each
4 song’s particular attributes.” As Pandora states on its website:

5 “We believe that each individual has a unique relationship with
6 music – no one else has tastes exactly like yours. So delivering a
7 great radio experience to each and every listener requires an
8 incredibly broad and deep understanding of music. That’s why
9 Pandora is based on the Music Genome Project, the most
10 sophisticated taxonomy of musical information ever collected. It
11 represents over ten years of analysis by our trained team of
12 musicologists, and spans everything from this past Tuesday’s
13 new releases all the way back to the Renaissance and Classical
14 music.”

15 21. Pandora’s entire business is built around selling access to music and
16 selling the music itself. Pandora does this in two ways. Pandora delivers audio
17 advertisements to its users in between songs and displays visual ads while music is
18 actually playing. In addition, for a monthly fee of \$4.99, Pandora offers a premium
19 service called “Pandora One,” which is advertisement free.

20 **CLASS ACTION ALLEGATIONS**

21 22. Flo & Eddie brings this action on behalf of itself individually and on
22 behalf of all other similarly situated owners of Pre-1972 recordings, which
23 recordings were reproduced, performed, distributed or otherwise exploited by
24 Pandora via the Music Service in California. The proposed class is comprised of
25 and defined as follows:

26 All owners of sound recordings of musical performances that
27 initially were “fixed” (*i.e.*, recorded) prior to February 15, 1972,
28 which sound recordings were reproduced, performed, distributed

1 and/or otherwise exploited by Pandora via the Music Service in
2 California.

3 23. This action may be properly brought and maintained as a class action
4 because there is a well-defined community of interest in the litigation and the
5 members of the proposed class are clearly and easily ascertainable and identifiable.

6 24. The class for whose benefit this action is brought is so numerous that
7 joinder of all class members is impracticable. Flo & Eddie is informed and believes
8 that there are hundreds or thousands of class members and that those class members
9 can be readily ascertained from the Pandora's database files and records and
10 discovery. The class members can be readily located and notified of this action.

11 25. The claims of Flo & Eddie are typical of the claims of the members of
12 the class, and Flo & Eddie's interests are consistent with and not antagonistic to
13 those of the other class members it seeks to represent. Flo & Eddie and all members
14 of the class have sustained actual pecuniary loss and face irreparable harm arising
15 out of Pandora's continued course of conduct as complained of herein.

16 26. Flo & Eddie have no interests that are adverse to, or which conflict
17 with, the interests of the absent members of the class and are able to fairly and
18 adequately represent and protect the interests of such a class. Flo & Eddie has
19 raised viable statutory, misappropriation, unfair business practices, and conversion
20 claims of the type reasonably expected to be raised by members of the class, and
21 will vigorously pursue those claims. If necessary, Flo & Eddie may seek leave of
22 the Court to amend this Complaint to include additional class representatives to
23 represent the class or additional claims as may be appropriate. Flo & Eddie is
24 represented by experienced, qualified and competent counsel who are committed to
25 prosecuting this action.

26 27. Common questions of fact and law exist as to all members of the class
27 that predominate over any questions affecting only individual members of the class.
28 These common legal and factual questions, which do not vary from class member to

1 class member, and which may be determined without reference to the individual
2 circumstances of any class member include, without limitation, the following:

3 (A) Whether Pandora reproduced, performed, distributed or
4 otherwise exploited via the Music Service pre-1972 recordings in California;

5 (B) Whether Pandora's reproduction, performance, distribution or
6 other exploitation via the Music Service of pre-1972 recordings in California
7 constitutes a violation of California Civil Code § 980(a)(2);

8 (C) Whether Pandora's reproduction, performance, distribution or
9 other exploitation via the Music Service of pre-1972 recordings in California
10 constitutes an unfair business practice in violation of California Business &
11 Professions Code § 17200;

12 (D) Whether Pandora's reproduction, performance, distribution or
13 other exploitation via the Music Service of pre-1972 recordings in California
14 constitutes misappropriation;

15 (E) Whether Pandora's reproduction, performance, distribution or
16 other exploitation via the Music Service of pre-1972 recordings in California
17 constitutes conversion;

18 (F) The basis and method for determining and computing damages
19 and/or restitution and disgorgement;

20 (G) Whether, pursuant to California Civil Code § 3294, Pandora is
21 guilty of oppression, fraud, or malice thereby entitling the members of the
22 class to an award of punitive damages; and

23 (H) Whether Pandora's conduct is continuing thereby entitling the
24 members of the class to injunctive or other relief.

25 28. A class action is superior to other available methods for the fair and
26 efficient adjudication of this controversy since individual litigation of the claims of
27 all class members is impracticable. The claims of the individual members of the
28 Class may range from smaller sums to larger sums. Thus, for those class members

with smaller claims, the expense and burden of individual litigation may not justify pursuing the claims individually. And even if every member of the class could afford to pursue individual litigation, the Court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues. By contrast, the maintenance of this action as a class action presents few management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each member of the class. Flo & Eddie anticipates no difficulty in the management of this action as a class action.

FIRST CLAIM FOR RELIEF
(For Violation of California Civil Code § 980(a)(2)
As Against All Defendants)

29. Flo & Eddie hereby incorporates the allegations set forth above in paragraphs 1 through 28 above, as though fully set forth herein.

30. Pursuant to California Civil Code § 980(a)(2), Flo & Eddie and the members of the class possess exclusive ownership interests in and to the pre-1972 Recordings, including the artistic performances embodied in those recordings.

31. Through its unauthorized reproduction, performance, distribution, or other exploitation via the Music Service of pre-1972 recordings (including The Turtles' Recordings) in California, Pandora has infringed the exclusive ownership interests in and to the pre-1972 recordings in violation of California Civil Code § 980(a)(2).

32. As a direct and proximate consequence of Pandora's violation of California Civil Code § 980(a)(2), Pandora has received and retained money and value that rightfully belongs to Flo & Eddie and the members of the class.

33. As a direct and proximate consequence of Pandora's violation of California Civil Code § 980(a)(2), Flo & Eddie and the members of the class have

1 been damaged in an amount that is not as yet fully ascertained but which Flo &
2 Eddie is informed and believes exceeds \$25 million.

3 34. Pandora's conduct is causing, and unless enjoined and restrained by
4 this Court will continue to cause, Flo & Eddie and each member of the class great
5 and irreparable injury that cannot fully be compensated or measured in money. Flo
6 & Eddie and each member of the class have no adequate remedy at law. Flo &
7 Eddie and each member of the class are entitled to temporary, preliminary and
8 permanent injunctions, prohibiting further violation of the ownership interests of Flo
9 & Eddie and each member of the class in the pre-1972 recordings.

10 **SECOND CLAIM FOR RELIEF**

11 **(For Misappropriation)** 12 **As Against All Defendants)**

13 35. Flo & Eddie hereby incorporates the allegations set forth above in
14 paragraphs 1 through 28 above, as though fully set forth herein.

15 36. Pursuant to California Civil Code § 980(a)(2) and California common
16 law, Flo & Eddie and the members of the class possess exclusive ownership
17 interests in and to the pre-1972 Recordings, including the artistic performances
18 embodied in those recordings.

19 37. Flo & Eddie and its predecessors in interest invested substantial time
20 and money in developing The Turtles' Recordings.

21 38. Because Pandora does not obtain licenses, it does not incur any of the
22 costs that a licensee is otherwise obligated to pay in order to reproduce, perform,
23 distribute or otherwise exploit via the Music Service pre-1972 recordings (including
24 The Turtles' Recordings).

25 39. Pandora has misappropriated, and continues to misappropriate, for its
26 own commercial benefit, the exclusive ownership interests in and to the pre-1972
27 recordings reproducing, performing, distributing or otherwise exploiting via the
28 Music Service pre-1972 recordings (including The Turtles' Recordings).

GRADSTEIN & MARZANO, P.C.
6310 SAN VICENTE BLVD, SUITE 510
LOS ANGELES, CALIFORNIA 90048
TELEPHONE: 323-776-3100

40. As a direct and proximate consequence of Pandora's misappropriation, Pandora has received and retained money and value that rightfully belongs to Flo & Eddie and the members of the class.

41. As a direct and proximate consequence of Pandora's misappropriation, Flo & Eddie and the members of the class have been damaged in an amount that is not as yet fully ascertained but which Flo & Eddie is informed and believes exceeds \$25 million.

42. Flo & Eddie is informed and believes, and on that basis alleges, that in engaging in the conduct described herein, Pandora acted with oppression, fraud and/or malice. The conduct of Pandora has been despicable and undertaken in conscious disregard of the rights of Flo & Eddie and each member of the class. Accordingly, Flo & Eddie and each member of the class are entitled to an award of punitive damages against Pandora in an amount sufficient to punish and make an example of it.

43. Pandora's conduct is causing, and unless enjoined and restrained by this Court, will continue to cause, Flo & Eddie and each member of the class great and irreparable injury that cannot fully be compensated or measured in money. Flo & Eddie and each member of the class have no adequate remedy at law. Flo & Eddie and each member of the class are entitled to temporary, preliminary and permanent injunctions, prohibiting further violation of the ownership interests of Flo & Eddie and each member of the class in the pre-1972 recordings.

THIRD CLAIM FOR RELIEF
(For Unfair Business Practices)
As Against All Defendants)

44. Flo & Eddie hereby incorporates the allegations set forth above in paragraphs 1 through 28 above, as though fully set forth herein.

45. Pursuant to California Civil Code § 980(a)(2) and California common law, Flo & Eddie and the members of the class possess exclusive ownership

1 interests in and to the pre-1972 Recordings, including the artistic performances
2 embodied in those recordings.

3 46. Pandora's conduct in reproducing, performing, distributing, or other
4 exploitation via the Music Service pre-1972 recordings (including The Turtles'
5 Recordings) constitutes a misappropriation of the property rights of Flo & Eddie and
6 each member of the class in the pre-1972 recordings and a violation of California
7 Civil Code § 980(a)(2).

8 47. By misappropriating the property rights of Flo & Eddie and each
9 member of the class in the pre-1972 recordings and by violating California Civil
10 Code § 980(a)(2), Pandora has engaged in unfair business practices in violation of
11 California Business & Professions Code § 17200.

12 48. As a direct and proximate consequence of its violation of California
13 Business & Professions Code § 17200, Pandora has received and retained money
14 and value that rightfully belongs to Flo & Eddie and the members of the class.

15 49. As a direct and proximate result of Pandora's conduct, Flo & Eddie and
16 each member of the class are entitled to restitution and disgorgement under
17 California Business & Professions Code § 17200 in an amount that is not as yet
18 fully ascertained but which Flo & Eddie is informed and believes exceeds \$25
19 million.

20 50. Flo & Eddie is informed and believes, and on that basis alleges, that in
21 engaging in the conduct described herein, Pandora acted with oppression, fraud
22 and/or malice. The conduct of Pandora has been despicable and undertaken in
23 conscious disregard of the rights of Flo & Eddie and each member of the class.
24 Accordingly, Flo & Eddie and each member of the class are entitled to an award of
25 punitive damages against Pandora in an amount sufficient to punish and make an
26 example of it.

27 51. Pandora's conduct is causing, and unless enjoined and restrained by
28 this Court, will continue to cause, Flo & Eddie and each member of the class great

1 and irreparable injury that cannot fully be compensated or measured in money. Flo
 2 & Eddie and each member of the class have no adequate remedy at law. Flo &
 3 Eddie and each member of the class are entitled to temporary, preliminary and
 4 permanent injunctions, prohibiting further violation of the ownership interests of Flo
 5 & Eddie and each member of the class in the pre-1972 recordings.

6 **FOURTH CLAIM FOR RELIEF**
 7 **(For Conversion)**
 8 **As Against All Defendants)**

9 52. Flo & Eddie hereby incorporates the allegations set forth above in
 10 paragraphs 1 through 28 above, as though fully set forth herein.

11 53. Pursuant to California Civil Code § 980(a)(2) and California common
 12 law, Flo & Eddie and the members of the class possess exclusive ownership
 13 interests in and to the pre-1972 Recordings, including the artistic performances
 14 embodied in those recordings.

15 54. By reproducing, performing, distributing or otherwise exploiting via
 16 the Music Service pre-1972 recordings (including The Turtles' Recordings),
 17 Pandora has converted for its own use Flo & Eddie and each member of the class's
 18 property rights in the pre-1972 recordings and has dispossessed each of their of
 19 property rights.

20 55. As a direct and proximate consequence of its conversion, Pandora has
 21 received and retained money and value that rightfully belongs to Flo & Eddie and
 22 the members of the class.

23 56. As a direct and proximate consequence of Pandora's conversion, Flo &
 24 Eddie and the members of the class have been damaged in an amount that is not as
 25 yet fully ascertained but which Flo & Eddie is informed and believes exceeds \$25
 26 million.

27 57. Flo & Eddie is informed and believes, and on that basis alleges, that in
 28 engaging in the conduct described herein, Pandora acted with oppression, fraud
 and/or malice. The conduct of Pandora has been despicable and undertaken in

conscious disregard of the rights of Flo & Eddie and each member of the class. Accordingly, Flo & Eddie and each member of the class are entitled to an award of punitive damages against Pandora in an amount sufficient to punish and make an example of it.

58. Pandora's conduct is causing, and unless enjoined and restrained by this Court, will continue to cause, Flo & Eddie and each member of the class great and irreparable injury that cannot fully be compensated or measured in money. Flo & Eddie and each member of the class have has no adequate remedy at law. Flo & Eddie and each member of the class are entitled to temporary, preliminary and permanent injunctions, prohibiting further violation of the ownership interests of Flo & Eddie and each member of the class in the pre-1972 recordings.

PRAYER

WHEREFORE, Flo & Eddie, on behalf of itself and all other members of the class, prays for Judgment against Pandora and the Doe defendants, and each of them, as follows:

A. Determining that this is a proper class action maintainable pursuant to Rule 23 of the Federal Rules Civil Procedure, and certifying Flo & Eddie as class representative, and Flo & Eddie's counsel as class counsel.

B. On all claims except for violation of California Business & Professions Code § 17200, compensatory damages in excess of \$25 million according to proof;

C. On the claim for violation of California Business & Professions Code § 17200, restitution and disgorgement of Pandora's unlawful proceeds and revenues in excess of \$25 million.

D. On the second, third, and fourth claims, punitive and exemplary damages according to proof at trial.

E. On all claims, a temporary, preliminary, and permanent injunction enjoining and restraining Pandora, and their respective agents, servants, directors, officers, principals, employees, representatives, subsidiaries and affiliated

1 companies, successors, assigns, and those acting in concert with them or at their
2 direction, from infringing, misappropriating, or converting, directly or indirectly, in
3 California the exclusive ownership interests in and to the pre-1972 Recordings,
4 including the artistic performances embodied in those recordings, including without
5 limitation by directly or indirectly reproducing, performing, distributing, or
6 otherwise exploiting via the Music Service the pre-1972 recordings.

7 F. On all claims, pre- and post-judgment interest.

8 G. For such fees and costs (including reasonable attorneys' fees) incurred
9 herein as permitted by law.

10 H. For such other and further relief as the Court deems just and proper.

11
12 DATED: October 1, 2014

GRADSTEIN & MARZANO, P.C.

Henry Gradstein

Maryann R. Marzano

Harvey W. Geller

13
14
15
16 By: 

Henry Gradstein

Attorneys for Plaintiff

FLO & EDDIE, INC.

DEMAND FOR JURY TRIAL

Plaintiff Flo & Eddie, Inc. demands a trial by jury of the claims alleged in this Complaint.

DATED: October 1, 2014

GRADSTEIN & MARZANO, P.C.

Henry Gradstein

Maryann R. Marzano

Harvey W. Geller

By: 

Henry Gradstein
Attorneys for Plaintiff
FLO & EDDIE, INC.

GRADSTEIN & MARZANO, P.C.
6310 SAN VICENTE BLVD., SUITE 510
LOS ANGELES, CALIFORNIA 90048
TELEPHONE: 323-776-3100

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Central District of California

FLO & EDDIE, INC., a California corporation,
individually and on behalf of all others similarly
situated,

Plaintiff(s)

v.

PANDORA MEDIA, INC., a Delaware corporation;
and DOES 1 through 100,

Defendant(s)

Civil Action No.

LA CV 14 07648-ODW(SHx)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

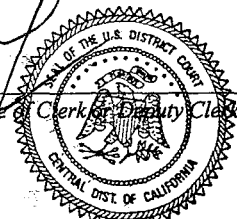
GRADSTEIN & MARZANO, P.C.
Henry Gradstein, Esq.
Maryann R. Marzano, Esq.
Harvey W. Geller, Esq.
6310 San Vicente Blvd., Suite 510
Los Angeles, CA 90048

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: OCT - 2 2014

CLERK OF COURT

Rudy
Signature of Clerk or Deputy Clerk



1164

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I. (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) FLO & EDDIE, INC., a California corporation, individually and on behalf of all others similarly situated	DEFENDANTS (Check box if you are representing yourself <input type="checkbox"/>) PANDORA MEDIA, INC., a Delaware corporation; and DOES 1 through 100
(b) County of Residence of First Listed Plaintiff <u>Los Angeles</u> (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)
(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information. GRADSTEIN & MARZANO, P.C.; Henry Gradstein, SBN 89747 Maryann R. Marzano, SBN 96867; Harvey Geller, SBN 123107 6310 San Vicente Blvd., Suite 510, Los Angeles, California 90048; (323) 776-3100	Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1. U.S. Government Plaintiff <input type="checkbox"/> 2. U.S. Government Defendant <input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III) CAFA	III. CITIZENSHIP OF PRINCIPAL PARTIES —For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant) <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;">PTF <input checked="" type="checkbox"/> 1</td> <td style="width:10%;">DEF <input checked="" type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%;">PTF <input type="checkbox"/> 4</td> <td style="width:10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. ORIGIN (Place an X in one box only.)

<input checked="" type="checkbox"/> 1. Original Proceeding	<input type="checkbox"/> 2. Removed from State Court	<input type="checkbox"/> 3. Remanded from Appellate Court	<input type="checkbox"/> 4. Reinstated or Reopened	<input type="checkbox"/> 5. Transferred from Another District (Specify)	<input type="checkbox"/> 6. Multi-District Litigation
------------------------------------------------------------	------------------------------------------------------	-----------------------------------------------------------	----------------------------------------------------	-------------------------------------------------------------------------	-------------------------------------------------------

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: ☒ Yes ☐ No **MONEY DEMANDED IN COMPLAINT:** \$ 25 Million

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 Class action complaint based on diversity arising under 28 U.S.C. 1332(d)(2) – damages in excess of \$5 million and over 100 class members – for violation of rights in sound recordings fixed prior to February 15, 1972, under California statutory and common law.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	Habeas Corpus:	<input checked="" type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	TORTS	PERSONAL PROPERTY	<input type="checkbox"/> 530 General	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	PERSONAL INJURY	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 371 Truth in Lending	Other:	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 155 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	FEDERAL TAX SUITS
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 350 Motor Vehicle	CIVIL RIGHTS	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	
<input type="checkbox"/> 895 Freedom of Info. Act	REAL PROPERTY	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	LABOR	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 740 Railway Labor Act	
		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 751 Family and Medical Leave Act	
			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 790 Other Labor Litigation	
				<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

FOR OFFICE USE ONLY:

Case Number:

LA CV 14 07648-ODW (SHX)

CV-71 (06/14)

CIVIL COVER SHEET

Page 1 of 3

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

QUESTION A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," skip to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question E, below, and continue from there.	STATE CASE WAS PENDING IN THE COUNTY OF: <input type="checkbox"/> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo <input type="checkbox"/> Orange <input type="checkbox"/> Riverside or San Bernardino		INITIAL DIVISION IN CACD IS: Western Southern Eastern
QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," skip to Question C. If "yes," answer Question B.1, at right.	B.1. Do 50% or more of the defendants who reside in the district reside in Orange Co? <i>check one of the boxes to the right</i> → B.2. Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) <i>check one of the boxes to the right</i> →	YES. Your case will initially be assigned to the Southern Division. <input type="checkbox"/> Enter "Southern" in response to Question E, below, and continue from there. NO. Continue to Question B.2. YES. Your case will initially be assigned to the Eastern Division. <input type="checkbox"/> Enter "Eastern" in response to Question E, below, and continue from there. NO. Your case will initially be assigned to the Western Division. <input type="checkbox"/> Enter "Western" in response to Question E, below, and continue from there.	
QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," skip to Question D. If "yes," answer Question C.1, at right.	C.1. Do 50% or more of the plaintiffs who reside in the district reside in Orange Co? <i>check one of the boxes to the right</i> → C.2. Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) <i>check one of the boxes to the right</i> →	YES. Your case will initially be assigned to the Southern Division. <input type="checkbox"/> Enter "Southern" in response to Question E, below, and continue from there. NO. Continue to Question C.2. YES. Your case will initially be assigned to the Eastern Division. <input type="checkbox"/> Enter "Eastern" in response to Question E, below, and continue from there. NO. Your case will initially be assigned to the Western Division. <input type="checkbox"/> Enter "Western" in response to Question E, below, and continue from there.	
QUESTION D: Location of plaintiffs and defendants? Indicate the location(s) in which 50% or more of <i>plaintiffs who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.) Indicate the location(s) in which 50% or more of <i>defendants who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	A. Orange County	B. Riverside or San Bernardino County	C. Los Angeles, Ventura, Santa Barbara, or San Luis Obispo County
D.1. Is there at least one answer in Column A? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "yes," your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question E, below, and continue from there. If "no," go to question D2 to the right. →	D.2. Is there at least one answer in Column B? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "yes," your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question E, below. If "no," your case will be assigned to the WESTERN DIVISION. Enter "Western" in response to Question E, below. ↓		
QUESTION E: Initial Division? Enter the initial division determined by Question A, B, C, or D above: →	INITIAL DIVISION IN CACD WESTERN		
QUESTION F: Northern Counties? Do 50% or more of plaintiffs or defendants in this district reside in Ventura, Santa Barbara, or San Luis Obispo counties? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

IX(a). IDENTICAL CASES: Has this action been previously filed in this court?

☒ NO

☐ YES

If yes, list case number(s):

IX(b). RELATED CASES: Is this case related (as defined below) to any cases previously filed in this court?

☐ NO

☒ YES

If yes, list case number(s): CV-13-05693 PSG (RZx)

Civil cases are related when they:

- ☐ A. Arise from the same or closely related transactions, happening, or event;
- ☒ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☒ C. For other reasons would entail substantial duplication of labor if heard by different judges.

Check all boxes that apply. That cases may involve the same patent, trademark, or copyright is not, in itself, sufficient to deem cases related.

**X. SIGNATURE OF ATTORNEY
(OR SELF-REPRESENTED LITIGANT):**

DATE: 10-1-14

Notice to Counsel/Parties: The submission of this Civil Cover Sheet is required by Local Rule 3-1. This Form CV-71 and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. For more detailed instructions, see separate instruction sheet (CV-071A).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))