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Wixen Music Publishing, Inc.  
7

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 WIXEN MUSIC PUBLISHING, INC.,  
a California corporation,

12 Plaintiff,

13 v.  
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15 PANDORA MEDIA, INC., a Delaware  
corporation; PANDORA MEDIA, LLC,  
16 a Delaware limited liability company;  
and DOES 1 through 10, inclusive,

17 Defendants.  
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CASE NO. 2:19-cv-5278

**COMPLAINT FOR COPYRIGHT  
INFRINGEMENT**

**Demand For Jury Trial**

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1 Plaintiff Wixen Music Publishing, Inc. (“Plaintiff” or “Wixen”), by its  
2 undersigned attorneys, for its complaint against Defendants Pandora Media, Inc.  
3 (“Pandora Inc.”) and Pandora Media, LLC (“Pandora LLC”) (collectively,  
4 “Pandora”), avers as follows:

5 **NATURE OF THE ACTION**

6 1. Plaintiff brings this action against Pandora to obtain redress for the  
7 massive and continuing unauthorized commercial exploitation by Pandora of the  
8 lyrics to the musical compositions listed in the attached Schedule A (collectively,  
9 the “Musical Compositions”). Plaintiff fully expects that there are numerous  
10 additional musical compositions whose lyrics are being or have been exploited by  
11 Pandora without authorization from Plaintiff, and has asked Pandora to identify the  
12 musical compositions whose lyrics are being or have been displayed or otherwise  
13 exploited. As of the date of this filing, Pandora has not provided such information.  
14 Plaintiff intends to amend this Complaint after such information is disclosed in  
15 discovery.

16 2. Plaintiff is an independent music publisher and exclusive licensee of  
17 the Musical Compositions, all of which have been registered with the United States  
18 Copyright Office. Plaintiff’s catalog of copyrighted musical compositions is  
19 extremely valuable and encompasses works composed or famously performed by a  
20 wide array of legendary songwriters and artists, including both contemporary hits  
21 and influential standards.

22 3. Pandora has developed an Internet digital music service designed to  
23 deliver uninterrupted, high-quality digital music transmission (often referred to as a  
24 “stream”) that Pandora ensures each user can precisely tailor and customize based  
25 on his or her music preferences. Pandora also offers paid subscription options  
26 whereby users can create interactive playlists and download them for offline  
27 listening. Pandora provides music to its users in a variety of ways, including via its

1 website (www.pandora.com), smartphones and tablets (through its downloadable  
2 app), apps pre-installed on “smart” TVs, Internet-enabled stereo receivers, and  
3 DVD and Blu-Ray players. Pandora touts itself as the “#1 US Music Streaming  
4 Service,” with over 120 million users of its service.

5 4. Pandora has built its business in large part on unauthorized uses of the  
6 Musical Compositions by displaying the lyrics to the Musical Compositions on its  
7 service, including on its website and app. However, Pandora does not have any  
8 valid license or other authorization to display any of the Musical Compositions in  
9 this manner. Nonetheless, Pandora has displayed and continues to display the  
10 lyrics to the Musical Compositions without any valid license or authorization from  
11 Plaintiff, even after receiving notice of the infringement from Plaintiff’s  
12 representatives in early 2018.

13 5. Pandora may claim that it had obtained licenses to display the lyrics to  
14 the Musical Compositions from one or more sources, including an entity called  
15 LyricFind, the self-proclaimed “largest lyric licensing service” in the world, which  
16 claims that it “has licensing from over 4,000 music publishers, including all  
17 majors.” However, as Pandora knows, and has known, LyricFind did not have the  
18 authority to grant licenses to Pandora for the display of any of the lyrics to the  
19 Musical Compositions on its service.

20 6. Pandora has profited and continues to profit immensely from its  
21 unauthorized display of the lyrics to the Musical Compositions, including from the  
22 subscription fees paid by its users for the ability to listen to the Musical  
23 Compositions and view the corresponding lyrics, and also from advertising  
24 revenue, including for advertisements that are played or displayed in connection  
25 with the display of the lyrics to the Musical Compositions.

26 7. Pandora is surely aware that its conduct constitutes copyright  
27 infringement. Pandora is a sophisticated entity that derives significant income

1 from the exploitation of musical works. As such, Pandora knows that musical  
2 compositions – including their lyrics – cannot be copied, distributed, sold, or  
3 displayed, without a license. Additionally, Plaintiff’s representatives put Pandora  
4 on actual notice of its infringing conduct in early 2018, yet Pandora did not even  
5 attempt to address its infringing conduct until May 2019, when it first purported to  
6 cease displaying some of the lyrics to the Musical Compositions on its service.

7 8. Pandora’s infringement is therefore willful and deliberate. Its conduct  
8 has caused and continues to cause substantial, manifest, and irreparable harm to  
9 Plaintiff, while enriching Pandora at Plaintiff’s expense and to the detriment of the  
10 copyrighted musical compositions controlled by Plaintiff. By this lawsuit, Plaintiff  
11 seeks to bring Pandora’s conduct to a stop and to obtain compensation for the harm  
12 Pandora has caused and continues to cause Plaintiff and to the owners of the  
13 copyright interests in and to the musical compositions controlled by Plaintiff.

14 **THE PARTIES**

15 9. Plaintiff is a California corporation with its principal place of business  
16 at 24025 Park Sorrento, Suite 130, Calabasas, California 91302. Plaintiff has  
17 standing to bring this action for copyright infringement as the exclusive licensee of  
18 the Musical Compositions identified in the attached Schedule A and incorporated  
19 herein by reference. Plaintiff possesses the exclusive rights, among other things, to  
20 sign agreements, collect royalties, receive monies, issue licenses, pay royalties,  
21 register copyrights, and otherwise interact and assert rights on behalf of each  
22 songwriter with or against publishing companies, performing and/or mechanical  
23 rights societies, and companies such as Pandora. Plaintiff’s exclusive  
24 administration rights are explicitly and irrevocably coupled with an interest in and  
25 to the musical compositions that it administers.

26 10. Pandora Inc. is and/or was a Delaware corporation with a principal  
27 place of business at 2100 Franklin Street, Suite 700, Oakland, California 94612.

1 Upon information and belief, Pandora Inc. may have been converted into Pandora  
2 LLC on or about May 21, 2019.

3 11. Pandora LLC is a Delaware limited liability company with a principal  
4 place of business at 2100 Franklin Street, Suite 700, Oakland, California 94612.  
5 According to its website, Pandora LLC maintains another corporate office in  
6 California, located at 3000 Ocean Park Boulevard, Suite 3050, Santa Monica,  
7 California 90405.

8 12. The true names and capacities, whether individual, corporate,  
9 associate, or otherwise, of defendants sued herein as Does 1 through 10, inclusive,  
10 are unknown to Plaintiff, which sued said defendants by such fictitious names (the  
11 “Doe Defendants”). If necessary, Plaintiff will seek leave to amend this Complaint  
12 to state their true names and capacities. Plaintiff is informed and believes, and on  
13 that basis avers, that the Doe Defendants are liable to Plaintiff as a result of their  
14 participation in all or some of the acts hereinafter set forth (all of the Defendants,  
15 including the Doe Defendants, collectively are referred to as “Defendants”).

16 13. Plaintiff is informed and believes, and on that basis avers, that at all  
17 times mentioned in this Complaint, each of the Defendants acted in concert with  
18 each other, and was the agent, affiliate, officer, director, manager, principal, alter-  
19 ego, and/or employee of the remaining Defendants, and, in doing the things  
20 averred in this Complaint, was at all times acting within the course and scope of  
21 such agency, affiliation, alter-ego relationship and/or employment; and actively  
22 participated in or subsequently ratified and adopted, or both, each and all of the  
23 acts or conducts alleged with full knowledge of all the facts and circumstances.

24 **JURISDICTION AND VENUE**

25 14. This is a civil action seeking damages and injunctive relief for  
26 copyright infringement under the Copyright Act, 17 U.S.C. § 101 *et seq.*

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1           15. This Court has subject matter jurisdiction over this action under 28  
2 U.S.C. §§ 1331 and 1338.

3           16. This Court has personal jurisdiction over Pandora because Pandora  
4 has continuous and systematic contacts within the Central District of California,  
5 which include, without limitation:

6           a. Upon information and belief, until on or about May 21, 2019,  
7 Pandora Inc. was qualified to do business in California and was registered as a  
8 foreign corporation with the California Secretary of State.

9           b. Pandora LLC is qualified to do business in California and is  
10 registered as a foreign limited liability company with the California Secretary of  
11 State.

12           c. Pandora LLC maintains a strong presence in California,  
13 including offices in Oakland, California and Santa Monica, California, where it  
14 employs California residents.

15           d. Pandora LLC's designated DMCA Copyright Agent identified  
16 in the "Intellectual Property Policy" on its website is located in California at 2100  
17 Franklin Street, 7th Floor, Oakland, California 94612.

18           e. Pandora Inc. has previously admitted in other federal filings  
19 that it regularly conducts business in California. *See, e.g., Yuncker, et al. v.*  
20 *Pandora Media, Inc.*, Case No. 4:11-CV-03113-JSW (N.D. Cal.), Dkt. 102  
21 (Pandora Inc.'s Answer) at ¶¶ 5-6 ("Pandora admits that it does business in the  
22 state of California ... Pandora admits that it regularly transacts business in the  
23 Northern District of California.").

24           f. Pandora actively and intentionally does business in California,  
25 as evidenced by its (i) subscribers and users in California, which Pandora actively  
26 reaches out to through, at a minimum, its website (www.pandora.com); (ii)  
27 contracts and other transactions that it has entered in California; (iii) revenue

1 generated from California residents and businesses in connection with its service;  
2 and (iv) advertisements that target California residents, including those in Los  
3 Angeles.

4 g. Pandora has purposefully availed itself of California law and  
5 could and did reasonably anticipate being brought into this Court because, among  
6 other reasons, Pandora (i) has been engaged and is engaged in infringing conduct  
7 within the State of California and this District, including by knowingly,  
8 intentionally, and repeatedly displaying the lyrics to the Musical Compositions  
9 over the Internet to California residents via its services; (ii) knew or should have  
10 known that the harm caused by its repeated unlicensed uses of lyrics to the Musical  
11 Compositions over the Internet was aimed at songwriters and music publishers,  
12 including Plaintiff and the songwriters it represents, who control compositions and  
13 reside in or near Los Angeles County, California, a global hub of the music  
14 industry; and (iii) knew or should have known that Plaintiff, an industry leading  
15 music publisher for over 40 years, would suffer, and in fact did suffer, the brunt of  
16 the harm caused by Pandora's unauthorized acts at Plaintiff's principal place of  
17 business in Calabasas, Los Angeles County, California.

18 17. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and  
19 1400(a) because Pandora conducts business in this District, including for example,  
20 by the maintenance of Pandora LLC's corporate office in Santa Monica,  
21 California, and, upon information and belief, a substantial part of the events giving  
22 rise to Plaintiff's claims occurred in this District. Plaintiff has its principal place of  
23 business in this District and has been injured in this District as a result of Pandora's  
24 infringing conduct.

25 18. This case is properly filed in the Western Division, as a substantial  
26 part of events giving rise to this case occurred in the Western Division.

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**FACTS APPLICABLE TO ALL CLAIMS**

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19. Plaintiff is an independent music publisher that was formed in 1978 by Randall Wixen. Plaintiff administers more than 75,000 songs written and/or owned by its more than 2,000 clients, including songs by some of the most popular and acclaimed musical artists of the last 100 years.

20. Plaintiff is the exclusive licensee of thousands of musical compositions, including the Musical Compositions. Plaintiff administers these compositions for its clients, with the goal of enhancing the value of the compositions through licensing while simultaneously preserving their integrity. Plaintiff has the exclusive right to conduct all administration activities with respect to these musical compositions, including registering them with performing rights organizations, filing copyright applications with the United States Copyright Office, negotiating and issuing licenses (including mechanical and synchronization licenses), collecting royalties, and filing lawsuits for copyright infringement. Plaintiff’s exclusive administration rights are explicitly and irrevocably coupled with an interest in and to the musical compositions that it administers.

21. Pandora owns and operates the Pandora digital music service, through which it provides paying and non-paying members of the public, in California and elsewhere, interactive music streaming and/or downloading via a free ad-supported option and various paid, ad-free options (collectively, the “Service”). Pandora makes music available to its users in a variety of ways, including via its website (www.pandora.com), smartphones and tablets (through its downloadable app), and apps pre-installed on “smart” TVs, Internet-enabled stereo receivers, DVD and Blu-Ray players.

22. Pandora offers various “tiers” of membership to its users. The standard membership option is a free, ad-supported radio, whereby users may select a pre-existing music “station” based on a particular recording artist, song, or

1 genre of music. To generate revenue from these free accounts, Pandora delivers  
2 audio advertisements to its users in between songs and displays visual ads while  
3 music is playing. According to Pandora, approximately 13 billion stations have  
4 been created on its Service.

5 23. Pandora also offers various paid membership options to consumers.  
6 For a monthly fee of \$4.99, consumers can obtain a “Pandora Plus” account, which  
7 is advertising-free and permits users to access up to four Pandora stations offline at  
8 a time. Pandora also offers a “Pandora Premium” membership for \$9.99 a month,  
9 which, in addition to being advertising-free, permits users to search for and play  
10 any song and create personalized playlists which can be streamed or downloaded  
11 for offline listening.

12 24. In addition to making musical works available for streaming and/or  
13 downloading, Pandora also displays the lyrics to many of these works on its  
14 Service, including the lyrics to the Musical Compositions. Upon information and  
15 belief, the lyrics are available to all Pandora users, including both free listeners and  
16 paid subscribers.

17 25. In order to display the lyrics to the Musical Compositions on its  
18 Service, Pandora was required to obtain a license from Plaintiff, the exclusive  
19 licensee of the Musical Compositions, or from an authorized licensee who had  
20 obtained the right from Plaintiff to sublicense the right to display the lyrics to the  
21 Musical Compositions. However, Pandora failed to obtain a valid license to  
22 display the lyrics on its Service.

23 26. Pandora may claim to have obtained licenses to display the lyrics to  
24 the Musical Compositions from one or more sources, including an entity called  
25 LyricFind. However, as Pandora knows, and has known, LyricFind did not have  
26 the authority to grant licenses to Pandora for the use of any of the lyrics to the  
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1 Musical Compositions. Accordingly, through this conduct, Pandora has infringed,  
2 and continues to infringe, Plaintiffs' rights in and to the Musical Compositions.

3 27. Pandora was surely aware that its conduct constituted copyright  
4 infringement. Pandora is a sophisticated entity that derives significant income  
5 from the exploitation of the content it distributes and touts itself as the "#1 US  
6 Music Streaming Service." Pandora obviously knew that the lyrics to the Musical  
7 Compositions could not be copied, distributed, sold, displayed, or otherwise  
8 exploited without a valid license.

9 28. Moreover, at a minimum, Pandora has been on notice of its  
10 unauthorized uses of the lyrics to the Musical Compositions since at least  
11 January 10, 2018, when Plaintiff expressly notified executives from Pandora at an  
12 in person meeting that Pandora's many uses of the lyrics to the Musical  
13 Compositions were unauthorized. Nonetheless, the lyrics to the Musical  
14 Compositions continue to be displayed by Pandora through the Service on an  
15 ongoing and regular basis, without authorization and without compensation to  
16 Plaintiff.

17 29. Plaintiff's initial investigation into the scope of this infringement  
18 indicates that its rights in numerous compositions that it administers have been  
19 infringed by Pandora. And upon information and belief, the lyrics to the Musical  
20 Compositions exclusively licensed to Plaintiff have been viewed by users of its  
21 Service millions of times throughout the United States, including in California.

22 30. Plaintiff is continuing its investigation into the scope of Pandora's  
23 infringement. Plaintiff is informed and believes, and on that basis avers, that  
24 further investigation will reveal that the lyrics to many more compositions  
25 controlled by Plaintiff have been and/or are being unlawfully exploited by  
26 Pandora. Plaintiff has requested that Pandora produce a comprehensive list of  
27 compositions whose lyrics were or are being displayed on its Service and a

1 corresponding list of compositions purportedly licensed, but Pandora has not  
2 complied as of the date of this filing. Plaintiff expressly reserves the right to  
3 amend this Complaint to assert additional claims for infringement of its  
4 compositions as it uncovers such infringement during the course of discovery in  
5 this action.

6 **FIRST CAUSE OF ACTION**  
7 **COPYRIGHT INFRINGEMENT**

8 31. Plaintiff incorporates by this reference each and every averment  
9 contained in paragraphs 1 through 30, inclusive.

10 32. The copyrights to the Musical Compositions have been registered  
11 with the United States Copyright Office.

12 33. Plaintiff is the exclusive licensee of the copyrights in the Musical  
13 Compositions. Accordingly, Plaintiff has the exclusive rights, among others, to  
14 reproduce, distribute, publicly perform, and display the Musical Compositions,  
15 including the lyrics thereto, as well as the right to authorize others to exercise any  
16 of these rights.

17 34. Pandora has infringed Plaintiff's copyright interests in the Musical  
18 Compositions by reproducing, distributing, and/or displaying the lyrics to the  
19 Musical Compositions on its Service without authorization, in violation of the  
20 Copyright Act, 17 U.S.C. §§ 106 and 501.

21 35. Each such infringement by Pandora of the Musical Compositions  
22 constitutes a separate and distinct act of infringement.

23 36. Pandora's acts of infringement are willful, intentional, purposeful, and  
24 in disregard of and indifferent to the rights of Plaintiff and those of the songwriters  
25 it represents.

26 37. As a direct and proximate result of Pandora's willful and infringing  
27 uses of the Musical Compositions, Plaintiff is entitled to damages and to Pandora's

1 profits in amounts to be proven at trial, and which are not currently ascertainable.  
2 Alternatively, Plaintiff is entitled to maximum statutory damages of \$150,000 for  
3 each copyright infringed, or in such other amount as may be proper under 17  
4 U.S.C. § 504(c).

5 38. Plaintiff is further entitled to recover its attorneys' fees and costs  
6 pursuant to 17 U.S.C. § 505.

7 39. As a result of Pandora's acts and conduct, Plaintiff has sustained and  
8 will continue to sustain substantial, immediate, and irreparable injury, for which  
9 there is no adequate remedy at law. Plaintiff is informed and believes, and on that  
10 basis avers, that unless enjoined by this Court, Pandora will continue to infringe  
11 Plaintiff's rights in the lyrics for the Musical Compositions. Plaintiff is entitled to  
12 permanent injunctive relief to restrain and enjoin Pandora's continuing infringing  
13 conduct.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays for judgment against Pandora, as follows:

16 1. A permanent injunction enjoining Pandora and its respective agents,  
17 servants, directors, officers, principals, employees, representatives, subsidiaries  
18 and affiliated companies, successors, assigns, and those acting in concert with  
19 Pandora or at its direction from directly or indirectly infringing in any manner any  
20 right in any and all musical compositions (or portions thereof), whether now in  
21 existence or later created, in which Plaintiff (including its parents, subsidiaries,  
22 affiliates, writers, publishers and co-publishers or distributed labels) owns or  
23 controls an exclusive right under Section 106 of the United States Copyright Act  
24 (17 U.S.C. § 106), including without limitation by directly or indirectly copying,  
25 reproducing, downloading, distributing, communicating to the public, uploading,  
26 linking to, transmitting, displaying, purporting to license, or otherwise exploiting

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1 in any manner any of the lyrics to Plaintiff’s compositions, including but not  
2 limited to the Musical Compositions;

3 2. An award of damages in such amount as may be determined at trial,  
4 including actual damages, inclusive of the injury to the market value of the  
5 copyright in the Musical Compositions, and the profits of Pandora; in the  
6 alternative, the maximum amount of statutory damages in the amount of \$150,000  
7 with respect to each copyrighted work infringed, or for such other amount as may  
8 be proper pursuant to 17 U.S.C. § 504(c);

9 3. Attorneys’ fees and costs pursuant to 17 U.S.C. § 505 and under other  
10 applicable law;

11 4. Pre- and post-judgment interest to the extent allowable; and

12 5. Such other and further relief that the Court may deem just and proper.

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14 DATED: June 17, 2019

DAVID A. STEINBERG  
GABRIELLA A. NOURAFCHAN  
MITCHELL SILBERBERG & KNUPP LLP

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By: /s/ David A. Steinberg  
David A. Steinberg  
Attorneys for Plaintiff  
Wixen Music Publishing, Inc.

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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all matters and issues so triable.

DATED: June 17, 2019

DAVID A. STEINBERG  
GABRIELLA A. NOURAFCHAN  
MITCHELL SILBERBERG & KNUPP LLP

By: /s/ David A. Steinberg  
David A. Steinberg  
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