

S240649

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

FLO & EDDIE, INC.,
Plaintiff-Respondent,

v.

PANDORA MEDIA, INC.,
Defendant-Petitioner.

Questions Certified from the United States Court of Appeal for the
Ninth Circuit, Case No. 15-55287

On Appeal From The United States District Court for the Central
District of California, Case No. CV14-7648 PSG
The Honorable Philip S. Gutierrez
Magistrate Judge Ralph Zarefsky

**APPLICATION TO FILE AMICUS CURIAE BRIEF AND BRIEF OF
AMICI CURIAE RECORDING ARTISTS IN SUPPORT OF
PLAINTIFF-RESPONDENT FLO & EDDIE, INC.**

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TO THE CHIEF JUSTICE OF THE CALIFORNIA SUPREME COURT:

Pursuant to Rule of Court Rule 8.520(f), proposed Amici Curiae hereby apply for permission to file the attached Amicus Curiae brief in support of Plaintiff-Respondent Flo & Eddie, Inc.

Proposed Amici are recording artists and estates of recording artists, managers, artists' rights advocates, and others responsible for the creation, promotion, and protection of sound recordings created before February 15, 1972 – some of the greatest popular music ever made. They are:

- **Don Brewer.** Don Brewer is the drummer for Grand Funk Railroad, a keystone band of early-'70s rock. Coming out of Flint, Michigan, the group quickly grew big enough to sell-out Shea Stadium and hit the top of the charts with “We’re An American Band” and a version of the Carole King-Gerry Goffin classic “The Loco-Motion.” After the band split, Brewer joined fellow Michigander Bob Seger’s Silver Bullet Band in the early ‘80s and since the late ‘90s has toured and recorded, leading a new Grand Funk lineup.
- **Carlene Carter.** Carlene Carter has a string of acclaimed country music albums to her name, as well as coming from country royalty, being the daughter of the Carter Family’s June Carter Cash and country star Carl Smith, and step-daughter of Johnny Cash. Her most recent album, 2014’s “Carter Girl,” paid homage to that with songs written by and guest appearances by various members of the Carter clan as well as duets with Willie Nelson and Kris Kristofferson.

- **Judy Collins.** Judy Collins is one of the most beloved singers of the generation that came of age in the '60s. Her versions of "Both Sides Now" and "Bird on a Wire" introduced millions to the talents of Joni Mitchell and Leonard Cohen, respectively, her talents and tastes transcending genres from folk to Broadway (a stunning version of Stephen Sondheim's "Send in the Clowns" that was a Top 20 hit) to classical repertoire. Throughout she has been a dedicated activist for social justice. Her most recent album, "Everybody Knows," is a collaboration with one-time producer and partner Stephen Stills (he wrote "Suite: Judy Blue Eyes" after their breakup). She wrote a best-selling 2011 autobiography, "Sweet Judy Blue Eyes: My Life in Music."
- **Steve Cropper.** Steve Cropper, as a guitarist, producer and writer, helped shape the sound of Memphis soul in the '60s. Among many credits, he co-wrote and played on Wilson Pickett's "In the Midnight Hour" and "Otis Redding's "(Sittin' On) the Dock of the Bay," played on Sam & Dave's "Soul Man" and was a member of Booker T. & the MGs, which in addition to having a series of hits of its own was the house band at Stax Records, recording and touring with all of the top artists on the label.
- **John Densmore.** Santa Monica-born drummer John Densmore co-founded the Doors in 1965 with singer Jim Morrison, keyboardist Ray Manzarek and guitarist Robbie Krieger, quickly becoming one of the sensations of the Sunset Strip rock scene and, with the 1967 No. 1 song "Light My Fire," rocketing to international fame, ultimately standing as one of the most enduringly influential bands in rock, inducted into the Rock and Roll Hall of Fame in 1993. Following Morrison's death in 1971, Densmore remained active in music and theater. He is the author

of the 1990 autobiography “Riders on the Storm” and the 2013 book “The Doors Unhinged,” chronicling his fights for the band’s legacy.

- **Melissa Etheridge.** Melissa Etheridge has been a powerful force both in music and social activism since her 1988 debut. With 1993’s six-million-selling “Yes I Am” album she became a radio and touring star, using the platform to speak out on human rights and LGBTQ issues. In 2007 she won the best original song Academy Award for “I Need to Wake Up,” from former Vice President Al Gore’s environmental documentary “An Inconvenient Truth.” With her latest album, “Memphis Rock and Soul,” she showcased her great love for classic southern soul.
- **Grateful Dead Productions.** The Grateful Dead’s legacy at once embodies and transcends San Francisco’s Haight-Ashbury scene and the Summer of Love which it helped spur and from which it emerged, as legions of “Deadheads” around the world, many sporting t-shirts and other items bearing the colorful graphics and images associated with it, continue to hold a passion for the music and spirit of the band. More than 20 years after the death of group leader Jerry Garcia, surviving members have carried on with the mix of folk, blues, jazz, including the “Fare Thee Well” reunion shows marking the band’s 50th anniversary in 2016 and the subsequent formation of Dead & Company, with original members Bob Weir, Bill Kreutzmann and Mickey Hart joined by guitarist John Mayer as one of the most popular touring acts of recent years. The 2017 documentary “Long Strange Trip” shed new light on this singular phenomenon in pop culture.
- **James William Guercio.** James William Guercio produced 11 albums by the band Chicago — five of which reached No. 1 on the Billboard

albums chart — and the 1969 album “Blood, Sweat and Tears” by the band of the same name, winning the Grammy Award for Album of the Year. As a bass player he joined the Beach Boys briefly in the ‘70s, also taking the role of the band’s manager. In 1973 he moved into the film world, directing and producing the movie “Electra Glide in Blue” starring Robert Blake, also writing and producing the soundtrack. His Caribou Ranch studio in the Rocky Mountains of Colorado hosted many of the top artists of the ‘70s and ‘80s, with Elton John, Joe Walsh, Billy Joel, Rod Stewart, Carole King and Supertramp among the many stars recording dozens of hits there.

- **Ron Isley.** Ron Isley and the Isley Brothers have spanned decades with hits, from the 1962 soul-rocker “Twist and Shout” to 1968’s “It’s Your Thing” to 1973’s “That Lady.” With Ron (a.k.a. Mr. Biggs) taking the lead, the Isley Brothers collaborated regularly with R. Kelly in the ‘90s and ‘00s, returning to the No. 1 pop chart position with the 2003 album “Body Kiss.”
- **Rudolph Isley.** Rudolph Isley was featured on dozens of hits with the Isley Brothers from the sibling group’s start in the ‘50s through the ‘80s, including lead vocals on the 1979 smash “It’s a Disco Night (Rock Don’t Stop).” He left the group to become a Christian minister in 1989.
- **Carole King.** Since writing her first No. 1 hit “Will You Love Me Tomorrow” at 17, Carole King has arguably become the most celebrated singer/songwriter of all time. More than 1,000 artists have recorded the Brooklyn-born Rock and Roll Hall of Famer’s indelible compositions, resulting in 100 hit singles. King had her first Top 40 hit as a recording artist with 1962’s “It Might as Well Rain Until September,” but it was her 1971 solo album *Tapestry* that took her to the pinnacle, selling more

than 25 million copies worldwide and yielding hits "It's Too Late," "I Feel the Earth Move," and "So Far Away." It remained the top-selling album by a female artist for a quarter century. King has received countless honors including multiple Grammys, Lifetime Achievement, the Library of Congress' Gershwin Prize, BMI Icon Award, MusiCares Person of The Year, Kennedy Center Honors, and many more. In 2012, she released her bestselling memoir, and in 2014, *Beautiful: The Carole King Musical* opened on Broadway, winning 2 Tonys. The show, based on King's early life and career, continues on Broadway with 7 productions in 5 countries.

- **Dave Koz.** Saxophonist Dave Koz has been one of the most successful figures in the “smooth jazz” world since his 1990 solo debut, with eight Top 10 albums on Billboard’s jazz charts, including the 2010 No. 1 “Hello Tomorrow.” He also gained national attention as a radio broadcaster, as morning anchor on L.A. station the Wave and in syndication.
- **Dave Mason.** Dave Mason co-founded the band Traffic, writing and singing some of the key songs on the English band’s first two albums, including “Feeling Alright,” which became a global hit in a version by Joe Cocker in 1969. Mason’s debut solo album, 1970s “Alone Together,” was core to the repertoire of burgeoning FM rock radio, the song “Only You Know and I Know” a staple both in his version and one by Delaney and Bonnie Bramlett. Resettling in California, he established himself as a popular solo artist while also collaborating with Cass Elliot, Michael Jackson, Phoebe Snow and others, joined Fleetwood Mac for one album in 1995 and toured as a member of Ringo Starr’s All-Starr Band. He has dedicated much time and effort to

support music education and co-founded Rock Our Vets, focusing on military veterans in need.

- **Smokey Robinson.** Smokey Robinson is a multi-hyphenate artist-songwriter-producer who has enjoyed six decades of success. From his earliest days at Motown Records where he wrote his first Top 10 single "Shop Around" for The Miracles to his most recent duets recording of some of his biggest hits, Smokey Robinson has created some of the most indelible hits of the 20th Century including "You've Really Got A Hold On Me," "I Second That Emotion" and "The Tracks of My Tears."
- **Mel Schacher.** Bassist Mel Schacher co-founded Grand Funk Railroad and was with the band through its classic period, producing 10 platinum albums to go with several hit singles. He and fellow founders Don Brewer and Mark Farner reunited in 1996, and he and Brewer teamed again to tour as Grand Funk from 2000 to 2012.
- **Dee Dee Sharp.** Philadelphia-born Dee Dee Sharp launched a dance craze with 1962's "Mashed Potato Time," which hit No. 1 on the Billboard R&B chart and No. 2 on the pop Hot 100. A string of teen dance hits followed. In the '70s she reemerged in the new Philadelphia resurgence, joining Lou Rawls, Billy Paul, Teddy Pendergrass, the O'Jays and Archie Bell as the Philadelphia International All Stars for the pointed song "Let's Clean Up the Ghetto."
- **Carly Simon.** Singer-songwriter Carly Simon's 1971 debut album and its hit "That's the Way I've Always Heard It Should Be," earned her the Grammy Best New Artist Award and launched a string of hit songs and albums that made her one of the decade's signature artists, with "Anticipation," the 1972 global No. 1 "You're So Vain" and the 1977

James Bond “The Spy Who Loved Me” film theme “Nobody Does It Better” among the most-cherished songs from that time. Later she added successful children’s author to her credits and in 2015 published her revealing autobiography “Boys in the Trees: A Memoir.”

- **Grace Slick.** As a member of the Jefferson Airplane, Grace Slick is one of the key and most-beloved figures from San Francisco’s ‘60s rock scene. Her performance of the song “Somebody to Love” with the band reached No. 5 on the Billboard Top 100 in 1967, the first breakthrough hit of the San Francisco scene, while her composition “White Rabbit” soon followed, reaching No. 8 on the chart. In the subsequent band Jefferson Starship, she sang several key hits of the ‘70s. Her ‘90s book, “Somebody to Love? A Rock-and-Roll Memoir,” detailed the ups and downs of a sometimes turbulent life, and in the time since has concentrated much of her creative talents on an acclaimed career as a painter. She and the Airplane were inducted into the Rock and Roll Hall of Fame in 1996.
- **Dionne Warwick.** Growing up singing gospel and R&B in New Jersey, Dionne Warwick became one of the most successful singers of the ‘60s, in particular as the voice/muse for the songwriting team of Burt Bacharach and Hal David with “Walk on By,” “I Say a Little Prayer” and “Do You Know the Way to San Jose” among her many hits. In 2002 she became a Goodwill Ambassador of the United Nations Food and Agriculture Organization and has worked dedicatedly to fight food deprivation and to help children with serious illnesses. She has continued to record and perform, and was inducted into the Rhythm & Blues Hall of Fame in 2016.

- **Mary Wilson.** Mary Wilson co-founded the Supremes, the core act of Motown Records classic '60s years and with 30 Top 40 hits, a dozen reaching No. 1 including “Where Did Our Love Go,” “Stop! In the Name of Love,” and “You Keep Me Hangin’ On,” the most popular and successful female group of the era. Wilson remained in the group through various personnel changes until its end in 1977, then started a successful solo career. She wrote two highly praised autobiographies, 1986’s “Dreamgirl: My Life As a Supreme” and 1990s “Supreme Faith: Someday We’ll Be Together.” She continues a very active life as an international touring performer and has been a dedicated activist for artists' rights.
- **Apple Corps LTD (The Beatles).** The Beatles stand, simply put, as the most important pop music act of the modern era. The creativity and talent of Paul McCartney, John Lennon, George Harrison and Ringo Starr changed not only the course of music in ways many still hold as the ultimate standard, but of pop culture as a whole. 2017 saw the celebration of the 50th anniversary of the release of the album “Sgt. Pepper’s Lonely Hearts Club Band,” often put at the top of critics’ and fans’ rankings of the best albums of all time.
- **Estate of Glen Campbell.** After establishing himself as one of the hottest session guitarists in pop with the L.A. elite Wrecking Crew, Arkansas farm boy Campbell went on to a still-unrivaled career crossing the lines between pop and country with hits from “Wichita Lineman” to “Rhinstone Cowboy,” as well as hosting the immensely popular “Glen Campbell Goodtime Hour” variety show on CBS-TV — not to mention co-starring alongside John Wayne in the original 1969 movie version of “True Grit.” He won 10 Grammy Awards, including five in 1967 when his “By the Time I Get to Phoenix” was named Album of the Year, and

a Lifetime Achievement Grammy in 2012. He had a career renaissance in the 2000s, despite being diagnosed with Alzheimer's disease. His and his family's struggle was shared in the bravely honest 2014 documentary, "Glen Campbell: I'll Be Me." He died from the disease in August 2017.

- **Estate of John Denver.** With the huge hits "Take Me Home, Country Roads" in 1971 and "Rocky Mountain High" in 1972, John Denver established himself as one of the top pop and country figures of that decade. His natural, boyish charm also served him well on TV and in movies, most notably starring alongside George Burns in 1977's "Oh, God!" He continued as a popular artist as well as a committed activist in humanitarian and environmental causes until his death in 2012 in a light-aircraft crash.
- **Estate of Judy Garland.** Few if any performances hold as high a place in music and film as young Judy Garland, as Dorothy Gale, singing "Over the Rainbow" in 1939's "The Wizard of Oz." But the legacy she left after dying far too young, at age 47, in 1969, goes way beyond that, both as a singer and an actor. Her starring roles in "Babes in Arms," "Meet Me In St. Louis," "The Harvey Girls" and others are filled with songs for which her performances remain the standard. And among her many albums, the triumphant "Judy at Carnegie Hall" concert recording from 1961 stands above all, having spent 13 weeks at No. 1 on Billboard's pop chart and winning four Grammy Awards, including Album of the Year, the first by a woman to get that accolade. In 2003 it was entered into the Library of Congress' National Recording Registry and remains a touchstone of concert recordings.

- **Moontrane Media Group, LLC. (Estate of Dexter Gordon)** Dexter Gordon began his career through collaborations with some of the most influential names in jazz including Lionel Hampton, Louis Armstrong, Charlie Parker, Miles Davis, Thelonious Monk, and Dizzy Gillespie, and was regarded as the world's first bebop tenor saxophonist. Key among his musical descendants were two of the major iconic saxophonists of the twentieth century, John Coltrane and Sonny Rollins. Gordon was nominated for several Grammy Awards and won Best Album and Best Jazz Artist of the Year for Downbeat Records in 1978 and 1979. In 1986, Dexter Gordon starred in a French film, *Round Midnight* (Warner Bros. 1986). The film gained international praise and Gordon received an Academy Award nomination for his performance in the leading role of Dale Turner, a fictional character loosely based on the lives of jazz legends Lester Young, Bud Powell, and Billie Holiday. Dexter was also awarded the title of Officier des Arts et Lettres (Officer of Arts and Letters) by the French Ministry of Culture. Dexter Gordon is the only jazz musician ever to have been nominated for an Academy Award.
- **Estate of Donny Hathaway.** Nearly 30 years since his death at 33, Donny Hathaway is among the most revered and influential performers of '70s R&B, his 1972 duet album with Roberta Flack and its hit single "Where Is The Love" an enduring favorite.
- **Experience Hendrix, L.L.C. (Jimi Hendrix).** In four short years between the debut album of the Jimi Hendrix Experience and his 1970 death, Jimi Hendrix brought about tectonic shifts in the very nature of guitar playing, of vibrant performance and of the shapes and scopes of rock music itself. Every one of the studio albums made in his lifetime stands as a game-changer, songs from "Purple Haze" to "Little Wing"

still electrifying staples of classic-rock, still as fresh and exciting as when they were new. And of course his appearances at The Monterey Pop Festival, with the unforgettable visual of him lighting his guitar on fire, and Woodstock, where he gave “The Star Spangled Banner” new dimensions for a new generation in an explosive instrumental performance, are indelible images of that volatile time. His albums, both the original releases and an ongoing series of archival and live recordings, continue to be in great demand from fans old and new.

- **Estate of Etta James.** If Los Angeles-born Etta James had recorded nothing but “At Last,” her legacy would be secure. Though the song had debuted in a 1941 movie and was recorded by numerous artists before she did, her 1960 version is the one that has lasted through the ages. It has been used in dozens of movies, TV shows and commercials, and it was in homage to her performance that Beyoncé sang it by request of newly elected President Barack Obama as the first dance he and Michelle Obama had at the Jan. 20, 2009 Inaugural Ball. James’ catalog includes many more standards of the blues and R&B repertoires and she is held as a top influence by stars including Bonnie Raitt, Rod Stewart, the Rolling Stones and Adele. She was given a Pioneer Award among the first honors bestowed by the Rhythm and Blues Foundation in 1989 and was granted an NAACP Image Award in 1993, with an induction into the Rock and Roll Hall of Fame in 1993.
- **Jazz Worship Inc. (Charles Mingus).** Charles Mingus was one of the great creative forces of post-bebop jazz, expanding the concepts of the form with results that still stand out today for their innovative appeal and tremendous impact on young musicians seeking their own forms of expression. Among his most enduring compositions is “Goodbye Pork Pie Hat,” an elegy to saxophonist Lester Young, which has been

recorded by such stars as Jeff Beck and Joni Mitchell, the latter featuring a version with her lyrics on her 1979 album collaboration with the composer, "Mingus," bringing his music to a new audience.

- **Roy's Boys LLC (Roy Orbison).** Rock and Roll Hall of Famer Roy Orbison's operatic voice and ambitious songwriting made him one of the most beloved figures in pop music from the time he first recorded for Memphis' Sun Records in the mid-'50s, though it was such '60s hits as "Only the Lonely," "Crying," "Blue Bayou" and "Oh, Pretty Woman" that made him an international star. Those and other songs of his remained influential favorites both in his and other artists' versions (Linda Ronstadt with "Blue Bayou," David Lee Roth with "Oh, Pretty Woman"). In the '80s he returned to prominence with help from some star acolytes. The 1987 TV concert film "Roy Orbison and Friends: A Black and White Night" featured Bruce Springsteen, Elvis Costello, Jackson Browne and Bonnie Raitt among those performing with him. Also in that year he, Bob Dylan, George Harrison, Tom Petty and Jeff Lynne formed the supergroup the Traveling Wilburys, followed the next year by his own Lynne-produced "Mystery Girl" album, completed just a month before his death.
- **John E. A. Phillips Trust (John Phillips of The Mamas & The Papas).** As the main songwriter and arranger of the Mamas & the Papas, John Phillips was behind a sound that both defined and described aspects of the California culture of the '60s, most famously in "California Dreamin'," but also in "Monday, Monday," "I Saw Her Again" and the ode to Laurel Canyon, "12:30 (Young Girls Are Coming to the Canyon)," all making scintillating use of the exquisite, shifting harmonies created with group-mates Michelle Phillips, "Mama" Cass Elliot and Denny Doherty. The group had 11 Top 40 Billboard singles

("Monday, Monday" reaching No. 1), and three albums reaching No. 4 or higher, with the debut "If You Can Believe Your Eyes and Ears" hitting the top in 1966. Phillips also was key in putting together the Monterey International Pop Festival in 1967, at which the group performed.

- **Frank Sinatra Enterprises.** Frank Sinatra's place in modern popular music is like that of no one else. His distinctive phrasing and sense of song has been often imitated, but never matched. His series of innovative "concept" works in the '50s and '60s brought about the notion of albums as a distinctive art form and his versions of dozens of songs will stand as definitive for generations to come.
- **Estate of Hank Williams.** Without Hank Williams, the evolution of modern country music would have been quite different. His combo of plain-spoken poetry and honky-tonk wisdom in such standards as "Your Cheatin' Heart," "Move It On Over" and "Oh Lonesome Me" provide the template for countless writers and performers who followed, not just in country but in rock and even soul.
- **Estate of Bobby Womack.** Cleveland-born Bobby Womack crossed genres and decades as a distinctly creative force in R&B. His 1964 song "It's All Over Now" (when he was part of the group the Valentinos) soon became a favorite of rock fans via a version by the Rolling Stones. In the late-'60s and early-'70s he established himself as a daring artist of wide-reaching talents, with such songs as 1972's "Across 110th Street" growing in renown over the years, including a resurgence spurred by its prominent use in Quentin Tarantino's "Jackie Brown." Over the years he was sought out for collaborations by such admirers as the Manhattans, Todd Rundgren, Van Morrison and the English group

Gorillaz, for whom he wrote and sang the 2010 hit “Stylo,” which also featured Mos Def. Others who recorded his songs and/or cited his influence included the J. Geils Band, Rod Stewart, Aretha Franklin and George Benson. He was inducted into the Rock and Roll Hall of Fame in 2009.

Proposed Amici include some of the greatest musicians of all time. These are the individuals who have literally lived the facts behind this case, and who have the most personal stake in the outcome. In their brief, they try to provide the Court with a picture of the real people behind the certified questions and to tell a small part of the magnificent story of music in California, in order to assist the Court in understanding the magnitude of what is at issue. Amici ask the Court to recognize and preserve California law that protects a cherished legacy of truly incredible music.¹

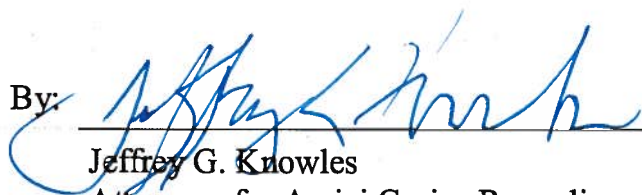
¹ Pursuant to Rule 8.520(f)(4) of the California Rules of Court, proposed Amici state that (1) there is no party or any counsel for a party in the pending appeal who authored the proposed amicus curiae brief in whole or in part; (2) there is no party or counsel for any party who made a monetary contribution intended to fund the preparation or submission of the brief; and (3) the only entity that has made a monetary contribution intended to fund the brief is the Recording Industry Association of America, Inc. , which did so in order to permit these legendary artists to tell their stories.

DATED: January 12, 2018

Respectfully submitted,

COBLENTZ PATCH DUFFY & BASS LLP

By:



Jeffrey G. Knowles
Attorneys for Amici Curiae Recording
Artists

BRIEF OF AMICI CURIAE RECORDING ARTISTS
IN SUPPORT OF PLAINTIFF-RESPONDENT
FLO & EDDIE, INC.

INTRODUCTION

California is home to some of the most popular music ever created. From the Summer of Love in San Francisco's Haight-Ashbury to the surf music of Dick Dale, the Ventures, and the Beach Boys, from the clubs of LA's Sunset Strip to Laurel Canyon, to the Latin-infused sound of East LA to the country and western twang of Bakersfield, California music transformed movies, television, and in many ways, the world. California musicians – whether native to the state or adopted by it – have made generations of music fans sing, dance, protest inequality and wars, advocate for freedom, surf, and just chill. This was the “California Sound,” and much of this music was created before February 15, 1972. The law of California has always recognized the value of this art, which is why it is protected under the common law, Civil Code section 980, and otherwise.

The artists who made these treasures ask nothing more than to be fairly compensated for the use of their recordings by online digital services, some of which are multi-billion dollar enterprises. Sadly, services would take the property of these legacy artists, on whose shoulders generations of musicians stand, and use their creations without paying so much as a cent. This Court should not allow that to happen.

This brief, joined by some of the greatest musicians of all time, tries to tell a small part of the magnificent story of music in California so that the Court understands what is at stake. While this brief does not discuss the specifics of California law – for that amici respectfully direct the Court to the briefs filed by Plaintiff-Respondent Flo & Eddie, Inc., and amici

Recording Industry Association of America, American Association of Independent Music, and independent record label ABKCO – amici ask the Court to recognize and preserve California law that protects a cherished legacy of truly incredible music.

ARGUMENT

I. CALIFORNIA’S RICH HISTORY OF ICONIC ARTISTS AND RECORDINGS

The music of California is inextricably tied to the very nature of the state, and reflective of the special attributes of its cultures and communities to an extent matched by few other places around the world. For generations, the music of the state has been a beacon drawing countless people to visit, or to stay, through its celebrations of lives, sights, and scenes that exist nowhere else. A place where people came to find new lives, to reinvent themselves. It wasn’t that different, really, to move from “California Here I Come” in the 1920’s to “Hooray for Hollywood” in the 1930’s to Scott McKenzie in the Summer of Love in 1967 suggesting to Haight-Ashbury pilgrims that if they’re going to San Francisco, “be sure to wear some flowers in your hair.”

Even some of the darker sides seemed full of hope and possibilities in their quests and questions: The Buffalo Springfield seeing a whole nation’s tense transition represented in the so-called Riot on Sunset Strip, the inspiration for the song “For What It’s Worth” — “something’s happening here, what it is ain’t exactly clear.” And, of course, “California Girls,” “California Sun,” “San Francisco Nights,” “L.A. Woman,” all beckoning. In turn, the music that’s been made here, with the inspiration of the special qualities found here, has spread around the world, heard and loved in lands as distant, and as different, as they can be. It all sprang from a combination of creative and enterprising spirit that in the middle of the

20th century made the music business of California a “dream factory,” and an economic engine, approaching that of Hollywood’s film and television world.

The Sounds of California. Music at once drove and reflected some of the most significant and renowned cultural phenomena of the Golden State. The global images of California’s surf and sun could not have happened without Dick Dale, the Ventures, the Surfariis, Jan & Dean, and, of course, the Beach Boys. There’s no Summer of Love without the music of San Francisco’s Haight-Ashbury, the psychedelic jams of the Grateful Dead and the rebellious spirit of the Jefferson Airplane. Who would know of the Sunset Strip and its youth-fueled rebellion or of Laurel Canyon and its poetic, domestic idealism if not for the songs from and of them, if not for the Byrds and The Buffalo Springfield, the Doors and Love, Joni Mitchell and Jackson Browne. Each of those songs is a cultural and economic legacy to those who created it and to the state where it was created.

The 1960s saw an explosion of California music shining over global culture as bright as the sun at Malibu. The conditions for that grew out of the Hollywood movie explosion of the ‘20s, ‘30s and ‘40s, and then the population spike of the post-World War II years, as many flocked here for jobs and new lives in the real estate boom and the growing aerospace industry. Journalist Barney Hoskyns, in his definitive book about the evolution of California pop music, “Waiting for the Sun,” quotes jazz musician Paul Horn about the state’s draw in the ‘40s and ‘50s: “California

was wide open — an experimental, innovative, and exceptionally creative environment. People felt free to try new ideas, anything at all.”²

Central Avenue Jazz, Hollywood Folk and Bakersfield Country. An influx of African-Americans from the South, Detroit, Texas, Chicago and elsewhere around the country coalesced around Los Angeles’ Central Avenue, where a vibrant jazz scene took hold in the ‘40s and ‘50s. Artists ranging from Nat King Cole to Charlie Parker, Chet Baker, Charles Mingus and Ornette Coleman were open to innovation, creating music that still sets standards others strive to match. And out of that, a vital rhythm and blues scene grew, the Penguins (“Earth Angel”) and the Platters (“Only You”) putting L.A. prominently on the doo-wop map, Johnny Otis (“Willie and the Hand Jive”) and his barnstorming revues breaking down color lines in the era of Jim Crow. In turn, this all inspired such leading lights of the next generation as Frank Zappa and the Doors. Other immigrants to the state brought in country music, spurring thriving scenes in Bakersfield, where Buck Owens and Merle Haggard would create a sound that still echoes today, and throughout Southern California, where a few years later, out of such clubs as the Ash Grove and the Troubadour, the musicians who would become the Byrds, The Buffalo Springfield and later the Flying Burrito Brothers and the Eagles would create a whole new hybrid of country-rock. Even the Rolling Stones made a pilgrimage to the Ash Grove, while teen-aged Jackson Browne, Ry Cooder, Taj Mahal and other future stars learned at the feet of some of the greats of blues, country and bluegrass.

The Latin Influence in California. In East Los Angeles and other parts of Southern California, a mix of Latin and Hispanic cultures with

² Hoskyns, *Waiting For the Sun: Strange Days, Weird Scenes, and the Sound of Los Angeles* (1996 St. Martin’s Press), p. 5.

others in the region gave rise to its own sounds, traditional songs blending with R&B and rock 'n' roll, from Richie Valens (the young star behind "La Bamba" who died in the plane crash with Buddy Holly) to '60s rockers Thee Midneters ("Whittier Blvd.") and the Premiers ("Farmer John") to the distinctive funk-soul of War, vividly portraying the neighborhood scenes with the huge hits "All Day Music" and "Slippin' Into Darkness." Meanwhile, in the Bay Area, Carlos Santana and his band channeled his Mexican origins and the pan-Latin sensibilities into a new, bracing, wide-ranging jazz-rock-soul blend with "Oye Como Va," "Evil Ways," "Black Magic Woman" and the instrumental workout "Soul Sacrifice," the latter whipping the Woodstock crowd to an elated frenzy in what for the band was a true national breakout moment.

Sand, Surf and Great Music. Barney Hoskyns paints a picture of California '50s teendom as like others across the nation — malt shops, jukeboxes, necking at the drive-in, listening to the latest rock and pop on the radio, in this case via Art Laboe (the future "Golden Oldies" purveyor) on KPOP, as well as with him in person as he hosted sock hops. "The difference in Los Angeles," Hoskyns wrote, "was that these kids were growing up in a place which instantly took teen trends and turned them into movies.... Maybe if you were growing up in pimply Long Beach, Hollywood seemed as far away as it did to any other American teens; any closer and the thin line between reality and celluloid delusion blurred."³

But at the same time, down by the Pacific shores, a new reality was taking hold, one of sand and surf and hot-rods. Dick Dale was born in Boston, but when he was a high school senior in the mid-'50s, his family moved to El Segundo on the Santa Monica Bay, his father lured by a job in

³ *Id.*, p. 38.

the burgeoning aerospace industry. Already proficient on guitar and piano, the young Dale took up drums and trumpet there, fueled by a love for Hank Williams, rock 'n' roll and the Arabic music he was exposed to by his Lebanese father and uncles. And, crucially, he learned to surf.

Experimenting with the sounds of a Fender Stratocaster — the jewel of the iconic Orange County company and its founder Leo Fender — and adding layers of heavy reverb, Dale was able to capture the sound, and *feeling*, he got while hanging ten on a long board through a curl pounding against the Southern California coast. Surf music, as it quickly came to be known, proliferating through dozens of bands around the region, became the sound in the heads of thousands who flocked to the state to find out for themselves, and millions more who romanticized the scene around the globe. With “Miserlou” in 1962, Dale brought that approach to a radical reworking of an Eastern Mediterranean folk song he learned from his Lebanese-American uncle. That became his signature hit and secured his title as “King of the Surf Guitar.”

Quentin Tarantino knew the value of the song when he had John Travolta and Uma Thurman dance to “Miserlou” on a retro-diner table-top in 1994’s “Pulp Fiction.” The producers of “Kitchen Nightmares” knew it, too, when they chose it for the series’ opening credits music. And programmers of satellite radio stations and algorithms of streaming services value it too, as it is in constant rotation there — only those services don’t pay for that value.

Around the same time, just down the coast in the beach suburb of Hawthorne, three musical teen brothers, a cousin and a neighborhood friend were just as taken with the culture around them and were inspired to chronicle it in what would become a catalog of songs like no other, an

influential body of work that remains the go-to musical image of California culture to this day. The group is, of course, the Beach Boys, at first writing musical post-cards from the shore (“Surfin’ Safari” and “Surfin’ U.S.A.,” with its colorful litany of top California surfing sites), from the suburban high schools and the after-school drag races (“I Get Around” and “Don’t Worry Baby”), and then with remarkable growth in musical and lyrical expression, revealing untold depth of that world, cultural and personal, through the talents and vision of leader Brian Wilson as expressed in full album length with “Pet Sounds,” hailed by many as one of the greatest, essential albums of the decade. “Pet Sounds” features music as inventive and distinctive as anything in the pop world, inspired by Phil Spector’s Wall of Sound, but holding its own visionary character, arguably unrivaled by anything of the time aside from the Beatles — who often credited Wilson’s work as both inspiration and a challenge to keep raising the stakes.

It was a heady time around the world, and a time in which the world looked to California for new ideas, new ways of life, new possibilities. And in no medium were those things expressed as freely and vividly as in music, music as cherished, as looked to now as it was then, the lifeblood of the state, reaching out beyond its borders, music from the ‘50s, ‘60s, early ‘70s as touchstones to the music business and, vitally, to fans who grew with it and whole new generations feeling the power of California dreaming.

II. THE “CALIFORNIA SOUND” CHANGED MOVIES, TELEVISION – AND THE WORLD

There’s hardly been a montage of California scenes in a TV show or movie that didn’t include the Capitol Records tower near the famed Hollywood and Vine intersection. It’s fitting, beyond the pure appeal of the architectural representation of a stack of LP records. Capitol Records was

the first major record label created right here in California, founded in 1942 by top songwriter Johnny Mercer to establish a music production and release company apart from those connected to the Hollywood movie studios. Frank Sinatra, Nat King Cole, Stan Kenton, Louis Prima, and Dean Martin all were part of the roster as the label became a world-class force, and in the '60s the labels affixed to its 45s and LPs — first an orange and yellow yin-yang swirl and then black rimmed with a rainbow — became indelible images that will forever be associated with the Beatles and Beach Boys for countless fans. Its success opened the doors for other L.A. label start-ups that quickly became global powerhouses, notably Warner Bros. Records (home of the Grateful Dead, Van Morrison, Bonnie Raitt, among others in that era) and its sister Reprise Records (co-founded by Sinatra when he left Capitol), and A&M Records (started by Herb Alpert — of the Tijuana Brass fame — and partner Jerry Moss, housed on the old Charlie Chaplin studio lot in Hollywood), and record label to Downey, California's The Carpenters.

Capitol's Studio B, on the ground floor of the tower, remains a mecca for top artists from around the world. That iconic picture of Frank Sinatra, fedora on head, in front of a full studio orchestra? That was there, the setting of many of his most prized recordings. And you may have seen it portrayed in the recent movie "Love and Mercy" about Brian Wilson's oft-tortured and ultimately redemptive tale. The sequence at the beginning of the movie, with Paul Dano playing Wilson, instructing the musicians of the vaunted Wrecking Crew on how to play the unprecedented textures of "God Only Knows," is a marvel of capturing the creative process.

The Wrecking Crew, of course, was a steady presence in that studio and others around town, musicians including young Leon Russell, bassist Carole Kaye, drummer Hal Blaine, guitarist Tommy Tedesco and another

young guitarist, a former Arkansas farm boy named Glen Campbell. It was in this studio where they worked with Sinatra (he told Campbell to get a hair cut) and Elvis Presley, just a fraction of sessions they did around town for Phil Spector (a graduate of L.A.'s Fairfax High), Jimmy Bowen, Mike Post, Lou Adler and dozens of other producers creating more and more of the iconic pop of the era. The Crew, for example, was the foundation of Spector's "Wall of Sound" as heard on the Ronette's "He's a Rebel," the Righteous Brothers' "You've Lost That Lovin' Feeling" and scores of other era-defining hits.

Their story is told on the recent "The Wrecking Crew" documentary, a revelation in terms of this cast of California musicians' impact on the whole world of pop music, of songs that remain today core to movies, radio, TV and, yes, streaming play. Among the thousands of other sessions featuring the Wrecking Crew were the Mamas and the Papas' "California Dreamin'," the Association's "Windy," the Fifth Dimension's "Up, Up and Away," Sonny and Cher's "I Got You Babe," Glen Campbell's "By the Time I Get to Phoenix" and enduringly key works by artists from Nat King Cole to Simon & Garfunkel to the Partridge Family.

Through it all the mystique and allure of the state only grew, the music becoming its prime calling card. The Doors' John Densmore, born and raised in Santa Monica, saw it happening:

John Phillips of the Mamas and the Papas, who was originally an East Coast dude, wrote California Dreamin', and at that moment California took over. It's still reverberating. It was a total renaissance. We were the house band at the Whisky on the Sunset Strip, and saw all the bands that headlined: the Byrds, Buffalo Springfield, Frank Zappa and the Mothers of Invention, Captain Beefheart, Van Morrison with Them. It affected the whole world, is still affecting the

world. We were at the epicenter, all of us, all the bands.⁴

The earthquake allusion is fitting, not just because of the state's geographical volatility, but for the cultural and musical upheavals coming out of California. Beatlemania and the British Invasion opened the doors of possibilities in music and expression, and the civil rights movement and Viet Nam war protests provided fuel for new meaning in pop music. In West Hollywood, the Sunset Strip area became a mecca for artists and fans looking to the new. The Byrds, its members schooled in folk and jazz as well as rock, channeled the new ideas at the nearby Troubadour club on Santa Monica Boulevard. The Buffalo Springfield brought together some volatile creative talents in Neil Young, Stephen Stills and Richie Furay, the right chemistry to capture the times — the so-called Riot on Sunset Strip brought by the police shutting down the club Pandora's Box, inspired Stills' ever-resonant "For What It's Worth." And at the Whisky a Go Go, the Doors, fronted by poet-shaman Jim Morrison, channeled a discontented darkness inspired by jazz and blues and by psyche-probing literature and art, caught the attention of record executive Jac Holzman, who had recently moved his until-then folk-centric Elektra Records company to L.A. from

⁴ Steve Hochman (interview with John Densmore), Jan. 8, 2018. Steve Hochman has been a music journalist, critic and historian for more than 30 years. From 1985 until the late '00s he was a core member of the Los Angeles Times pop music department, covering a global range of music and all aspects of music and music business news. He also wrote regularly for Rolling Stone, including groundbreaking early-'90s investigations into the impact of AIDS/HIV in the music world and the tragic return of heroin as a drug of choice for young rockers. He served as consulting editor for the award-winning, comprehensive "Popular Musicians" encyclopedia published by Salem Press and is the author of the book "The Music Behind the Magic." Currently he explores new music in monthly segments on L.A. public radio station KPCC and for the BuzzBandsLA site.

New York and was ready to embrace the sounds of a new generation, a new time.

Up the coast in the Bay Area, all the streams of the new youth culture, of protest and poetry and peace and love, came together at the corner of Haight and Ashbury and in free love-ins and be-ins in Golden Gate Park, culminating in what came to be called the Summer of Love of 1967. No less than George Harrison of the Beatles made a pilgrimage to see it for himself. Suddenly, San Francisco was at the center of the music world, with record companies falling over each other to sign bands that were nothing like what had been heard on pop radio before, bands who grew out of the free-form, anything goes environment of Ken Kesey's Acid Tests and The Fillmore Auditorium.

Grace Slick, who became a star with Jefferson Airplane singing "White Rabbit" and "Somebody to Love," two of 1967's biggest hits, calls the scene a mix of the Beatnik ethos sliding into the Hippie era, the latter shedding the nihilism of the former for a belief that they could change the world in positive ways. She credits a Time magazine article depicting the scene as spurring the record business interest. "They may not have even liked it," she says of the talent scouts. "But they saw people in the seats. All of a sudden the Grateful Dead got signed, Janis Joplin got signed, we got signed."⁵

The music drew on folk, blues, classic soul, all stirred with the local do-your-own-thing spirit — and of course the psychedelic aesthetic. Across the Bay in Oakland as well, new ideas were coming together, most prominently with visionary musician Sylvester "Sly" Stewart and his multi-

⁵ Steve Hochman (interview with Grace Slick), Jan. 8, 2018.

cultural funk-pop-rock band Sly and the Family Stone, whose influence extended across the country and the years, with Prince perhaps the most prominent acolyte. And at the same time in the East Bay, Creedence Clearwater Revival recharged working-class rock 'n' roll roots into a powerful approach, echoed in the next decades by Bruce Springsteen way over in New Jersey.

Promoter Bill Graham helped galvanize this into something powerful, with his Fillmore Auditorium shows, mixing styles and cultures on the same nights in ways no one had thought of before — with more than just musical impact. “That was astounding,” says the Doors’ Densmore. “He would book [jazz great] Miles Davis, a blues band and the Doors on one night. That was unheard of — crossing genres, crossing races, and everyone loved it. It was the future, musically and culturally. And it said that you’d better look to California. We’re big.”⁶

The Monterey Pop Festival in 1967’s Summer of Love was a real coming out party of this in both a cultural and business sense. Put together by producer and record executive Lou Adler (the Mamas and the Papas, Carole King, among his hit acts) and “Papa” John Phillips, the event showed the draw and power of a wide range of music — among them San Francisco-based Janis Joplin, Memphis soul star Otis Redding, Indian musician Ravi Shankar and, of course the explosive performances by Jimi Hendrix and The Who closing the show. The success of Monterey erased doubts about the commercial viability of this music, and pointed the way for many other pop festivals, including Woodstock. It is the music of this time that still carries the ideals and aesthetics of that scene today, expressed in everything from the still-thriving “jam band” circuit to the blissful

⁶ Steve Hochman (interview with John Densmore), Jan. 8, 2018.

electronic dance music world, from the iconic Burning Man gathering in the Nevada desert to the massive Coachella festivals now held each year in California's Inland Empire.

The Laurel Canyon Scene. The end of the '60s saw much change, fallout from the turmoil, assassinations, protests taking more violent turns. But the spirit that fueled California's music in the previous decade found new artists to pick up the mantle with new senses of expression, many settling into L.A.'s Laurel Canyon.

In the 2006 book "Laurel Canyon: The Inside Story of Rock and Roll's Legendary Neighborhood," author Michael Walker writes of a magical era in a magical place, an oasis just minutes from the bustling Sunset Strip, that drew creative figures from around the world. They formed a community that spurred a transformation of music and cultural attitudes that could not have happened anywhere else, and which sent a message back out to the world.

"During Laurel Canyon's golden era, the musicians who lived and worked there scored dozens of landmark hits, from 'Suite: Judy Blue Eyes' to 'California Dreamin'' to 'My Opening Farewell' to 'It's Too Late,' while selling tens of millions of records and resetting the thermostat of pop culture worldwide," Walker wrote, citing artists as essential as Joni Mitchell, Crosby, Stills & Nash, Frank Zappa, Jackson Browne, Judy Collins and the Eagles' Glenn Frey and Don Henley among those who found community and inspiration there. "Thanks to this incredible influx of

talent, Laurel Canyon and, with it, Los Angeles wrested from New York and London the bragging rights of musical capital of the world.”⁷

Graham Nash told Walker, “To be part of that boiling pot of music, twelve hours a day, every day? It was an amazing scene.”⁸ That magic remains a pull to many to this day, the settings and sounds of Laurel Canyon drawing steady streams of young artists throughout the years, with such figures as Jonathan Wilson (a fine musician in his own right who in addition to his own albums has worked with Bob Weir and Phil Lesh of the Grateful Dead, Father John Misty and many others) and the band Dawes setting up shop there, and being taken under the wings of such mentors as Graham Nash and Jackson Browne.

There was a term used commonly in the Laurel Canyon heyday, a term that reached back decades and tied together all the vibrant cultures, all the innovations, all the visionary artistry and business creativity that made the state a mecca of and for music transcending mere geography, a term that still embodies a sense of promise, depth and joyful magic around the world: “The California Sound.” This Court should ensure that this unique sound is preserved for the generations to come.

III. THE IMPORTANCE OF ROYALTIES TO LEGACY ARTISTS

As one of the original Four Tops, Duke Fakir made some of the most powerful and enduring music of the ‘60s, songs indelibly linked not just to the Motown Records label for which they were recorded but the spirit of an era. There were 18 Top 40 hits between 1964 and 1972 — including No. 1s

⁷ Walker, *Laurel Canyon: The Inside Story of Rock and Roll’s Legendary Neighborhood* (2006, Faber and Faber), p. xiii.

⁸ *Id.*, p. xiv.

“I Can’t Help Myself (Sugar Pie Honey Bunch)” and “Reach Out I’ll Be There,” not to mention “Bernadette,” “Baby I Need Your Loving” and “It’s the Same Old Song.” You can hardly turn on a classic-rock or soul radio outlet without hearing one of these songs, plus the countless movies and TV shows that have used them over the years. And today they are constants on such digital streaming platforms as Spotify, Pandora and Apple Music as well as several channels of the Sirius/XM satellite radio service, companies that are dominating the economics of music and accruing unprecedented valuations for their executives and investors, in large part on the value of such classic, cherished music.

Now, Fakir has a powerful message, on behalf of himself and other artists, regarding those outlets, which have not been required to pay performance royalties to artists, their heirs and the copyright holders of songs released before 1972. In an op-ed piece he penned for the December 28, 2017, edition of the Washington Post, he was unsparing in his condemnation of this injustice:

This digital rip-off has been a disaster for many older artists, diverting the fruits of their labors — funds that should be their lifeline — to the balance sheets of some of the wealthiest companies in the world. Digital radio earns millions every year from the exploitation of pre-’72 music, from big band to Motown to the British Invasion. Yet the artists who recorded those classics — many of whom are no longer able to tour — struggle for basic food, shelter and medical care. It’s ridiculous, it’s unfair, and it’s about time we make it illegal.⁹

⁹ Fakir, *We’re Ripping Off Some Of The Best Musicians of the Last Century. It Needs To Stop*, Washington Post, Opinions (Dec. 28, 2017).

Fakir is hardly alone. A growing roster of artists of that time or their estates, as well as those of more recent times who have been so deeply influenced by the legacy acts, are stepping up to address this injustice. Sales of compact discs, the dominant physical music product, have declined dramatically in the last decade. And now the purchase of downloads is falling out of favor rapidly with a shift more and more to the lucrative streaming services.

Others agree:

- John Densmore, co-founder and drummer of the essential Los Angeles '60s band the Doors, which remains one of the most iconic and influential bands of the rock era, puts it succinctly: “Our royalties nosedived the last few years. I don’t want to sound like I don’t have dough. I just want what’s fair. All the music I made was before 1972, and you’re not going to pay me for the use?”¹⁰
- Singer Grace Slick, who helped define the same era’s sounds with San Francisco’s Jefferson Airplane, is just as plain in her take: “It’s basically simple. If you are making bucks off of my stuff, guess what? I deserve a portion of it.”¹¹

Mary Wilson was one of Fakir’s Motown cohorts, a founding member of the Supremes, the most successful female group of the era and arguably the core act on the classic Motown roster as the label truly became, as it declared itself, “The Sound of Young America.” In 1963 and ’64 the group scored a phenomenal five consecutive No. 1 hits — “Where

¹⁰ Steve Hochman (interview with John Densmore), Jan. 8, 2018.

¹¹ Steve Hochman (interview with Grace Slick), Jan. 8, 2018.

Did Our Love Go,” “Baby Love,” “Come See About Me,” “Stop! In the Name of Love” and “Back in My Arms Again” — rivaling the Beatles in pop preeminence. The group had seven more No. 1 hits through 1969, with an astounding total of 30 Top 40 selections between 1963 and 1971, a time in which it was a favorite act on “The Ed Sullivan Show” and other national network TV showcases.

To this day, Wilson hears her recorded performances everywhere she goes, and finds enthusiastic fans with them: “You get in an elevator, go to a grocery store, you’ll hear it,” she says. “People have said it’s the soundtrack of their lives. People get married by it, they date by it, graduate from college. The music we grew up with defines the emotions of your life.”¹²

Wilson, who lived in Los Angeles much of her life since leaving Detroit in the ‘70s, raising her sons here, has been very active in protecting the rights of her and her colleagues and of many others of her era, testifying on Capitol Hill for, among other things, measures to stop the proliferation of fake groups, acts touring under the name of hers and other classic acts despite containing no true members of the original, exploiting the enduring popularity of their music. And now she is speaking up about the exploitation of the value by online digital services.

“That’s a lot of money people are making on this, and the artists are not being paid,” she says. As with many, in the absence of royalties, touring is the only way for these artists to earn a living from the value of their music, she says. “I’m one of them,” she says, noting a very busy

¹² Steve Hochman (interview with Mary Wilson), Jan. 6, 2018.

touring schedule maintained at age 73. She's not asking for sympathy for herself, but she sees others who are really hurting. Wilson explains:

Many of these artists have died not only broke but unhappy. I'm here to tell you that their hearts were broken — and their music was being played. They were idolized around the world. The music is so valued, but the people who made it are treated as if they are insignificant. It's more than about money. It's about people's lives.¹³

Artist after artist, legacy after legacy, there's a common thread.

Longtime California resident Dave Mason came to fame first in the English band Traffic — his song "Feeling Alright," was a 1969 breakthrough that established Joe Cocker's stardom — before stepping out with "Along Together," his 1970 album that showed his full range of talents and quickly became part of the core repertoire of FM rock radio in its heady, formative years.

It doesn't matter when, where, how or what. It's our work. Many [recording artists] already got screwed over by the music business, and now even worse by companies that have valuations on The Street of billions of dollars. I need to be paid for my work and so does any other artist. If a company wants to license 'Feeling Alright,' they ask to license it. These guys are doing it without paying. There is no company without the music. It is a moral issue in reality.¹⁴

Mason is another of many artists who, despite the continued popularity of their recordings, now sees very little income other than from touring. He's been on tour of late in shows built around complete performances of the "Alone Together" album, to the great delight of both

¹³ *Id.*

¹⁴ Steve Hochman (interview with Dave Mason), Jan. 5, 2018.

veteran fans and younger people who have come to his music. “I’m still singing for my supper,” he says. “That’s all that’s left — the shows.”¹⁵

James William Guercio was a musician in L.A., where he moved in the ‘60s, before going on to become one of the most celebrated producers of that time, with Blood, Sweat and Tears’ 1969 album — containing three Top 5 hit singles including “Spinning Wheel” and winner of the Grammy Album of the Year Award — and Chicago’s breakthrough albums. “It’s a terrible thing,” he says. “We won record of the year with Blood, Sweat and Tears and then those early Chicago albums. And we’re not getting anything from streaming. Those tunes are in heavy rotation still, they’re played quite a bit. Blood, Sweat and Tears, their whole career is that album, and we don’t get paid.”¹⁶

For Dick Dale, it’s literally a matter of life or death. A few years ago, at age 78, suffering from two bouts of rectal cancer, renal failure and extremely painful vertebrae damage, he continued a grueling touring schedule so that he could earn enough to pay his soaring medical costs. In a July 2015 interview with the Pittsburgh City Paper, he said those expenses ran to \$3000 a month — on top of what he was paying for insurance. “I can’t stop touring because I will die. Physically and literally, I will die. Sure, I’d love to stay home and build ships in a bottle and spend time with my wife in Hawaii, but I have to perform to save my life.”¹⁷

¹⁵ *Id.*

¹⁶ Steve Hochman (interview with James William Guercio), Jan. 5, 2018.

¹⁷ Deitch, *At 78 and with myriad health issues, surf-rock legend Dick Dale plays through the pain*, Pittsburgh City Paper (July 29, 2015).

IV. UNLESS THIS COURT ACTS, THE GROWING POPULARITY OF STREAMING RISKS DISPLACING TRADITIONAL ROYALTY PAYMENTS ON WHICH LEGACY ARTISTS DEPEND

Steve Cropper knows one thing he can always count on. He'll turn on his satellite radio, dial up one of the stations that plays soul, R&B, '60s pop and rock, and he'll hear one of the great songs that came out of Memphis in that time: Otis Redding doing "Sitting on the Dock of a Bay" (written in part on a houseboat in Sausalito), Sam & Dave with "Soul Man," Wilson Pickett shouting "Midnight Hour." And he perks right up, for two reasons.

First: He performed on and co-wrote those, and dozens of other enduringly beloved songs from that time. "I can't turn on any of those stations that have anything to do with soul and R&B and not hear one of those songs," he says. "That's within the first two minutes."¹⁸

That's the good part. The second reason is not: The satellite and streaming outlets playing this music are not paying for it. The artists who made those cherished records and their heirs, the rights-holders to those recordings, are cut off from the considerable revenues they generate for the digital outlets via subscriptions and advertising. "For someone to arbitrarily say they're not paying for it, that's not right," he says.¹⁹

For Cropper, this is a matter both financial and personal, the matter of a body of work, a life's achievement, his identity. But it also is a something to be taken on a bigger scale. The work he and so many others in

¹⁸ Steve Hochman (interview with Steve Cropper), Dec. 15, 2018.

¹⁹ *Id.*

the musical arts have done is tied to both the economy and the very identity of time and place.

With every change in the technology of music distribution, artist rights advocates and managers have had to fight hard for the performers and creators to get their due as new developments bring more and more exposure of their music. Southern California-based artist rights and recovery manager Nancy Meyer negotiated many such deals on behalf of her clients, including the estates of rhythm and blues artists T-Bone Walker (whose “They Call It Stormy Monday” remains a much-beloved standard), Otis Rush, Memphis Slim and blues pioneer Lonnie Johnson. Recordings of theirs were staples of popular anthology sets, continuing to earn much-deserved royalties revenue for the artists’ heirs, including Walker’s daughter Bernita, who still lives in the Los Angeles house that her father bought when he moved to the state in the 1950s.

“What the streaming world has done is decimate the traditional sources of royalties for my clients, mainly families of legacy artists,” she says. The music, she notes, is still in great demand, with Rush’s “Double Trouble” (for which the late Texas guitar star Stevie Ray Vaughn named his band) and “I Can’t Quit You Baby” standing as influential staples. Meyer couldn’t be clearer:

People still want to hear and access these recordings. You can buy the download, but more and more people are streaming and not purchasing. What’s happening is there is a recognized and inherent long-term value to these legacy recordings. I’ve been making the argument for a long time — and most people come around and get it. You’ll never be able to convince me that you shouldn’t pay the people who are creators of

the art. And those master recordings never go out of favor or out of fashion.²⁰

Woody Louis Armstrong Shaw III is fighting daily for two artistic and economic legacies of two revered jazz pioneers to which he is tied — that of his father, the late jazz trumpeter Woody Shaw, and his step-father, modern jazz saxophonist Dexter Gordon. Shaw, having himself been a professional jazz drummer, learned the ins and outs of the business through his mother, artist rights activist Maxine Gordon, establishing his firm, Moontrane Media Group, specifically to address the challenges presented in the digital age. Those challenges were even the subject of his thesis as he earned an M.A. in arts administration from Columbia University in 2015. “Right before the economic downturn [a decade ago], you could see there was a shift happening, looking at the royalties statements,” he says. “This is the new distribution models. I saw a lot of people were going to have a hard time.”²¹

V. **CALIFORNIA SHOULD REMAIN “A COUPLE OF STEPS AHEAD OF OTHER PLACES” BY AFFIRMING THE RIGHTS OF ARTISTS**

“The law has to catch up to the technology,” Woody Louis Armstrong Shaw III says. “Unfortunately, this has taken so long, so many artists have had to pay such a heavy price, personal and economical, for generations, for us to have this conversation. One small hope is it looks like California has always been a couple of steps ahead of other places in terms of accommodating rights of artists. I see hope for this.” He continues:

²⁰ Steve Hochman (interview with Nancy Meyer), Jan. 2, 2018.

²¹ Steve Hochman (interview with Woody Louis Armstrong Shaw III), Jan. 8, 2018.

We can only hope that the states will take into consideration that the economic resources that would otherwise be available to the heirs and families of these legendary artists, the minimal compensation for generations of cultural contributions and enrichment that these artists gave to the country and the state of California. And those resources are necessary to keep those legacies alive and to support the artists still living. It's part of the lifeblood of the ecosystem for the entertainment industry. These corporations can secure wealth of assets in their catalogs that keep their lights on and keep their shareholders happy and accumulate great wealth. Why shouldn't the artists who are the progenitors of this great art, and their heirs, do the same?²²

Maxine Gordon sums it up: "The legacy of Dexter Gordon, tenor saxophonist, composer and Academy Award-nominated actor, is well-known to jazz lovers the world over. His recordings from the 1960s are jazz classics and can be heard daily on all forms of digital media and in public performances. We support the right for Dexter Gordon and other great artists and their estates to be compensated for their artistic accomplishments, and look to the California Supreme Court to determine that California law will protect those rights."²³

CONCLUSION

The history of popular music is an integral part of the history of California. Amici respectfully ask the Court to ensure that California's law continues to protect the creators and owners of pre-1972 sound recordings so that they are compensated when those recordings are performed by digital online businesses.

²² *Id.*

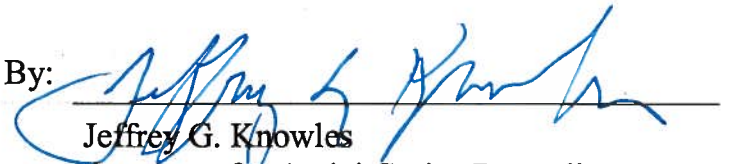
²³ Steve Hochman (correspondence with Maxine Gordon), Jan. 8, 2018.

DATED: January 12, 2018

Respectfully submitted,

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By:

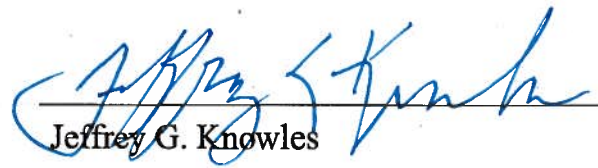


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CERTIFICATE OF WORD COUNT

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DATED: January 12, 2018


Jeffrey G. Knowles

CERTIFICATE OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is One Montgomery Street, Suite 3000, San Francisco, CA 94104-5500.

On January 12, 2018, I served the following document(s) described as:

**APPLICATION TO FILE AMICUS CURIAE BRIEF
AND BRIEF OF AMICI CURIAE RECORDING
ARTISTS IN SUPPORT OF PLAINTIFF-
RESPONDENT FLO & EDDIE, INC.**

by placing true copies thereof in sealed envelope(s) addressed as follows and by placing for collection and mailing with the United States Postal Service, in the ordinary course of business that same day, on:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on the 12th of January, 2018, at San Francisco, California.


Cindy Fong

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