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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **OAKLAND DIVISION**

17 SONG fi, et al.,) Case No.: 4:14-CV-05080-CW
18 Plaintiffs,)
19 vs.) **THIRD AMENDED COMPLAINT**
20 GOOGLE, INC. and YOUTUBE, LLC,)
21 Defendants.) Judge: The Honorable Claudia Wilken
22)

23 **VIOLATIONS OF THE CARTWRIGHT ACT,**
FRAUD, LIBEL, AND TORTIOUS INTERFERENCE

24 Plaintiffs now submit a Third Amended Complaint (“3AC”) pursuant to the Order of the
25 Honorable Claudia Wilken (“DE 97”).

PARTIES

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1. Plaintiff Song fi, Inc. (“Song fi”) is a District of Columbia corporation with its principal place of business at 1250 Connecticut Avenue, N.W., Suite 200, Washington, D.C. 20036. Song fi is in the business of broadcasting and distributing works of music and video art created by the Independent Artist community.

2. Plaintiff Rasta Rock Corporation (“Rasta Rock”), d/b/a the Rasta Rock Opera, is a performing musical and theatrical act and a District of Columbia corporation with its principal place of business at 1250 Connecticut Avenue, N.W., Suite 200, Washington, D.C. 20036.

3. Plaintiff Joseph N. Brotherton (“Joe Brotherton”) is an individual who resides in, and is a Citizen of the District of Columbia, Washington D.C., and is also a former United States Marine honorably discharged from the United States Marine Corps Band.

4. Plaintiff N.G.B. is a 7-year-old minor who resides in, and is a Citizen of the District of Columbia, Washington D.C. who is the son of Joe Brotherton and his wife, Lisa M. Pellegrino with Marilia Scanlan, N.G.B.’s grandmother, being N.G.B’s Court approved Guardian ad Litem.

5. Defendant Google, Inc. (“Google”) is a California corporation with its principal place of business in Mountain View, California.

6. Defendant YouTube, LLC (“YouTube”) is a California limited liability company with its principal place of business in San Bruno, California wholly owned and operated by Google.

JURISDICTION AND VENUE

7. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1332 because there is complete diversity between the parties and the amount in controversy exceeds \$75,000.

8. This Court has *in personam* jurisdiction over Google since its principal place of business lies in Santa Clara County, California, one of the counties within the geographical jurisdiction of this Court. *In personam* jurisdiction also arises in this Court because this location is where the conduct giving rise to this action occurred.

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9. This Court has *in personam* jurisdiction over YouTube since its principal place of business lies in California. Additionally, YouTube is *de facto* an operating division of Google rather than a subsidiary of it, therefore this Court has *in personam* jurisdiction over YouTube under the same legal authorities and for the same reasons that it has *in personam* jurisdiction over Google.

10. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(1) and (2) and by way of the choice of law and venue provisions in the Terms of Service ("TOS") agreement found on the YouTube homepage and entered into by the parties.

BACKGROUND

11. Despite the fact that YouTube is legally a limited liability company in California, it is a limited liability company in name only as YouTube is 100% owned and controlled by Google.

12. The chief executive officer of YouTube, Susan Wojcicki, was appointed by Google and reports directly to Google's chief executive officer, Larry Page.

13. YouTube's planning and operations are actively controlled by Google, thus Google and YouTube are a single business entity hereinafter referred to as "G-Y".

14. G-Y operates two websites (*www.google.com*, and *www.youtube.com*), hereinafter "the Google Website" and "the YouTube Website" respectively.

15. G-Y, through its YouTube website, is the dominant provider of online video hosting services. There is no other music or video website operating anywhere in the world that remotely rivals YouTube's viewership, market share, profitability, and name recognition.

16. G-Y profits from content contributed by uploaders to the YouTube Website that draws viewer traffic in with G-Y selling pay-per-click advertising based on a YouTube counter ("View Count").

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COUNT 1: VIOLATION OF THE CARTWRIGHT ACT

(Cal Bus. & Prof. Code §§ 16720, et seq.)

Brought by Plaintiffs Song fi and Rasta Rock

17. The relevant antitrust market is the sale, promotion, and distribution of recorded music and music videos in the United States.

18. Plaintiffs *never* robotically inflated the View Count for the "LuvYa" music video described below or any other video posted on the Stevie Marco YouTube channel owned and operated by Song fi and Rasta Rock, nor did Plaintiffs "LuvYa" music video contain content that violated the YouTube TOS in any way, shape or form.

19. The separate and independent entities involved and working together for the common objective of illegally restraining trade in the relevant market ("Conspiring Entities") include;

a) G-Y, at the direction of G-Y executives Larry Page, Sergey Brin, Eric Schmidt, Susan Wojcicki and David Drummond ("G-Y Executives");

b) The Universal Music Group ("UMG") and its subsidiaries, associated record labels and distribution partners;

c) The Raymond Braun Media Group ("RBMG") and Scooter Braun individually, who is the founder of RBMG and the personal manager of Justin Bieber and Psy, both of which artists are signed to UMG, and

d) The hundreds of companies created, upon information and belief, and allowed to flourish by the Conspiring Entities that are promoted on the Google Search Engine whose primary business interest is producing computer generated millisecond YouTube views that instantly appear in the YouTube View Count in violation of Section 4H of the TOS ("Fake View Facilitators").

20. The Conspiring Entities and others to be discovered have combined their assets and common objectives in a fraud-ridden antitrust conspiracy in violation of the Cartwright Act, Cal. Bus. & Prof. Code §§ 16270, *et seq.*, to restrain trade through anti-competitive conduct that includes

1 the torts of Fraud, Libel, and Tortious Interference.

2 21. These wrongful and illegal acts have bilked advertisers out of billions of dollars while
3 fraudulently fixing the popularity of the music and video Art of UMG and other major music labels
4 (“Major Labels”) to the benefit of the Conspiring Entities and to the detriment of other sellers,
5 promoters, and distributors of music and music videos, including Plaintiffs and others in the
6 Independent Artist community.

7 22. This unlawful scheme harms competition by permitting computer generated views in
8 millisecond durations (“Fake Views”), to be added to the View Counts of the Major Labels. As part
9 of the conspiracy, upon information and belief, G-Y and the G-Y Executives refrain from 4H TOS
10 enforcement action against the Major Labels and the other Conspiring Entities.

11 23. While allowing the Major Labels to add Fake Views to their View Counts, G-Y and
12 G-Y Executives, as part of the conspiracy, employ aggressive and contrived enforcement action
13 against Plaintiffs and others in the Independent Artist community who are not affiliated with the
14 Major Labels by wrongfully accusing them of violating Section 4H of the TOS, removing their
15 videos, views, “likes,” and public comments, and then libeling them by intentionally posting false
16 and defamatory "Notices" in place of their Art.

17 **The Role of G-Y and G-Y Executives in the Conspiracy**

18 24. As defined with factual particularity as follows, G-Y, at the direction of G-Y
19 Executives, entered into a conspiracy with the other Conspiring Entities to illegally restrain trade in
20 the relevant market. G-Y and G-Y Executives, upon information and belief, have worked closely
21 with the Conspiring Entities to achieve an illegal common objective that would be financially
22 beneficial to them and them alone while holding members of the Independent Artist community
23 down and using them as diversionary scapegoats.

24 25. In earlier years, the Google pay-per-click model revolutionized the internet
25 advertising world brilliantly and ethically in a “Search Engine” capacity. When a human being
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1 searched “Tires” on Google, advertisements for tires would appear on the side bar. When users
2 clicked on the ad, the advertiser was charged for that click.

3 26. When Google acquired YouTube in 2006, the same “pay per click” model was
4 implemented by G-Y in the form of a “View Count,” which is held out by G-Y as the number of
5 times a “human being” has viewed a particular video for a meaningful duration.

6 27. After acquiring YouTube, Google changed YouTube’s operational structure from the
7 previous ownership to transform it into the vehicle used by the Conspiring Entities to effectuate the
8 conspiracy alleged herein.

9 28. The new Google-driven operational changes in YouTube were a byproduct of
10 contracts entered into between G-Y and Major Labels, including UMG, Sony Music Group, and
11 Warner Music Group, which called for the splitting of advertising revenues from Major Label videos
12 posted on YouTube instead of traditional fixed fee licensing agreements. The New York Times, in
13 an article attached hereto as Exhibit 1 and incorporated herein, reported that “the companies’ deals
14 with YouTube call for them to share revenue from ads that will run alongside their music videos.”

15 29. Ads shown with music videos on YouTube are billed to advertisers on the sole basis
16 of the published View Count for videos shown along with those ads, with G-Y and the Major Labels
17 splitting that revenue pursuant to their contractual agreements.

18 30. G-Y, as part of the conspiracy, allows computer generated Fake Views, in
19 millisecond duration times, to be added to the View Counts of the videos of Major Label artists
20 without any threat of TOS enforcement action by G-Y, all at the direction of the G-Y Executives.

21 31. A common objective of the Conspiring Entities, upon information and belief, is to
22 minimize the popularity of the Independent Artist community relative to that of Major Label artists,
23 as is the case with Plaintiffs, who had a legitimate rising View Count with their “LuvYa” music
24 video but saw G-Y remove that video and post in its place a false and defamatory Notice about the
25 content of “LuvYa.”

1 32. The anticompetitive conduct of the Conspiring Entities deceives consumers and
2 businesses as to the true popularity of Artists signed to the Major Labels, which facilitates purchases
3 for UMG and the other Major Labels that consumer and business entities may not have otherwise
4 consummated. Worse yet, the Conspiring Entities, upon information and belief, fix the popularity of
5 the music videos of Major Label artists through a fraud ridden View Count.

6 33. The well-known entertainment trade publication Vocativ published an article on
7 September 29, 2014, well after this litigation was filed, titled: “Psy, Bieber, and My Journey into the
8 World of Fake YouTube Views.” This article, a copy of which is attached hereto as Exhibit 2 and
9 incorporated herein, reported that Justin Bieber’s manager, Scooter Braun, appeared to purchase 200
10 million Fake Views for \$150,000. The article contained the following observation about the
11 entertainment industry’s reliance on the YouTube View Count: “YouTube views aren’t some quaint
12 little marketing component or minor audience building tool. They can make or break a new career –
13 and add a lot of money to the bank accounts of existing stars. They have become so relevant to the
14 industry that Billboard now factors in YouTube view counts when creating its top 100 ratings.”

15 34. Competition is harmed by the Conspiring Entities’ fraud-ridden manipulation of the
16 View Count, which artificially increases the View Counts of the Major Labels while decreasing or
17 holding back the View Counts of the Independent Artist.

18 35. In the case of Plaintiffs and others in the Independent Artist community, G-Y goes
19 further by implementing a systematic process approved by G-Y Executives that includes false
20 accusations of violating the TOS, wrongfully removing videos, views, likes, and public comments
21 and then libeling the Independent Artist, in this case Plaintiffs, by posting a false and defamatory
22 Notice in place of their music videos, all designed to prevent the Independent Artists from
23 competing fairly in the relevant market.

24 36. G-Y, at the direction of G-Y Executives, and as part of the conspiracy, refuses to
25 program any firewall, delay, or minimum time requirement into the View Count algorithm to prevent
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1 millisecond Fake Views from instantly showing up in published View Counts. There is only one
2 logical explanation for G-Y's failure to take such a critical step to prevent View Count fraud; to
3 facilitate selective enforcement of 4H of the TOS in a manner that benefits the Major Labels while
4 restraining competition from the Independent Artist community.

5 37. As part of the conspiracy, G-Y and G-Y Executives intentionally allow billions of
6 Fake Views into the View Count to pad the wallets of the Conspiring Entities through contracts with
7 the Major Labels that split the advertising bounty, while at the same time making the YouTube
8 Website appear to command dramatically more human traffic than it does, which results in inflated
9 pay per click advertising rates to unsuspecting advertisers.

10 38. Upon information and belief, G-Y Executives are the masterminds of the anti-
11 competitive and fraudulent conspiracy allowing anyone to simply copy the URL of a particular video
12 from the "*Share*" icon and purchase Fake Views by sending payment to the service provider in
13 proportion to the number of "Fake Views" requested.

14 39. Attachment 3 also proves G-Y is selling sponsored ads—i.e., ads given priority in
15 lists that G-Y presents in response to inquiries on the Google search engine--to companies in the
16 business of violating Section 4H of the TOS, making G-Y an accomplice to restraining the market
17 share and popularity of the Independent Artist community, as is the case with Plaintiffs.

18 40. G-Y Executives have absolute control over the View Count and are solely responsible
19 for its published content. As Judge Collyer of the U.S. District Court for the District of Columbia
20 said to Defendants' counsel during a hearing on Plaintiffs' Motion for Temporary Restraining Order:

21 The counter is a YouTube thing. It's not the user's. I have nothing to do with it
22 no matter how many times I view the same video. It's YouTube's counter, not
23 mine. Even if I'm malintentioned, there is, you know, I don't affect that counter.
24 It's not my counter. It's your counter, your client's counter. (DE 12 at 36:4-10.)

25 41. G-Y assumes the role of collection agent in the conspiracy by processing and
26 collecting money from advertisers for Fake Views in the View Count and then splitting the

1 fraudulently obtained revenues with the Conspiring Entities by prearranged contractual agreement.

2 42. G-Y, as part of the conspiracy, undertakes selective underground enforcement of
3 violations of Section 4H of the TOS, which states: "You agree not to use or launch any automated
4 system, including without limitation, "robots," "spiders," or "offline readers," that accesses the
5 Service in a manner that sends more request messages to the YouTube servers in a given period of
6 time than a human can reasonably produce in the same period by using a conventional on-line web
7 browser."

8 43. G-Y's selective enforcement of Section 4H of the TOS is a key element of the
9 conspiracy. Anyone can buy YouTube Fake Views by simply copying the URLs of YouTube videos
10 and paying the Fake View Facilitators, but G-Y selectively enforces Section 4H to favor the Major
11 Labels at the expense of the Independent Artists.

12 44. While G-Y bullies the Independent Artists and uses them as a diversionary scapegoat
13 when Fake Views may or may not have been a factor in their View Counts, G-Y Executives turn an
14 intentional blind eye to the astronomical Fake Views that appear in the View Counts of Artists
15 signed to the Major Labels.

16 45. G-Y's absolute control over the View Count allows the Conspiring Entities to restrain
17 trade by granting the Major Labels the anticompetitive advantage of robotically "fixing" perceived
18 popularity through the fraud ridden View Count.

19 46. Another primary role of G-Y and the G-Y Executives in the conspiracy is to keep the
20 way views are counted in the View Count "top secret" and to never publish any guidelines or
21 standards as to how views are counted.

22 47. Defendants' counsel has made representations in open Court that "views" are counted
23 every time any user watches a particular video; i.e., if someone watches a video 5 times for a
24 meaningful duration, it is counted as 5 views. This is not the case. Plaintiff Joe Brotherton has
25 observed that the first time he watches a video on YouTube, the View Count increases by one, but
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1 there are no additional increases in the View Count for his subsequent views of the same video.

2 48. G-Y has never made any other public statement that supports Defendants' counsel's
3 statement in open Court.

4 49. Plaintiffs allege upon information and belief that views are counted only one time per
5 user in the YouTube View Count prior to any Fake View enhancement.

6 **The Role of UMG in the Conspiracy**

7 50. As reflected in Exhibit 1, on October 19, 2006, the New York Times reported on
8 contracts between G-Y and the Major Labels agreeing to split advertising revenues from the music
9 videos of Major Label artists posted on YouTube.

10 51. The Major Labels were in serious financial decline in 2006 as a result of the
11 explosion of online music and video file sharing, so the Major Labels pursued revenue sharing
12 contracts with YouTube wrapped around the new horizon of internet advertising based on free music
13 and video distribution. As of that point, the financial interests of G-Y and the Major Labels were
14 aligned around advertising dollars being split based on a YouTube View Count.

15 52. The Major Labels had something G-Y needed: the legal rights to the content of the
16 music and music videos of established stars. What G-Y brought to the table was the hottest new
17 "free" music and video entertainment platform with the resources of Google behind it. It was these
18 combined assets and interests that led to overnight business deals between G-Y and the Major Labels
19 within weeks of Google acquiring YouTube.

20 53. Upon information and belief, another role the Major Labels played was to facilitate
21 online shell companies that would be the manufacturers of the computer generated Fake Views, as
22 the average person would have no clue as to how to execute such a sophisticated hacking function.

23 54. This element of the conspiracy was included to give the Conspiring Entities the
24 appearance of clean hands.

25 55. An example of how G-Y and the G-Y Executives worked in concert with the Major

1 Labels and other Conspiring Entities is Justin Bieber, a “YouTube Star” created by Fake Views as
2 the false popularity gauge that launched Bieber’s music career into the View Count stratosphere.

3 56. In January 2010, the music video “Baby” was released from Bieber’s debut album *My*
4 *World 2.0*. The song featured Ludacris and charted at number five (5) on the US *Billboard* Hot 100
5 and peaked at number three (3) on the Canadian hot 100.

6 57. As of April 7, 2015, the “Baby” video distributed by UMG displayed 1,347,157,623
7 views according to the YouTube View Count <https://youtu.be/kffacxfA7G4>.

8 58. Record sales for “Baby”—which would have been the barometer for the US
9 *Billboard* Hot 100 in the pre-YouTube era—in no way correlated to the popularity gauge claimed in
10 the astronomical 1.3 billion-plus supposed human views published in the View Count for Justin
11 Bieber's “Baby” video.

12 59. The “King of Pop,” Michael Jackson, as of April 7, 2015, captured only 313,278,414
13 views for his legendary “Thriller” video, equaling only 22% of the views of Bieber’s “Baby” video.

14 60. It is not plausible to conclude that Michael Jackson’s smash record *Thriller*, which
15 remained #1 on the *Billboard* charts for thirty seven (37) consecutive weeks, would get only 22% of
16 the views of a passing teen idol whose “Baby” record peaked at number five (5) in U.S. record
17 market and quickly fell off the charts.

18 61. The dismal record sales of “Baby” render the 1.3 billion human View Count
19 implausible under any credible study, especially since the View Count does not reflect multiple
20 viewings by a single user.

21 62. The time and date the ongoing conspiracy was implemented as it relates to Justin
22 Bieber and the Conspiring Entities was on February 19, 2010, the day the “Baby” video was
23 uploaded. On that day, upon information and belief, G-Y and G-Y Executives agreed to allow
24 UMG, RBMG, and Scooter Braun to robotically inflate the “Baby” View Count into the billions.

25 63. More fictitious yet is the “Gangnam Style” video (<https://youtu.be/9bZkp7q19f0>) by
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1 Korean recording artist Psy, who is also signed to UMG and Scooter Braun, of which the YouTube
2 View Count claims a staggering 2,552,143,419 human views as of April 7, 2015.

3 64. The 2.5 billion-plus views for the Psy video is all but impossible, as one-third of the
4 human race would have to have viewed “Gangnam Style” on YouTube. Given that only 45% of the
5 world has access to the internet, and approximately 80% of that 45% has dial-up or otherwise limited
6 service, the robotic computer fraud inherent within the “Gangnam Style” video is clear.

7 65. “Gangnam Style” was initially posted on YouTube on July 15, 2012 and went semi-
8 viral within the first couple of months. At that time, Psy was not signed to Scooter Braun, RBMG,
9 or UMG.

10 66. On September 3, 2012, Scooter Braun uploaded a press release onto YouTube
11 (<https://youtu.be/sOn3aWDHIsE>), saying that he and Psy had decided to “make some history
12 together” by making Psy the first Korean artist to break a big record in the United States.

13 67. Then, on September 4, 2012, it was confirmed that Psy had signed with Scooter
14 Braun's School Boy Records under RBMG management and UMG.

15 68. The time and date the conspiracy was created as it relates to Psy was on September 4,
16 2012, the day the “Gangnam Style” video, already posted on YouTube, became the property of
17 UMG, School Boy Records, and Scooter Braun. On that day, upon information and belief, G-Y and
18 the other Conspiring Entities agreed to allow UMG, under the direction of Chairman Lucian
19 Grainge, with Scooter Braun being the implementer, to robotically inflate the “Gangnam Style”
20 View Count with hundreds of millions of Fake Views.

21 69. Upon information and belief, G-Y Executives, in furtherance of the conspiracy,
22 agreed to turn a blind eye to the 4H TOS violations of UMG with agreement to split the fraudulently
23 generated advertising revenue pursuant to 2006 contractual agreements.

24 70. “Gangnam Style” then exploded onto the scene by virtue of the Conspiring Entities
25 juicing the View Count into the billions, with Fake Views fueling a false popularity frenzy that
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1 hoodwinked the public and the entertainment industry and defrauded advertisers who paid for all of
2 those Fake Views published in the “Gangnam Style” View Count.

3 **The Role of “RBMG” and Scooter Braun in the Conspiracy**

4 71. On May 15, 2012, UMG issued a press release titled “Universal Music Group UMG
5 and Scooter Braun’s School Boy Records Expand Their Strategic Partnership.” The release
6 announced that UMG would invest in and distribute Schoolboy Records, which is the record
7 company for “Gangnam Style,” with Scooter Braun serving as a direct consultant to UMG Chairman
8 Lucian Grainge. A copy of the press release is attached hereto as Exhibit 4 and incorporated herein.

9 72. The September 29, 2014 Vocativ article (Exhibit 2) states: “About an hour later, an
10 email came through containing two screen shots. The first was what appeared to be Scooter Braun—
11 the well-known talent manager behind Justin Bieber and Psy—having a Skype conversation with a
12 person named “Kenzo.” Braun (if it was really him) appeared to be buying around 200 million
13 YouTube views for an unnamed video. “We do not want any traces or any low-quality views that
14 can get us in trouble,” the screen shot showed Braun as saying.”

15 73. The article continues to describe the unlawful actions of Scooter Braun, whose
16 company is in a contractual relationship with G-Y, UMG, Psy, and Justin Bieber, and is a paid
17 consultant to UMG chairman Lucian Grainge: “A second screen shot attached appeared to show
18 Braun sending a PayPal payment for \$150,000”

19 74. The article further describes the impact that the Fake View fraud scheme of the
20 Conspiring Entities has had on YouTube advertisers: “The whole YouTube industry has been
21 scamming billions from advertisers with fake views.”

22 75. Upon information and belief, Scooter Braun was given a share of advertising
23 revenues as a Conspiring Entity as a result of his relationship with UMG and its Chairman Lucian
24 Grainge through the new strategic alliance agreement described in the UMG press release.

1 **The Role of the Fake View Facilitators in the Conspiracy**

2 76. The role of the Fake View Facilitators is that of computer hackers who are set up
3 under shell internet companies by the Conspiring Entities to create computerized "Fake Views,"
4 which are added to YouTube videos as described with factual particularity as follows.

5 77. A search of "Buy YouTube Views" on the Google search engine displays hundreds of
6 companies who are in the business of adding Fake Views to published YouTube View Counts in
7 violation of 4H, many of which are sponsored by Google in the form of ads paid for by the Fake
8 View Facilitators to G-Y.

9 78. For example, the site <http://buildmyviews.org/worldwide-views/> allows anyone to
10 buy 100,000 robotically enhanced views on YouTube for \$199. (Exhibit 3)

11 79. Another site, <https://www.qqtube.com/>, allows anyone to buy 1,000,000 robotically
12 inflated views on YouTube in violation of section 4H of the YouTube TOS for \$450. (Exhibit 3)

13 **A Pattern of Anti-Competitive Conduct in the Relevant Market**

14 80. A common objective of the Conspiring Entities and G-Y Executives is to wrongfully
15 accuse Plaintiffs and other Independent Artists who have rising View Counts of violating the TOS.
16 G-Y then removes their videos, views, likes, and public comments and then posts in place of their
17 video art a preplanned false and defamatory Notice designed to artificially reduce the Independent
18 Artist's popularity relative to that of the Major Label artists.

19 81. In Defendants' Motion to Dismiss Plaintiffs 2AC, and in oral arguments on February
20 23, 2016, Defendants cited several cases--including *In re Bartholomew v. YouTube, LLC, I and II*--in
21 which G-Y was accused of engaging in precisely the conduct alleged here, i.e., removing the videos
22 of Independent Artists and posting false and defamatory Notices about them stating that the videos'
23 content violated the TOS. These cases support Plaintiffs' allegation that Defendants' treatment of
24 the "LuvYa" video described below was not an isolated occurrence, but part of a larger pattern and
25 practice of intentionally impugning the videos and restraining the market of Independent Artists.

1 Plaintiffs' discovery is expected to produce thousands of such false and defamatory Notices, all
2 unfolding under the same anti-competitive conspiracy.

3 82. While Defendants cited *Bartholomew v. YouTube, LLC, I and II* to support their
4 argument that the Notice was not capable of a defamatory meaning, this Court flatly rejected
5 Defendants' argument:

6 "This Court disagrees; it would not be unreasonable for an average reader to find
7 defamatory meaning in an accusation of violation of the Community Guidelines. Of
8 the eight bullet points listed, the first four mention pornography, child exploitation,
9 animal abuse, bomb making, violence and intent to shock or disgust. The sixth and
10 seventh bullet points mention hate speech, as well as "predatory behavior, stalking,
11 threats, harassment, intimidation, invading privacy, revealing other people's personal
12 information, and inciting others to commit violent acts. . . . A fact-finder could
13 reasonably infer defamatory meaning here". (DE 97 at 24:3-16.)

14 **Defendants' Anti-Competitive Conduct Harms Competition**

15 83. Plaintiffs state with factual particularity the entities who maintained separate and
16 independent interests which combined for the purpose of restraining trade in the relevant market of
17 the sale, promotion, and distribution of recorded music and music videos in the United States, as
18 well as the specific conduct engaged in by each of the Conspiring Entities in furtherance of the
19 illegal conspiracy. Plaintiffs and other Independent Artists not signed to the Major Labels are
20 harmed by the anti-competitive conduct of the Conspiring Entities as described in ¶¶ 17-82.

21 **Plaintiffs' Injuries Were Proximately Caused by Cartwright Act Violations.**

22 84. Plaintiffs were within the "target area" of the antitrust violations of the Conspiring
23 Entities and their injuries were proximately caused by the formation and implementation of the
24 illegal anti-competitive conspiracy to restrain trade, wherein the torts of Fraud, Libel, and Tortious
25 Interference were undertaken against Plaintiffs as pled with factual particularity in ¶¶ 17-84.

26 **Actual Damages - Cartwright Act**

27 85. Plaintiffs Song fi and Rasta Rock claim injury and seek relief for actual damages

1 suffered collectively and as a proximate result of Defendants' Cartwright Act violations as follows:

2 a) Loss to the actual value of the "Respect and Love Manifesto" and music and film
3 score "Rasta Rock Opera" property proximately caused by the conspiracy in an amount that can be
4 measured and proven at trial by documents and industry experts, which is pleaded to exceed
5 \$1,250,000.

6 b) Loss in live performance revenues for shows that were canceled, which loss was
7 proximately caused by the conspiracy, in an amount that can be measured and proven at trial by
8 documents and industry experts, which is pled to exceed \$46,500.

9 c) Funds owed to Song fi and Rasta Rock as a result of the termination of funding
10 arrangements by Precision Contracting Solutions and demand for instant repayment of loans in the
11 amount of \$350,000 as a result of the conspiracy, which can be measured and proven at trial by
12 documents and industry experts.

13 **Treble Damages - Cartwright Act**

14 86. In addition to actual damages, Plaintiffs Song fi and Rasta Rock seek treble damages
15 as authorized by the Cartwright Act.

16 **Exemplary Damages - Cartwright Act**

17 87. Plaintiffs Song fi and Rasta Rock seek Exemplary Damages under Cal. Civ. Code §
18 3294 for intentional violations of the Cartwright Act that incorporated the torts of Fraud, Libel and
19 Tortious Interference to carry out the antitrust conspiracy. These torts were masterminded by G-Y
20 and the G-Y Executives to oppress Plaintiffs and other Independent Artists in a malicious and
21 fraudulent manner.

22 a) The anticompetitive conduct of G-Y and the G-Y Executives alleged in ¶¶ 17-87 was
23 conceived and undertaken with malice and intended to cause injury to Plaintiffs with a willful and
24 conscious disregard for their rights and safety as well as that of other Independent Artists.

25 b) The oppression inherent in the anticompetitive conduct of G-Y and the G-Y
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1 Executives and the other Conspiring Entities as described in ¶¶ 17-87 subjected Plaintiffs and others
2 in the Independent Artist community to unjust hardship with conscious disregard for their safety.

3 c) The fraud inherent in the anticompetitive conduct of G-Y and the G-Y Executives
4 described in ¶¶ 17-87 consists of numerous intentional misrepresentations, deceit, and concealment
5 of material facts known to G-Y and the G-Y Executives with the intent and effect of depriving
6 Plaintiffs and others in the Independent Artist community of their property.

7
8 **COUNT 2: FRAUD**

9 **Brought by Plaintiffs Song fi and Rasta Rock**

10 88. Judge Conti issued an Order granting Plaintiffs leave to amend their proposed 2AC to
11 add additional claims for violations of the Cartwright Act and Fraud (DE 67 at 7:18-25):

12 The Court has reviewed the First Amended Complaint ("FAC"), ECF No. 13, and
13 finds that the facts alleged therein are sufficiently similar to those alleged in the
14 PSAC that the new claims for fraud and antitrust violations are part of the same set
15 of facts which gave rise to the original complaint in this case. Defendant has been
16 on notice of allegations of some type of fraud and of some form of improper
17 agreement with "Major Labels" since the FAC. See FAC ¶¶ 17-30.

18 89. This Court then granted Plaintiffs leave to amend their fraud claims in the 2AC on
19 April 4, 2016 (DE 97).

20 90. The fraud claims found in this 3AC are directly linked to Plaintiff's Cartwright Act
21 claims. The "who, what, when, where and why" of the alleged fraud are pled with factual
22 particularity in Plaintiffs' Cartwright Act claims in ¶¶ 17-87, all of which are hereby incorporated by
23 reference into Plaintiffs' fraud count.

24 **Intentional Fraud**

25 91. Plaintiffs allege under this fraud count, upon information and belief, that G-Y
26 executives Larry Page, Sergey Brin, Eric Schmidt, Susan Wojcicki and David Drummond were
27 aware of the fraud alleged and ordered its implementation.

1 92. Some published View Counts on YouTube are intentional false statements published
2 by GY at the direction of the G-Y Executives ("False Statements").

3 93. The False Statements made by G-Y are statements of a material fact rather than an
4 opinion and are intentionally made statements purporting to state how many times a human being
5 has watched a particular video for a meaningful duration.

6 94. G-Y intentionally failed to disclose in the TOS that the published View Count may
7 not be accurate when viewed and that G-Y allows the Major Labels to add Fake Views to their View
8 Counts while G-Y undertakes no 4H enforcement action against them.

9 95. G-Y's False Statements defrauded Plaintiffs by inducing them to rely on the implied
10 promise that the YouTube platform was a passive website without conflicting interests and that 4H
11 would be enforced in a non-prejudicial and unbiased manner.

12 96. Reliance by Plaintiffs on G-Y's implied representation that the published YouTube
13 View Count was and would be free from outside manipulation is gleaned from the public's reliance
14 on the security safeguards of other G-Y services, such as G-mail. Based on G-Y's well-known use
15 of such security safeguards, Plaintiffs reasonably believed that G-Y, through the honest and diligent
16 enforcement of Section 4H of the TOS, would ensure a published View Count free from outside
17 manipulation.

18 97. Defendants intent to defraud Plaintiffs is evident from G-Y's knowledge that its View
19 Counts were False Statements when published regarding certain music videos of the Major Labels
20 and the Conspiring Entities.

21 98. G-Y's intentional False Statements were made without regard for the truth or the
22 harmful consequences to Plaintiffs and others in the Independent Artist community.

23 99. The implied promise in the YouTube TOS is that any 4H violations resulting in Fake
24 Views will be quashed long before they are published in the YouTube View Count.

25 100. Section 4H of the TOS induces reliance by those entering into the agreement with
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1 implied assurances that G-Y will publish a legitimate human View Count for a meaningful duration.

2 101. Plaintiffs would not have entered into the TOS and uploaded the "LuvYa" music
3 video if Plaintiffs had known those assurances were false, that G-Y does not in fact engage in honest
4 and diligent enforcement of Section 4H, and that G-Y employs selective enforcement of 4H to the
5 benefit of the Major Labels and to the detriment of the Independent Artist.

6 102. The proximate cause of the damages claimed for intentional fraud is the False
7 Statement made by G-Y regarding their published View Count.

8 **Promissory Fraud**

9 103. Plaintiffs allege under this promissory fraud count, upon information and belief, that
10 G-Y executives Larry Page, Sergey Brin, Eric Schmidt, Susan Wojcicki and David Drummond were
11 aware of the fraud alleged and ordered its implementation.

12 104. Defendants made Plaintiffs an implied promise (the "Implied Promise") within the
13 YouTube TOS that the published View Count on YouTube would be free from Fake Views.

14 105. The specific language found in 4H of the TOS highlights the Implied Promise of G-Y
15 by identifying enforcement action that will take place should G-Y discover uploaders who have
16 attempted to hack Fake Views into their View Counts.

17 106. The Implied Promise is further evidenced by the absence of any disclosure statement
18 in the TOS or Community Guidelines to alert users that the View Count may not be accurate based
19 on 4H violations.

20 107. The Implied Promise is further evidenced by G-Y's complete and absolute control
21 over the View Count with respect to its security, which a reasonable user of the YouTube service
22 would expect to be consistent with the security of other G-Y services such as G-mail.

23 108. Defendants have made the same Implied Promise to the music and film industries
24 asserting that the YouTube View Count is an accurate reflection of the true popularity of the music
25 and video arts.

1 109. G-Y had no intention of performing its Implied Promise and of ensuring the integrity
2 of the View Count when it entered into the TOS with Plaintiffs and others because a tortious anti-
3 competitive conspiracy was underway at the time Plaintiffs entered into the TOS agreement with G-
4 Y, as described in ¶¶ 18-87.

5 110. Defendants intended to break the Implied Promise before, during, and after the
6 Implied Promise was made to Plaintiffs because a tortious anti-competitive conspiracy was
7 underway as described in ¶¶ 18-87 at the time Plaintiffs entered into the TOS agreement, which
8 consisted of selective and wrongful 4H enforcement against those in the Independent Artist
9 community while undertaking no 4H enforcement with to the Major Labels’ artist videos.

10 111. The Implied Promise made by Defendants was made with the intent to deceive
11 because a tortious anti-competitive conspiracy was underway as described in ¶¶ 18-87 at the time
12 Plaintiffs entered into the TOS agreement with G-Y.

13 112. Plaintiffs also used their Implied Promise to induce Plaintiffs into the TOS agreement
14 for the purpose of hosting the “LuvYa” music video of Plaintiffs at no charge to G-Y, which
15 increased traffic and advertising revenue to the YouTube website.

16 113. Plaintiffs justifiably and reasonably relied on the Implied Promise of G-Y that the
17 published YouTube View Count would be free from outside manipulation from Fake Views
18 published in the View Count and that 4H enforcement would be fairly and uniformly undertaken
19 without conflict of interest.

20 114. Plaintiffs justifiably and reasonably relied on the Implied Promise of G-Y inherent in
21 the TOS to protect Plaintiffs from being falsely accused of violations of the TOS with respect to the
22 “LuvYa” music video when Plaintiffs abided by the TOS in all aspects, which they did.

23 115. Plaintiffs justifiably and reasonably relied on the Implied Promise of G-Y inherent in
24 the TOS to protect Plaintiffs from being libeled and their business relationships being wrongfully
25 and intentionally interfered with by the posting of G-Y's false and defamatory Notice in place of the
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1 "LuvYa" music video if Plaintiffs conformed to the TOS agreement in all aspects.

2 116. The proximate cause of the damages claimed in this promissory fraud count is the
3 Implied Promise that the View Counts published on YouTube will be free from the contamination of
4 Fake Views. Plaintiff would never have entered into the TOS had they known G-Y had no intention
5 of fulfilling the Implied Promise.

6 **Out of Pocket Damages - Fraud**

7 117. Plaintiffs claim injury from the fraud and seek relief for "Out of Pocket" damages
8 suffered by Plaintiffs Song fi and Rasta Rock collectively as follows:

9 a) Payments to technical personnel to convert, condense and upload the "LuvYa" music
10 video and manage the comments and responses on the Stevie Marco video channel. which is pled to
11 exceed \$12,850 and which can be measured and proven at trial.

12 b) Loss of advertising expenses paid to Facebook to promote the "LuvYa" music video
13 prior to G-Y's posting of its Notice, in an amount to exceed \$6,500.

14 c) G-Y has confiscated the views, likes, and favorable public comments that are the
15 property of Plaintiffs, which Plaintiffs spent more than \$40,000 to produce, and therefore claim
16 herein as out of pocket loss. Additionally, the fair market value of that property in the context of
17 promotional value and goodwill is additionally pled, which is provable by documents to be a
18 minimum of \$150,000 of additional out-of-pocket losses to Plaintiffs Song fi and Rasta Rock.

19 d) Reasonable attorneys' fees, as Plaintiffs have been required to retain counsel and file
20 this lawsuit in order to vindicate their rights.

21 **Exemplary Damages - Intentional and Promissory Fraud**

22 118. Plaintiffs plead Exemplary Damages under Cal. Civ. Code § 3294 for intentional and
23 promissory fraud.

24 119. The fraudulent conduct of G-Y and the G-Y Executives and resulting damages as
25 alleged in ¶¶ 17-118 was conceived and undertaken with malice and intended to cause injury to

1 Plaintiffs with a willful and conscious disregard for the rights and safety of Plaintiffs.

2 120. The oppression inherent in the anticompetitive conduct of Defendants and the other
3 Conspiring Entities as described in ¶¶ 17-118 subjected Plaintiffs to unjust hardship with conscious
4 disregard for their rights and safety.

5 121. The intentional fraud inherent in the fraudulent conduct of G-Y and the G-Y
6 Executives described in ¶¶ 17-118 consists of numerous intentional misrepresentations, deceit, and
7 concealment of material facts known to G-Y and the G-Y Executives with the intent of defrauding
8 advertisers while depriving Plaintiffs and others in the Independent Artist community of their
9 property.

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11 **COUNT 3: LIBEL PER QUOD**

12 **Brought by all Plaintiffs**

13 122. Plaintiffs *never* robotically inflated the View Count for the "LuvYa" music video or
14 any other video posted on the Stevie Marco YouTube channel owned and operated by Song fi and
15 Rasta Rock.

16 123. On February 14, 2014, Plaintiffs uploaded through the Stevie Marco YouTube
17 channel, a promotional music video from the Rasta Rock Opera's "Respect and Love Manifesto"
18 music and film score titled "LuvYa LuvYa LuvYa" ("LuvYa"), starring then-six-year-old N.G.B and
19 musicians from the Rasta Rock Opera performing an original Reggae love song.

20 124. The "Title" and "More" section of the "LuvYa" music video on YouTube listed Song
21 fi, the Rasta Rock Opera, young N.G.B, and musicians from the Rasta Rock Opera musical group,
22 including Plaintiff Joe Brotherton, as performers.

23 125. N.G.B.'s teacher was also sent the "LuvYa" video and once she learned that one of
24 her kindergarten students starred in a music video decided to show "LuvYa" to N.G.B.'s entire class
25 and shared the video with parents, facility, and other administrators in N.G.B.'s school district. A

1 copy of the e-mail from Joe Brotherton to N.G.B's teacher is attached hereto as Exhibit 5 and
2 incorporated herein.

3 126. Rasta Rock and its publisher/distributor Song fi also promoted the "LuvYa" music
4 video link aggressively through email chains and social network platforms, wherein N.G.B was
5 identified as being the star of the video along with the Rasta Rock Opera musical group as a
6 preamble to those receiving the "LuvYa" video link. Copies of such emails are attached hereto as
7 Exhibit 6 and incorporated herein.

8 127. Joe Brotherton also shared the "LuvYa" music video by e-mail chain announcing that
9 he and his son N.G.B. appeared in the video that the receiver was about to watch and share. Copies
10 of Joe Brotherton's e-mails are attached hereto as Exhibit 7 and incorporated herein.

11 128. On February 14, 2014, the day "LuvYa" was posted on YouTube, Song fi and Rasta
12 Rock launched a major social media promotion and marketing campaign on Facebook featuring
13 "LuvYa," which was distributed to over 108,000 Facebook followers. Recipients of the Facebook
14 post of "LuvYa" opened the video as proven by Facebook technology that tracks the number of
15 people reached as noted in Exhibit 8, which is incorporated herein.

16 129. Promotions of "LuvYa" on other social networking platforms and email chains
17 followed in the ensuing weeks, causing "LuvYa" to gather more than 23,000 views, likes, and public
18 comments, all of which were earned without any Fake Views or any other violation of the TOS.

19 130. Song fi and the Rasta Rock Opera also published and distributed print materials at
20 shows, as well as at the shows of musicians who performed on the Rasta Rock Opera project, stating:
21 "Song fi, in association with the Rasta Rock Opera present "LuvYa" a promotional music video and
22 Reggae love song from the upcoming release of the Respect and Love Manifesto musical score. Log
23 onto the "Stevie Marco Channel" on YouTube to subscribe and share now or visit the Rasta Rock
24 Opera's Facebook page by entering Rastarock.com from your phone or computer browser."

25 131. Thousands of people attending the live shows noted in ¶ 128 logged onto YouTube
26

1 and Facebook after the "LuvYa" video was removed and saw the false and defamatory Notice that
2 these Defendants and the G-Y Executives posted, as evidenced by fans coming up to Joseph
3 Brotherton and asking him "what was the problem with the content of the "LuvYa" video involving
4 young kids."

5 132. Plaintiffs hereby plead that the false and defamatory Notice posted by Defendants and
6 the G-Y Executives in place of the "LuvYa" music video was "of and concerning" all Plaintiffs.

7 133. The hundreds of thousands of people who received the "LuvYa" video link through
8 social media promotions, e-mail chains, live performances, print materials, and other distribution
9 means knew well the identities of the performers because they were described in the correspondence
10 that contained the attached "LuvYa" music video they were asked to watch and forward.

11 134. In April 2014, a G-Y representative tried vigorously to persuade Song fi and Rasta
12 Rock to spend advertising dollars with YouTube. Song fi and Rasta Rock refused and a verbal
13 confrontation ensued.

14 135. Days later, on April 18, 2014 and without any prior notice, G-Y took down the
15 "LuvYa" music video, as well as its views, likes, and public comments, and posted their false and
16 defamatory "Notice" in place of the "LuvYa" video that stated: "This video has been removed
17 because its content violates YouTube's Terms of Service . . . Sorry about that."

18 136. Next, G-Y and G-Y Executives created a second and totally separate link apart from
19 the original "LuvYa" link containing G-Y's false and defamatory Notice and parked the newly
20 created second link with the "LuvYa" video attached in the private setting on the Stevie Marco
21 YouTube channel without any views, likes or public comments, thus confiscating Plaintiffs'
22 property.

23 137. Defendants had no interest in promoting this new, second "LuvYa" link with the
24 original link still live and containing YouTube's false and defamatory Notice that remained in the
25 possession of hundreds of thousands of people. The damage was already done and ongoing. A

1 second release of "LuvYa" would have only magnified the "live" false and defamatory Notice, thus
2 creating further controversy and further damage to Plaintiffs.

3 138. G-Y and the G-Y Executives could have and should have re-posted the "LuvYa"
4 music video on the original link to avoid the disastrous consequences of their libelous statement.
5 Instead, G-Y and the G-Y Executives kept the defamatory notice "live" with the clear intention of
6 harming and damaging Plaintiffs.

7 139. The original link that contained the false and defamatory Notice that previously
8 hosted the "LuvYa" music video is and always has been the exclusive property of G-Y. Plaintiffs
9 have never had any control over the link or had the ability to remove the Notice, edit the Notice, or
10 affect the content of the Notice in any way, shape, or form.

11 140. The false and defamatory Notice contained a direct link to the TOS and YouTube's
12 Community Guidelines, enabling viewers to learn the specific types of prohibited "content" that
13 would violate the TOS and trigger a Notice such as that posted in place of "LuvYa."

14 141. The Community Guidelines enumerated such "content" violations as pornography,
15 child exploitation, animal abuse, bomb making, violence and intent to shock or disgust, and hate
16 speech, as well as "predatory behavior, stalking, threats, harassment, intimidation, invading privacy,
17 revealing other people's personal information, and inciting others to commit violent acts."

18 142. There was nothing whatsoever about the content of the "LuvYa" music video that
19 remotely violated any content prohibitions in the YouTube TOS or the associated Community
20 Guidelines.

21 143. Song fi and Rasta Rock learned of the takedown of the "LuvYa" music video and the
22 false and defamatory Notice posted by G-Y on April 22, 2014 and on the same day Song fi and
23 Rasta Rock submitted an appeal to YouTube.

24 144. G-Y responded by sending an e-mail the same day back to Plaintiffs, asserting that
25 "LuvYa" had not been removed not because of its content, but rather because the View Count for
26

1 "LuvYa" had purportedly been inflated with Fake Views in violation of Section 4H of the TOS.

2 145. G-Y's email response alleging a Section 4H violation was in direct contradiction to
3 G-Ys public Notice claiming "LuvYa" was removed because of its content. G-Y's contradictory
4 statements as to why G-Y removed "LuvYa" illustrates the intentional nature of G-Y's false and
5 defamatory Notice.

6 146. On May 12, 2014, Song fi's legal counsel sent a letter to G-Y's Chief Legal Officer,
7 David Drummond, demanding a retraction of Defendants' false and defamatory Notice by way of
8 reposting the "LuvYa" music video on the original link while also informing G-Y that Plaintiffs had
9 never violated Section 4H or any other aspect of the TOS.

10 147. Song fi's counsel also put G-Y on notice that the removal of "LuvYa" and the posting
11 of Defendants' Notice was libeling Plaintiffs and was interfering with the existing and prospective
12 business relationships of both Song fi and Rasta Rock. A copy of the letter from Song fi's counsel to
13 G-Y Executives is attached hereto as Exhibit 9 and incorporated herein.

14 148. After Defendants were put on notice that they were libeling Plaintiffs pursuant to the
15 May 12 letter, Defendants failed to retract their false and defamatory Notice, failed to repost the
16 "LuvYa" music video on its original link along with its views, likes, and public comments, and
17 failed to even respond to Plaintiffs' formal notice that harm was being inflicted, giving rise to
18 exemplary damages under Cal. Civ. Code § 3294 to supplement the special damages and general
19 damages alleged herein.

20 149. Even after being informed by certified mail on May 12, 2014 of the Libel, Fraud and
21 Tortious Interference that was ongoing from the removal of the "LuvYa" music video, Defendants
22 and the G-Y Executives ignored the issue and allowed the posted Notice to remain in place for
23 nearly (3) months after the May 12 demand letter.

24 150. G-Y and the G-Y Executives kept their false and defamatory Notice intentionally
25 "live" on the original "LuvYa" link from April 18, 2014 until August 11, 2014.

1 151. Following the August 1, 2014 hearing on Plaintiff's Motion for Temporary
2 Restraining Order in District of Columbia Federal Court wherein Judge Collyer criticized
3 Defendants' Notice, G-Y decided to finally remove the Notice and replaced it with a second notice
4 stating "This Video Has Been Removed."

5 152. In its Order of April 4, 2016 (DE 97), this Court stated: "It would not be unreasonable
6 for an average reader to find defamatory meaning in an accusation of violation of the Community
7 Guidelines. Of the eight bullet points listed, the first four mention pornography, child exploitation,
8 animal abuse, bomb making, violence and intent to shock or disgust. The sixth and seventh bullet
9 points mention hate speech, as well as "predatory behavior, stalking, threats, harassment,
10 intimidation, invading privacy, revealing other people's personal information, and inciting others to
11 commit violent acts." A fact-finder could reasonably infer defamatory meaning here." (DE 97
12 at 24:3-16.)

13 **Special Damages - Libel**

14 153. Plaintiffs claim injury for libel that was the proximate cause of the damages pled
15 herein and Plaintiffs collectively seek relief for special damages suffered by all Plaintiffs as follows:

16 a) Advanced payments by Song fi and Rasta Rock to lighting companies,
17 scaffolding companies, film companies and recording companies in an amount to exceed \$87,000
18 that was lost when the posting of G-Y's false and defamatory Notice caused the cancellations of
19 revenue producing performances.

20 b) Loss of acting revenues to N.G.B., who had an agreement with Precision
21 Contracting Solutions ("PCS") to perform in a series of Home Advisors commercials on the
22 company's page, which were cancelled when PCS clients saw the Notice on the original "LuvYa"
23 video link.

24 c) Loss of earnings from performance revenues to Joe Brotherton as a proximate
25 result of the G-Y Notice, in an amount to be proven at trial that will exceed \$50,000.

1 d) Reasonable attorneys' fees, as Plaintiffs have been required to retain counsel
2 and file this lawsuit in order to vindicate their rights.

3 **General Damages - Libel**

4 154. All Plaintiffs seek individual general damages in an amount to be proven at trial for
5 the ridicule, hatred, scorn, contempt and loss of reputation that resulted from the intentional false and
6 defamatory Notice posted by G-Y of and concerning Plaintiffs Song fi, Rasta Rock, Joseph
7 Brotherton and N.G.B.

8 **Exemplary Damages - Libel**

9 155. Plaintiffs plead Exemplary Damages under Cal. Civ. Code § 3294 for intentional
10 malicious, fraudulent, and oppressive violations of California Libel law.

11 156. The intentional libelous conduct described in ¶¶ 17-154 was conceived and
12 undertaken with malice and intended by Defendants to cause injury to Plaintiffs with a willful and
13 conscious disregard for their rights and safety.

14 157. The oppression inherent in the libelous Notice as described in ¶¶ 17-154 subjected
15 Plaintiffs to cruel and unjust hardship with conscious disregard for their rights.

16 158. The fraud inherent in the libelous conduct of G-Y described in ¶¶ 17-154 consisted of
17 intentional false misrepresentations, deceit, and the concealment of material facts known to G-Y and
18 not to Plaintiffs with G-Y harboring the intention of depriving Plaintiffs of their property and legal
19 rights.

20 **COUNT 4: TORTIOUS INTERFERENCE**

21 **Brought by Plaintiffs Song fi and Rasta Rock**

22 159. As the View Count for "LuvYa" rose above 23,000, the presence of the views, likes
23 and positive comments became essential to the credibility of Song fi and Rasta Rock in seeking
24 sponsorships and continued funding for their recordings, films, and live performance projects.

25 160. G-Y's posting of the false and defamatory Notice intentionally interfered with the

1 business relationships that Plaintiffs Song fi and Rasta Rock had with the Nike Corporation and with
2 other business partners, both existing and in negotiation and with Precision Contracting Solutions
3 (“PCS”), the funding entity for Song fi and Rasta Rock.

4 161. The intentional and malicious nature of Defendants’ interference with Plaintiffs’
5 business relationships is evidenced by the actions of Mr. David Drummond, G-Y’s Chief Legal
6 Officer, a Board member and G-Y Executive who was notified in writing on May 12, 2014 as to the
7 impact G-Y’s Notice was having on Song fi and Rasta Rock's business relationships. Mr.
8 Drummond never even responded.

9 162. G-Y undertook multiple wrongful acts in violation of California law over and above
10 the tortious interference itself that included violations of the Cartwright Act, fraud, and libel per
11 quod. These wrongful acts satisfy the wrongful conduct requirement necessary to state a claim as
12 the intentional requirement has been met by the May 12 letter giving G-Y Executives notice of the
13 interference and resulting harm.

14 163. Prior to the Defendants’ removal of "LuvYa" and the issuance of their false and
15 defamatory Notice, both Song fi and Rasta Rock had promoted the “LuvYa” music video and touted
16 its View Count, likes, and public comments in negotiations with potential and existing funders,
17 business partners, sponsors and media organizations.

18 164. All of these economic relationships were seriously damaged, and in some cases
19 destroyed, as a result of G-Y’s false and defamatory Notice.

20 165. Song fi and Rasta Rock had promoted “LuvYa” in securing a sponsorship with Nike,
21 an international footwear company, for a July 4, 2014 performance of the “Star Spangled Banner” by
22 Stevie Marco of the Rasta Rock Opera on the roof of Nike’s store in Georgetown located on M
23 Street in Washington, D.C.

24 166. Nike had given its approval for the event and a permit for the performance had been
25 obtained from District of Columbia authorities. Song fi spent a substantial amount of money in
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1 preparation for the event, which it lost as a result of the libelous actions of Defendants.

2 167. During Nike’s due diligence review of Song fi and Rasta Rock, Nike learned of
3 G-Y’s takedown Notice and as a result was unwilling to risk a possible image problem in associating
4 Nike with inappropriate children’s content. Nike called off the 4th of July Star Spangled Banner
5 event at the last minute based on Defendants’ Notice.

6 168. G-Y’s wrongful conduct interfered with other business relationships of Plaintiffs,
7 including the agreement Song fi had with the Nike Corporation as well as funding agreements
8 Plaintiffs had secured with Precision Contracting Solutions (“PCS”).

9 169. From their inception through G-Y’s posting of the false and defamatory Notice, both
10 Song fi and Rasta Rock had been funded through an agreement with Precision Contracting
11 Solutions, LP, (“PCS”) a construction firm headquartered in Silver Spring, Maryland.

12 170. PCS’s management authorized the “LuvYa” music video to be shared with PCS’s
13 customer base, highlighting its investment into the arts, and more specifically the “LuvYa” music
14 video as a public relations asset portraying the beauty and innocence of young children and family
15 values on Valentine’s Day.

16 171. When G-Y removed “LuvYa” and posted the false and defamatory Notice,
17 G-Y caused a major public relations problem for PCS, and as a result, on May 10, 2014, PCS
18 notified Song fi and Rasta Rock that PCS was suspending all further funding until a satisfactory
19 retraction of G-Y’s Notice could be realized, thus shutting down the business operations of Song fi
20 and Rasta Rock indefinitely.

21 172. G-Y’s false and defamatory Notice caused and continues to cause intentional
22 financial harm to Song fi and the Rasta Rock Opera by the crippling of their business operations, as
23 a direct result of G-Y’s wrongful conduct.

24 **Compensatory Damages - Tortious Interference**

25 173. Plaintiffs claim injury for tortious interference that was the proximate cause of the

1 damages pled herein, and Plaintiffs collectively seek compensatory damages in the form of lost
2 earnings due to the termination of contractual agreements to produce music and film as a direct
3 result of the intentional interference undertaken by G-Y, of which amounts can be proven at trial by
4 way of documents in an amount that exceeds \$750,000.

5 **Exemplary Damages - Tortious Interference**

6 174. Plaintiffs plead Exemplary Damages under Cal. Civ. Code § 3294 for intentional
7 malicious, fraudulent, and oppressive violations of tortious interference law.

8 175. The intentional interference with business relations described in ¶¶ 17-174 was
9 conceived and undertaken with malice and intended by Defendants to cause injury to Plaintiffs with
10 a willful and conscious disregard for their rights and safety.

11 176. The oppression inherent in the intentional interference with business relations as
12 described in ¶¶ 17-174 subjected Plaintiffs to cruel and unjust hardship with conscious disregard for
13 their rights, safety, and property.

14 177. The fraud inherent in the intentional interference of G-Y with business relations
15 described in ¶¶ 17-174 consisted of intentional false misrepresentations, deceit, and the concealment
16 of material facts known to G-Y and not to Plaintiffs with G-Y harboring the intention of depriving
17 Plaintiffs of their property and legal rights with intent to cause ongoing injury.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs pray for relief as follows:

- 20 1. For general damages according to proof, as alleged herein;
21 2. For special damages according to proof, as alleged herein;
22 3. For compensatory damages according to proof, as alleged herein;
23 4. For actual and treble damages according to proof, as alleged herein;
24 5. For exemplary damages according to proof, as alleged herein;
25 6. For reasonable attorneys' fees, costs, and other expenses incurred herein, as provided by

1 law; and

2 7. For such other and further relief as the Court may deem proper.

3
4 **PRAYER FOR JURY TRIAL**

5 Plaintiffs hereby demand a trial by jury for the resolution of this litigation.

6 Respectfully submitted,

7 COZEN O'CONNOR

8
9 Dated: April 18, 2016

10 By: /s/ Ronald F. Wick
11 Ronald F. Wick
12 Attorneys for Plaintiffs