

place of business in California. Island Records is an unincorporated division of UMG with an office in New York.

4. Upon information and belief, defendant Polygram Publishing, Inc. (“Polygram Publishing”) is a Delaware corporation with its principal place of business in Santa Monica, California.

Jurisdiction and Venue

5. This Court has jurisdiction over defendants pursuant to CPLR §§ 301-302(1) because, upon information and belief, defendants, and/or their predecessors-in-interest, maintain or maintained a place of business in this State from which the claims in this action arise.

6. Venue is proper pursuant to CPLR § 503 because a substantial part of the events and omissions giving rise to the claims occurred in this County.

Background

7. Romeo is one of the most accomplished reggae singers and songwriters in the world. Born in Jamaica, Romeo worked on a sugar plantation before winning a local talent competition and pursuing a career in music. Beginning in the 1960s, Romeo has an extensive background in the music industry. One of Romeo’s hits spent 20 weeks in the Top 40 Official UK Singles Chart. Romeo’s works have appeared in a variety of media, including film, television, and video games. Romeo has worked extensively with Lee Perry (“Perry”), a Jamaican artist, composer, and producer.

8. UMG, together with its parents, subsidiaries, and affiliates, form the largest music company in the world.

9. As explained below, defendants acquired the rights and obligations under the relevant agreements with Romeo, through a series of transfers, acquisitions and/or mergers.

The Recording Agreement

10. On March 8, 1976, Romeo and Perry entered into a Recording Agreement with Island Records Inc. d/b/a Island Records (“Island Records”). A copy of the contract is annexed as Exhibit A (the “Recording Agreement”).

11. Upon information and belief, Island Records was then owned by Christopher Blackwell (“Blackwell”) and was based in New York, New York.

12. The Recording Agreement identified Romeo and Perry as both artists and producers and required them to deliver albums to Island Records, and for Island Records to compensate Romeo and Perry through payment of advances and royalties.

13. Among other things, Island Records agreed to provide semi-annual accountings to Romeo and to pay Romeo and Perry a royalty of 25% of all sums received by Island Records from licensees of their recordings.

14. The Recording Agreement contained an implied covenant of good faith and fair dealing.

The Songwriting Agreement

15. On or around February 1, 1976, Romeo entered into a Songwriting Agreement with Island Music, an affiliate of Island Records. A copy of the Songwriting Agreement is annexed as Exhibit B (the “Songwriting Agreement”).

16. Upon information and belief, Blackwell also owned Island Music, which was also based in New York, New York.

17. The Songwriting Agreement purported to transfer Romeo’s publishing rights in the songs on the albums delivered to Island Music, and for Island Music to compensate Romeo through payment of advances and royalties.

18. Among other things, Island Music agreed to provide semi-annual accountings to Romeo and to pay Romeo a royalty of 50% of all sums received by Island Music in respect of Romeo's compositions.

19. The Songwriting Agreement contained an implied covenant of good faith and fair dealing.

Romeo's Performance Under the Agreements

20. Romeo fully performed the Recording Agreement and the Songwriting Agreement.

21. Romeo delivered master recordings for two albums to Island Records, War Ina Babylon and Reconstruction (the "Albums") containing 19 recordings of Romeo's performances (the "Romeo Recordings").

22. Romeo wrote, or co-wrote, each of the songs (the "Romeo Compositions") on the Albums.

23. Island Records and Island Music accepted Romeo's Recordings and Compositions.

24. Island Records released the first album, War Ina Babylon, in 1976. The album War Ina Babylon contained nine Romeo Recordings, including *War Ina Babylon* and *Chase The Devil*.

25. Island Records and Island Music released a second album, Reconstruction, in 1977. The album Reconstruction contained ten Romeo Recordings.

Defendants' Acquisition of Rights and Obligations Under the Agreements

26. Upon information and belief, in or around 1989, the PolyGram U.K. Group, or its parent, subsidiary or affiliate ("PolyGram") acquired Island Records.

27. Upon information and belief, in connection with that acquisition of Island Records, PolyGram assumed all of Island Records' rights and obligations under the Recording Agreement.

28. Upon information and belief, in connection with that acquisition of Island Records, PolyGram (or one of its affiliated companies) also acquired Island Music and assumed all of Island Music's rights and obligations under the Songwriting Agreement.

29. Upon information and belief, in or around 1998, UMG' then-parent company, Seagram Company ("Seagram"), acquired PolyGram and merged it with Universal Music Group in 1999.

30. Upon information and belief, Island Records was thereafter merged into UMG and now operates as an unincorporated division of UMG.

31. Upon information and belief, in connection with the 1998 acquisition of PolyGram, UMG assumed all of the rights and obligations of Island Records under the Recording Agreement and Polygram Publishing (through its predecessor Universal – Songs of Polygram International, Inc.) assumed all rights and obligations of Island Music under the Songwriting Agreement.

32. In February 2017, Universal - Songs of Polygram International, Inc. merged with and into Polygram Publishing, which is the surviving entity of such merger.

33. UMG is the current counterparty to Romeo under the Recording Agreement.

34. Polygram Publishing is the current counterparty to Romeo under the Songwriting Agreement.

35. Upon information and belief, UMG d/b/a Island Records administers the recording royalties under the Recording Agreement.

36. Upon information and belief, UMG contractually agreed to assume the obligation to pay Romeo the royalties due under the Recording Agreement, and/or Romeo is an intended third-party beneficiary of that agreement.

37. Upon information and belief, Polygram Publishing administers the publishing royalties under the Songwriting Agreement through Universal-Songs of Polygram.

38. Upon information and belief, Polygram Publishing contractually agreed to assume the obligation to pay Romeo the royalties due under the Songwriting Agreement, and/or Romeo is an intended third-party beneficiary of that agreement.

Commercial Success of the Albums

39. The Albums have been a great a commercial success. Romeo's War Ina Babylon is generally considered one of the greatest reggae albums of all time.

40. Upon information and belief, after the initial release, there were numerous additional pressings of War Ina Babylon and there were in excess of 1 million copies sold.

41. Upon information and belief, the Romeo Recordings and Compositions have been licensed for use in television, films, and video games.

42. In or about 2003, for example, the artist and producer Jay-Z released The Black Album, which included the song *Lucifer*. *Lucifer* extensively sampled from Romeo's recording of *Chase The Devil*, including Romeo singing "Lucifer, Son of the Morning, I'm gonna chase you out of Earth." *Lucifer* was a commercial success. The Black Album debuted at No. 1 on the US Billboard Top 100 chart and is considered one of Jay-Z's finest albums. According to published reports, as of July 2013, the Black Album had sold 3,516,000 copies in the US alone.

43. The Prodigy (a UK based electronic dance group who have sold more than 25 million records worldwide and achieved 1.5 billion streams on Spotify alone), sampled plaintiff's

recording of *Chase The Devil* on their international smash hit, *Out Of Space*. UMG and its predecessors have failed to account to Romeo in respect of sales related to *Out of Space*, nor have they paid any royalties to Romeo in accordance with his contractual entitlement.

44. Additionally, Romeo's recording and composition of *Chase The Devil* was licensed for the hugely successful 2011 feature film Paul featuring Seth Rogen which grossed nearly \$100 million worldwide.

45. Additionally, Romeo's recording and composition of *Chase The Devil* was licensed for use in Grand Theft Auto: San Andreas [GTASA], considered by many reviewers to be one of the greatest video games ever made and one of the highest selling video games of all time. Defendant UMG accounted to Romeo for his song *Chase The Devil* to the extent that he received 25% of a \$5,000 "synchronization fee" for use of the song. Grand Theft Auto was the number one brand in gaming and GTASA became the number one best-selling game in history upon its release. The synchronization fee is well below commercial expectations and industry standards for a release of this magnitude.

46. On information and belief, a UMG Recordings related entity "Interscope Records", released the original soundtrack of GTASA which featured *Chase The Devil*. The synchronization fee for the original soundtrack accounted to Romeo was a 25% share of \$2,500. The commercial release of the soundtrack took place in USA (including a repressing), Canada, Germany and Europe-wide but Romeo's accounting from UMG Recordings for the original soundtrack appears only in one statement paying him 25% of \$471.12. There is no detail of unit sales. This reporting is not commensurate with the scale, scope, and timespan of the commercial project. Upon information and belief synchronization of a song should see an equal license fee for the recording and songwriting/publishing.

47. As writer of *Chase The Devil*, Romeo would also have expected to see the license fees reflected in his publishing statements from Polygram Publishing. Neither the license of *Chase The Devil* in the GTASA game nor the original soundtrack is accounted to Romeo by Polygram Publishing.

Breach of the Recording Agreement

48. UMG, and its predecessors, and/or licensees, sold records and licensed sound recordings containing, and/or derived extensive benefits from, the Romeo Recordings.

49. Upon information and belief, UMG, and its predecessors, and/or its licensees, have received substantial payments from the use of the Romeo Recordings.

50. From about 1976 to 2021, UMG and its predecessors in interest under the Recording Agreement, did not provide plaintiff with any accountings, statements or royalty payments to Romeo concerning the Romeo Recordings.

51. In or around May 2021, Romeo, through his agent Music Justice, demanded that UMG provide a complete accounting, including all the royalty statements for all revenues derived from sales and licenses of the Romeo Recordings previously not received by or known to Romeo and pay Romeo the royalties owed to him, but they have failed to do so.

52. On or around September 2021 through April 2022, UMG provided to Romeo, for the first time, certain royalty statements dated from 1976 to 2021, for the Romeo Recordings.

53. The royalty statements that UMG provided are incomplete and inaccurate and, upon information and belief, contain false statements. In many instances, the royalty accounting to Romeo is false on its face. For example, the Island Records compilation Island Reggae Triple Best Of contains three Romeo recordings - *War Ina Babylon*, *One Step Forward*, and *Chase The Devil*. The compilation was only ever released on CD therefore without product variation It

follows that earnings in respect of each of Romeo's three songs on the compilation should therefore be identical. However, UMG have reported different sales for the three songs on the CD compilation - a physical impossibility. Furthermore, one of the songs on the compilation has a different royalty rate to the other two: despite all the songs falling under the same agreement and therefore, subject to the same royalty rate. Similar instances of such failings apply to other compilations in Romeo's royalty statements.

54. Further, the limited statements provided by UMG omit extensive time periods, some of which were the most lucrative for the Romeo Recordings. For example, UMG has not provided any statements for 1977, the year following the initial release of War Ina Babylon.

55. In addition, the UMG statements indicate that UMG improperly deducted substantial sums from Romeo's royalty accounting without explanation or justification. For example, the UMG statements indicate that, in 2021, UMG deducted \$22,105.20 from plaintiff's royalties without explanation. UMG has refused to explain the deduction despite repeated requests.

56. Moreover, the UMG statements fail to account for certain sales and licenses. For example, the statements provided do not include any licensing or sales royalties for licenses and sales of *Lucifer* on The Black Album by Jay-Z or for The Prodigy release of *Out of Space*. This successful album achieved Platinum status following its release in 1992. Neither recording nor publishing royalties were accounted for in Romeo's statements.

57. Similarly, UMG Publishing has never paid or accounted to plaintiff for the use of the *Chase The Devil* recording in the movie Paul or the Grand Theft Auto video game. Further on information and belief, the soundtrack of the recent Yardie film, directed by Idris Elba, was

released by Island Records, it contains Romeo Recordings and Compositions and is unaccounted for.

58. Defendants have also failed to account to Romeo for all sales, downloads, streams, and third-party license income in accordance with his contractual entitlement.

59. Further, defendants have diluted Romeo's royalties share by licensing, sub-licensing, and/or transferring, the Romeo Recordings and Compositions to related entities without receiving market royalty rates, and/or without a good-faith business purpose.

60. Upon information and belief Romeo's Recordings and Compositions feature on numerous compilation albums on UMG Recordings related entities: including Island Records France, Maison Barclay, Chronicles, Polymedia Music Service, Universal Licensing Music, Virgin Records, Hip-O Records, Universal, Universal Music TV, Universal Music Canada, Interscope Records, Brunswick News, Universal Music Germany, Spectrum Music, Universal Music Catalogue, Universal UMC, UMe, Trojan Records, EMI, Alle 40 Goed, Universal Music Strategic Marketing, Universal Music Belgium, Universal Music On Demand and Phonogram, without any accounting to Romeo.

61. In or around September 2021, UMG paid Romeo approximately \$125,565.04, and paid Romeo some modest amounts thereafter.

62. Those payments did not come close to bringing the account for the Romeo Recordings current; nor did they compensate Romeo for lost interest on the late payments.

63. On or about December 2021, August 2022, and September 2022, Romeo, through his agents and/or attorneys, objected to the statements in writing, and demanded a complete accounting from UMG for all sales and royalties due under the Recording Agreement.

64. UMG has not provided a complete or accurate accounting; nor has it paid all royalties due under the Recording Agreement.

Breach of the Songwriting Agreement

65. Upon information and belief, Polygram Publishing, and its predecessors under the Songwriting Agreement, have received substantial payments from the sales, licensing, and use of the Romeo Compositions, but they have breached the agreement to pay royalties and provide twice yearly accountings to Romeo.

66. Most egregiously, Polygram Publishing, and its predecessors, have failed to pay all due publishing royalties to plaintiff since the release of the Albums in 1976.

67. From 1976 through approximately 2005, Polygram Publishing, and its predecessors under the Songwriting Agreement, did not provide plaintiff with any publishing royalty statements for the Romeo Compositions.

68. In or around May 2021, Romeo, through his agent Music Justice, demanded that Polygram Publishing provide a complete accounting, including all the royalty statements for all revenues derived from sales and licenses of the Romeo Compositions previously not received by or known to Romeo, and pay Romeo the royalties owed to him, but they have failed to do so.

69. The limited royalty statements that Polygram Publishing has provided are incomplete and inaccurate. For example, the Polygram Publishing statements provided to plaintiff are quite limited and they omit extensive time periods, some of which were the most lucrative for the Romeo Compositions. For example, Polygram Publishing, and its predecessors, have not provided Romeo with any accountings from 1976 until 2005 for any of the following Romeo Compositions: *One Step Forward*, *Uptown Babies Don't Cry*, *Chase The Devil*, *Stealing*

In the Name of Jah AKA Stealin', Smile Out A Style, Reconstruction, Poor Man's Life, Melt Away, War Rock, Where Is The Love, Martin Luther King, Take A Hold and Destination Africa.

70. Further, Polygram Publishing and its predecessors have never paid any royalties or provided any accountings for the following Romeo Compositions: *Chase the Devil, Smile Out A Style, Let's Live Together, Melt Away, War Rock, and Take A Hold.*

71. Moreover, the limited publishing royalty statements that have been provided fail to account for significant sales and licenses. For example, even though plaintiff is credited as a writer on Jay-Z's *Lucifer* and The Prodigy's *Out of Space*, Polygram Publishing statements provided do not include any accounting for licenses, sales, or streams of those works and plaintiff has not received a penny in royalties. Similarly, Polygram Publishing has never paid or accounted to plaintiff for the use of the Romeo Compositions in the movie Paul or the Grand Theft Auto video game.

72. Upon information and belief, Romeo's publishing income has been collected through the following Polygram Publishing related entities: Universal Music Publishing Poland, Universal Music Publishing Hong Kong Ltd, Universal Music Publishing NV Belgium, Universal Music Publishing Switzerland, Universal Music Publishing KFT Hungary, Universal Music Publishing SA Spain, Universal Music Publishing SARL, Universal Music Publishing AB, Universal Music Publishing GMBH, Universal Music Publishing Ltd, Universal Music Publishing SRO, Universal Records Group, Universal Music Publishing BV (Holland), Universal Music Publishing PTY. LTD. AUS, Universal Music Publishing KK Japan, Universal Music Canada Ltd, Universal Publishing South Africa PTY Ltd, Universal Music Publishing LTDA Brazil, Universal Music Publishing Portugal, Universal Music Publishing LLC Greece, Universal Music Publishing Philippines, and Universal Music Publishing Korea but the

collections do not match with sales reported by UMG Recordings in the listed territories and further some territories where sales are reported are missing entirely from plaintiff's Polygram Publishing statements.

73. Further, Polygram Publishing has diluted Romeo's royalties share by licensing, sub-licensing, and/or transferring, the Romeo Recordings to related entities without receiving market royalty rates, and/or without a good-faith business purpose. Sub-publisher deductions between Polygram Publishing and other entities serve no purpose other than to reduce Romeo's publishing income, since all of the entities involved, are ultimately owned or controlled Polygram Publishing's parent company or otherwise affiliated with Polygram Publishing.

74. The Romeo Recordings and Compositions have been played on the radio around the world since 1976, yet Polygram Publishing have never paid Romeo his share of publisher royalties derived from his rights to "public performance income." This revenue is typically significantly higher than the mechanical royalties (linked to physical sales of records).

75. On or about September 30, 2022, Romeo, through his counsel, objected to the Polygram Publishing statements and to the failure to pay publishing royalties in writing, and demanded a complete accounting and payment in full, with interest.

76. Polygram Publishing has not provided a complete or accurate accounting; nor has it paid the royalties due under the Songwriting Agreement.

First Cause of Action
(Breach of the Recording Agreement)

77. Plaintiff repeats and reiterates the allegations set forth above as though fully set forth herein.

78. The Recording Agreement is an enforceable agreement between Romeo and UMG.

79. Romeo performed his obligations under the Recording Agreement.

80. UMG and its predecessors have breached the Recording Agreement by (a) failing to provide complete and accurate statements to Romeo, (b) failing to pay Romeo the full amounts due under complete and accurate statements, and (c) failing to pay Romeo interest on late payments, and non-payments.

81. Upon information and belief, UMG and its predecessors have breached the covenant of good faith and fair dealing in the Recording Agreement by (a) concealing its licensing rates and agreements concerning the Romeo Recordings, and (b) concealing its use of licensing, sublicensing and/or transfers, to artificially reduce the royalty payments owed to Romeo.

82. The foregoing breaches have damaged Romeo and Romeo is entitled to a money judgment in excess of the jurisdictional threshold of this Court in an amount to be determined by the trier of fact in this action.

83. Further, Romeo is entitled to a complete and accurate accounting of his share of royalties, fees, and other monies received by defendants for the manufacture, sale, distribution, and licensing of the Romeo Recordings.

84. In addition, the foregoing breaches of the Recording Agreement are so fundamental as to defeat the object of the contract. Plaintiff is therefore also entitled to judgment granting rescission of the Recording Agreement and declaring plaintiff to be the legal owner of the Romeo Recordings and all rights pertaining to them.

Second Cause of Action
(Breach of the Songwriting Agreement)

85. Plaintiff repeats and reiterates the allegations set forth above as though fully set forth herein.

86. The Songwriting Agreement is an enforceable agreement between Romeo and Polygram Publishing and its predecessors.

87. The Songwriting Agreement required Polygram Publishing and its predecessors to provide semi-annual accountings to Romeo and to compensate Romeo through payment of advances and royalties, including a royalty of 50% of all sums received from licensees of the Romeo's Compositions.

88. Romeo performed his obligations under the Songwriting Agreement.

89. Polygram Publishing and its predecessors have breached the Songwriting Agreement by (a) failing to provide complete and accurate statements to Romeo, (b) failing to pay Romeo the full amounts due under complete and accurate statements, and (c) failing to pay Romeo interest on late payments, and non-payments.

90. Upon information and belief, Polygram Publishing and its predecessors have breached the covenant of good faith and fair dealing in the Songwriting Agreement by (a) concealing its licensing rates and agreements concerning the tracks in the Albums, and (b) concealing its use of licensing, sublicensing and/or transfers, to artificially reduce the royalty payments owed to Romeo.

91. The foregoing breaches have damaged Romeo and Romeo is entitled to a money judgment in excess of the jurisdictional threshold of this Court in an amount to be determined by the trier of fact in this action.

92. Further, Romeo is entitled to a complete and accurate accounting of his share of royalties, fees, and other monies received by defendants for the manufacture, sale, distribution, and licensing of the Romeo Compositions.

93. In addition, the foregoing breaches of the Songwriting Agreement are so fundamental as to defeat the object of the contract. Plaintiff is therefore also entitled to judgment granting rescission of the Songwriting Agreement and declaring plaintiff to be the legal owner of the Romeo Compositions and all rights pertaining to them.

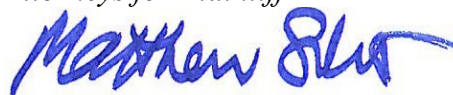
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WHEREFORE, plaintiff Maxie Smith p/k/a Max Romeo (“Romeo”), by his undersigned attorneys, requests that judgment be entered on the Amended Complaint as follows:

- (i) on the First Cause of Action, against defendant UMG Recordings, Inc. d/b/a Island Records, awarding compensatory damages in an amount to be determined, but in any event not less than \$7.5 million, plus prejudgment interest, at the legal rate, and awarding plaintiff’s attorneys’ fees, and the costs and disbursements of this action, and granting an accounting of Romeo’s share of all royalties, fees, and other monies received by defendants from the manufacture, sale, distribution, and licensing of the Romeo Recordings, rescission of the Recording Agreement and declaring plaintiff to be the legal owner of the Romeo Recordings and all rights pertaining to them; and
- (ii) on the Second Cause of Action, against defendant Polygram Publishing, Inc., awarding compensatory damages in an amount to be determined, but in any event not less than \$7.5 million, plus prejudgment interest, at the legal rate, and awarding plaintiff’s attorneys’ fees, and the costs and disbursements of this action, and granting an accounting of Romeo’s share of all royalties, fees, and other monies received by defendants from the manufacture, sale, distribution, and licensing of the Romeo Compositions, rescission of the Songwriting Agreement and declaring plaintiff to be the legal owner of the Romeo Compositions and all rights pertaining to them; and
- (iii) such other and further relief as the Court deems just and proper.

Dated: New York, New York
September 29, 2023

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