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16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 In re PANDORA MEDIA, LLC  
19 COPYRIGHT LITIGATION

Master File No. 2:22-cv-00809-MCS-  
MAR

20 This Document Relates To:

21 ALL ACTIONS\*

22 **CONSOLIDATED ACTION**

23 **DEFENDANT AND**  
24 **COUNTERCLAIMANT**  
25 **PANDORA MEDIA, LLC'S**  
26 **COUNTERCLAIMS TO**  
27 **PLAINTIFFS' AMENDED**  
28 **CONSOLIDATED COMPLAINT**  
**AGAINST ALL**  
**PLAINTIFFS/COUNTERCLAIM**  
**DEFENDANTS AND**  
**COUNTERCLAIM DEFENDANT**  
**WORDCOLLECTIONS, INC.**

1 Pursuant to Rule 13 of the Federal Rules of Civil Procedure, Defendant  
2 Pandora Media, LLC (“Pandora”), by way of its attorneys, hereby states for its  
3 Counterclaims against Plaintiffs and Counterclaim Defendants Yellow Rose  
4 Productions, Inc., on behalf of Bill Engvall (“Yellow Rose”), Main Sequence, Ltd.  
5 (“Main Sequence”), Ron White, Inc. (“White, Inc.”), Robin Williams Trust  
6 (“Williams Trust”), Brave Lion, Inc., on behalf of Andrew Clay Silverstein a/k/a/  
7 Andrew Dice Clay (“Brave Lion”), Nick Di Paolo, individually and on behalf of Acid  
8 Tongue, Inc. (“Di Paolo”), Mary Reese Hicks, individually and on behalf of Arizona  
9 Bay Production Co., Inc. (“Hicks”), and Counterclaim Defendant WordCollections,  
10 Inc. (“Word Collections”; collectively, “Counterdefendants”), the following:

11 **I. NATURE OF THE ACTION**

12 1. These Counterclaims seek injunctive relief, treble damages, and the cost  
13 of suit, including reasonable attorney’s fees, and other relief under Federal antitrust  
14 laws, 15 U.S.C. §§ 1, 2, 15 and 26, to remedy a conspiracy in unreasonable restraint  
15 of trade, a conspiracy to monopolize, monopolization and attempted monopolization  
16 by Counterdefendants.

17 2. For years, Pandora and many other services have enabled their listeners  
18 and subscribers to listen to recordings of comedians’ performances. Pandora does  
19 not need access to all comedians’ recordings in order to offer a viable comedy  
20 streaming service. In a competitive market, then, comedians compete to have  
21 Pandora and other services play their recordings and the underlying comedy routines  
22 embodied in those recordings. Pandora has always satisfied its copyright obligations  
23 to comedians by paying millions of dollars in license fees every year to the owners  
24 of the copyright in the sound recordings of the comedians’ performances, which in  
25 turn shared those payments with the comedians. No comedian ever sought to raise  
26 the price to Pandora by separately licensing or charging an additional royalty for any

27 \_\_\_\_\_  
28 \* This caption is formatted pursuant to the Court’s March 22, 2022 Order Consolidating Cases. ECF Doc. No. 18.

1 rights in the “literary works”—*i.e.*, jokes—underlying the licensed recordings.  
2 Instead, comedians chose unilaterally to benefit from the royalties they were already  
3 receiving for the use of the comedy recordings and the added promotional and other  
4 benefits that the services gave them, creating additional demand for their live  
5 performances and otherwise benefiting the comedians. Comedians were clearly  
6 satisfied with this long-standing custom and practice—one that predates Pandora by  
7 many decades—as demonstrated by the fact that they and their representatives  
8 regularly reached out to Pandora in order to secure more plays of their recordings.  
9 Doing so would make no economic sense if the comedians felt that they were not  
10 being appropriately compensated by Pandora.

11 3. Then, in late 2020, Counterdefendant Word Collections announced its  
12 launch. As a “first of its kind Performing Rights Collection Agency,” Word  
13 Collections said that it would license to Pandora and other services the comedians’  
14 asserted “literary works” rights and collect additional royalties for those rights.

15 4. But Word Collections’ true business model is not that of a benign  
16 licensing agent or an advocate for comedians’ intellectual property rights; it is that  
17 of a cartel leader. Word Collections has consolidated its comedians’ naturally  
18 competing rights into a monopolistic portfolio and fixed the price of the only license  
19 available for those rights, ensuring that services have no alternative to its blanket  
20 license for its entire portfolio. In place of the above-noted historic custom and  
21 practice that has worked to the mutual benefit of all involved, or a market in which  
22 comedians actively compete with each other on the price of literary works rights to  
23 have Pandora and others perform their comedy routines, Word Collections seeks to  
24 build a market in which it: (a) fixes supracompetitive literary works rights royalties  
25 with its co-conspirator comedian “clients,” including the other Counterdefendants;  
26 (b) accumulates monopoly power in literary works rights licensing; and (c) uses that  
27 monopoly power to foreclose competition through its full-portfolio mandatory  
28 blanket license and by tying the literary works rights that give it monopoly power to

1 rights in other literary works, including comedy and other literary works, that  
2 Pandora and other services do not need. On information and belief, Word Collections  
3 has coordinated and funded the filing of the Amended Consolidated Complaint to  
4 impose this dysfunctional market on all manner of entities that perform, reproduce  
5 or distribute comedy through the threat of crippling infringement penalties.

6 5. The result of Word Collections' anticompetitive tactics is to create for  
7 itself and the comedians that join its scheme hold-up power over services like  
8 Pandora, to exploit that hold-up power by dramatically increasing the price that  
9 Pandora and others have to pay to make comedy recordings available to their  
10 listeners, and to hamper the ability of Pandora and other services to respond to  
11 consumer demand for high-quality comedy services.

12 6. While, as set forth in Pandora's Answer to the Amended Consolidated  
13 Complaint, Pandora disputes Counterdefendants' infringement claims, these antitrust  
14 counterclaims assume *arguendo* that there exist public performance, reproduction  
15 and/or distribution rights in the jokes embodied in comedy recordings and that  
16 comedians, as authors of those jokes, might have retained those rights and, if so,  
17 could unilaterally upend historic practice and try to separately license them. These  
18 antitrust counterclaims instead challenge how Counterdefendants have agreed to  
19 suppress competition that otherwise would exist in the licensing of those rights.

## 20 II. THE PARTIES

21 7. A Delaware limited liability company and a subsidiary of SiriusXM  
22 Radio Inc. ("SiriusXM"), Pandora is an ad-supported audio entertainment streaming  
23 service in the United States. Pandora provides its users with music, comedy and  
24 other spoken-word audio programming through internet-connected devices. Pandora  
25 has long been and remains best known for its flagship free-to-the-consumer non-  
26 interactive internet radio service, which currently has approximately 50 million  
27 monthly active users. That service offers listeners a "radio-style" or "lean-back"  
28 listening experience, by which Pandora creates for each listener an individualized

1 play-list. After creating an account, a listener need only “seed” a station or select a  
2 “genre” and then music or spoken-word content will begin to play. To create a  
3 “seeded” station, the listener simply types the name of an artist, composer (for  
4 classical music), or song title to serve as the starting point or “seed” of the station.  
5 Pandora then automatically creates a station centered around that “seed,” which—  
6 through use of its Music and Comedy Genome Projects and a combination of  
7 proprietary playlist algorithms—will play tracks whose characteristics are similar to  
8 those of the “seed.” As an alternative, a user can select a “genre” station, which  
9 begins as a pre-programmed collection of tracks that reflect a certain style or  
10 preference. Each genre station is initially populated by tracks selected by Pandora.  
11 While the listener is not able to select any particular song or artist to hear at any given  
12 time, the listener is able to provide Pandora with feedback regarding likes and  
13 dislikes. This feedback is used to further refine each listener’s personalized station.

14 8. In addition to its free ad-supported service, Pandora offers two  
15 subscription services. Its second most popular offering, Pandora Plus (formerly  
16 called Pandora One), is an ad-free subscription service that includes some semi-  
17 interactive features, such as song replays and caching of a limited number of stations  
18 to enable offline listening when users do not have internet access, but does not  
19 provide users with the ability to select particular songs or albums on demand.  
20 Pandora’s other subscription service—Pandora Premium—is a fully on-demand  
21 service that allows subscribers to select what recordings they want to listen to and  
22 when.

23 9. According to the Amended Consolidated Complaint, Counterdefendant  
24 Yellow Rose is “a corporation in the care of JP Williams and Jennifer Riker of  
25 Parallel Entertainment located at 9696 Culver Boulevard, Suite 308, Culver City, CA  
26 90232.” According to the Amended Consolidated Complaint, Yellow Rose  
27 “represents the intellectual property rights of Bill Engvall,” a comedian who,  
28

1 according to Yellow Rose’s California corporate filings, is its Chief Executive  
2 Officer. On information and belief, Yellow Rose is a California corporation.

3 10. According to the Amended Consolidated Complaint, Plaintiff and  
4 Counterdefendant Main Sequence “owns and represents the intellectual property  
5 rights of the late George Carlin.” According to the Amended Consolidated  
6 Complaint, Main Sequence has its principal place of business in Los Angeles,  
7 California. According to the California Secretary of State’s website, Main Sequence  
8 is a California corporation and has been suspended from doing business in California  
9 by the California Franchise Tax Board.

10 11. According to the Amended Consolidated Complaint, Plaintiff and  
11 Counterdefendant White, Inc. is a Georgia corporation with its principal place of  
12 business in Fairburn, Georgia. According to the Amended Consolidated Complaint,  
13 White, Inc. “is the owner of intellectual property rights, on behalf of Ron White who  
14 is a comedian, actor, and author who resides in California.” According to White,  
15 Inc.’s Georgia corporate filings, Ron White has been White, Inc.’s Chief Executive  
16 Officer and sole officer since at least April 2019.

17 12. According to the Amended Consolidated Complaint, Plaintiff and  
18 Counterdefendant Brave Lion “has its principal place of business at 11766 Wilshire  
19 Blvd., Suite 500, Los Angeles, California 90025,” and “on behalf of Andrew Clay  
20 Silverstein” “is a copyright owner of properly registered literary works” of Mr.  
21 Silverstein, better known as the comedian Andrew Dice Clay, who, according to  
22 Brave Lion’s California corporate filings, is Brave Lion’s Chief Executive Officer.  
23 On information and belief, Brave Lion is a California corporation.

24 13. According to the Amended Consolidated Complaint, Plaintiff and  
25 Counterdefendant Di Paolo is an actor and comedian who, “individually and on  
26 behalf of Acid Tongue, Inc., owns the intellectual property rights of Nick Di Paolo.”  
27 According to the State of New York Department of State Division of Corporations  
28 database, Acid Tongue, Inc., on whose behalf Counterdefendant Di Paolo

1 purportedly brought his complaint, is a New York corporation, and Counterdefendant  
2 Di Paolo is its registered agent. According to the same State of New York database,  
3 Acid Tongue, Inc.’s entity status has been “inactive” since April 22, 2020.

4 14. According to the Amended Consolidated Complaint, Plaintiff and  
5 Counterdefendant the Williams Trust “represents the intellectual property rights of  
6 the late Robin Williams,” and is in the care of Trustee Arnold D. Kassoy, a partner  
7 in the law firm of Manatt, Phelps & Phillips, LLP, in Los Angeles, California.

8 15. According to the Amended Consolidated Complaint, Plaintiff and  
9 Counterdefendant Hicks “individually and on behalf of Arizona Bay Production Co.,  
10 Inc., owns the intellectual property rights of Bill Hicks (deceased), who was a  
11 comedian and musician.” According to the Arkansas Secretary of State website,  
12 Arizona Bay Production Co. on whose behalf Counterdefendant Hicks purportedly  
13 brought her complaint, is an Arkansas corporation, and Counterdefendant Hicks is  
14 its President and Secretary.

15 16. According to its website, Counterdefendant Word Collections “is the  
16 ASCAP and BMI for spoken word instead of music. It works for the world’s  
17 comedians and other spoken word performers to license and collect royalties earned  
18 when digital radio or AM/FM radio broadcast recordings of their ‘Literary Works.’”  
19 According to the Amended Consolidated Complaint, Word Collections has acted on  
20 behalf of “various copyright owners” since “in or about August of 2020,” and,  
21 beginning in April 2021, on behalf also of Brave Lion, Bill Engvall, Main Sequence,  
22 White, Inc., the Williams Trust, and Hicks “in an effort to negotiate a licensing  
23 agreement for various copyright owners” with Pandora. On information and belief,  
24 Word Collections is a Delaware corporation, with its headquarters in New York City,  
25 New York.

### 26 III. JURISDICTION AND VENUE

27 17. These Counterclaims arise under the Sherman Antitrust Act, 15 U.S.C.  
28 §§ 1, 2, 15 and 26.

1           18. This Court has subject matter jurisdiction over these Counterclaims  
2 pursuant to 28 U.S.C. §§ 1331 and 1337(a), Sections 4 and 16 of the Clayton Act, 15  
3 U.S.C. §§ 15 and 26, and Sections 1 and 2 of the Sherman Antitrust Act, 15 U.S.C.  
4 §§ 1 and 2.

5           19. This Court has personal jurisdiction over Brave Lion based on: (a) Brave  
6 Lion's filing its Amended Consolidated Complaint; (b) the fact that Brave Lion is,  
7 on information and belief, a California corporation, with its principal place of  
8 business in Los Angeles, California and, on information and belief, conducts a  
9 substantial portion of its business in California; and (c) Word Collections' alleged  
10 efforts on behalf of Brave Lion to force Pandora, located in California, including  
11 through communications with Pandora employees located in this District, to enter  
12 into a license agreement with respect to Brave Lion's alleged literary works rights.

13           20. This Court has personal jurisdiction over Yellow Rose based on: (a)  
14 Yellow Rose's filing its Amended Consolidated Complaint; (b) the fact that Yellow  
15 Rose is, on information and belief, a California corporation, with its principal place  
16 of business in Culver City, California and, on information and belief, conducts a  
17 substantial portion of its business in California; and (c) Word Collections' alleged  
18 efforts on behalf of Yellow Rose's Chief Executive Officer Bill Engvall to force  
19 Pandora, located in California, including through communications with Pandora  
20 employees located in this District, to enter into a license agreement with respect to  
21 Mr. Engvall's alleged literary works rights.

22           21. This Court has personal jurisdiction over Di Paolo based on: (a) Di  
23 Paolo's filing its Amended Consolidated Complaint; (b) the fact that Di Paolo, on  
24 information and belief, conducts a substantial portion of its business in California;  
25 and (c) on information and belief, Word Collections' alleged efforts on behalf of Di  
26 Paolo to force Pandora, located in California, including through communications  
27 with Pandora employees located in this District, to enter into a license agreement  
28 with respect to alleged literary works rights owned by Di Paolo.



1           22. This Court has personal jurisdiction over Main Sequence based on: (a)  
2 Main Sequence's filing of its Amended Consolidated Complaint; (b) the fact that  
3 Main Sequence, although suspended from doing business by California's Franchise  
4 Tax Board, is a California corporation with its alleged principal place of business in  
5 Los Angeles, California and, on information and belief, conducts a substantial  
6 portion of its business in California; and (c) Word Collections' alleged efforts on  
7 behalf of Main Sequence to force Pandora, located in California, including through  
8 communications with Pandora employees located in this District, to enter into a  
9 license agreement with respect to Main Sequence's alleged literary works rights.

10           23. This Court has personal jurisdiction over White, Inc. based on: (a)  
11 White, Inc.'s filing of its Amended Consolidated Complaint; (b) the fact that White,  
12 Inc.'s Chief Executive Officer and sole director is a resident of California and, on  
13 information and belief, conducts a substantial portion of White, Inc.'s business in  
14 California; and (c) Word Collections' alleged efforts on behalf of White, Inc. to force  
15 Pandora, located in California, including through communications with Pandora  
16 employees located in this District, to enter into a license agreement with respect to  
17 White, Inc.'s alleged literary works rights.

18           24. This Court has personal jurisdiction over the Williams Trust based on,  
19 among other things: (a) the Williams Trust's filing of its Amended Consolidated  
20 Complaint; (b) the Williams Trust's operation under the care of its Trustee in Los  
21 Angeles, California and, on information and belief, because it conducts a substantial  
22 portion of its business in California; and (c) Word Collections' alleged efforts on  
23 behalf of the Williams Trust to force Pandora, located in California, including  
24 through communications with Pandora employees located in this District, to enter  
25 into a license agreement with respect to the Williams Trust's alleged literary works  
26 rights.

27           25. This Court has personal jurisdiction over Hicks based on: (a) its filing  
28 of the Amended Consolidated Complaint in this Consolidated Action; (b) on

1 information and belief, Hicks conducts a substantial portion of its business in  
2 California; and (c) on information and belief, Word Collections’ alleged efforts on  
3 behalf of Hicks to force Pandora, located in California, including through  
4 communications with Pandora employees located in this District, to enter into a  
5 license agreement with respect to alleged literary works rights owned by Hicks.

6 26. This Court has personal jurisdiction over Word Collections based on:  
7 (a) its alleged “numerous efforts” and contacts “on an ongoing basis” since August  
8 2020 directed to Pandora, located in the State of California, including through  
9 communications with Pandora employees located in this District, to force Pandora to  
10 enter into a license agreement; (b) on information and belief, its role in sponsoring  
11 and coordinating the Amended Consolidated Complaint; and (c) on information and  
12 belief, because it conducts substantial and ongoing business in California, including  
13 in this District, including, but not limited to, by soliciting new clients, investors, and  
14 other co-conspirators.

15 27. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391  
16 and 1400, and 15 U.S.C. §§ 15, 22, and 26.

17 28. Joinder of all Counterdefendants, including Counterdefendant Word  
18 Collections, is proper pursuant to Rules 13(h) and 20(a)(2) of the Federal Rules of  
19 Civil Procedure. Rule 20 allows for permissive joinder of defendants (and counter-  
20 defendants, pursuant to Rule 13(h)) where, as here: “(A) any right to relief is asserted  
21 against them jointly, severally, or in the alternative with respect to or arising out of  
22 the same transaction, occurrence, or series of transactions or occurrences; and (B)  
23 any question of law or fact common to all defendants will arise in the action.” Fed.  
24 R. Civ. P. 20(a)(2). Joinder of all Counterdefendants is further warranted because,  
25 among other reasons, it will promote judicial efficiency, it will expedite the final  
26 determination of the disputes, including those raised in the Amended Consolidated  
27 Complaint, the defenses in the Answer to the Amended Consolidated Complaint, and  
28 in these Counterclaims, and because it prejudices no party.

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**IV. TRADE AND COMMERCE**

29. At all times relevant to these Counterclaims, Counterdefendants have been engaged in interstate commerce, and their activities have substantially affected interstate commerce. The efforts of Counterdefendants, who are residents of multiple different states, to compel Pandora and other services to license asserted literary works rights occurs in interstate commerce. Pandora and, on information and belief, other providers of comedy content, provide their programming services in interstate commerce.

30. Moreover, through their concerted efforts to force Pandora and, on information and belief, other providers of comedy to enter into literary works rights licenses for the copyrighted literary works they claim to own or control, Counterdefendants directly affect the interstate transmission of Pandora’s offerings as well as those of other services that provide comedy content to listeners. Their collusion on the licensing of their asserted literary works rights, their consolidation of their asserted rights under Word Collections’ control, and Word Collections’ bundling of these rights into a mandatory all-or-nothing blanket license have already imposed substantial costs on Pandora; if their collusion succeeds in imposing these licenses on Pandora and other providers of comedy content at supracompetitive prices, the total cost to Pandora, these other providers of comedy, and their customers, all in the flow of interstate commerce, will be enormous.

**V. FACTUAL ALLEGATIONS**

**A. Streaming Services and Comedy Performances**

31. Until 2011, Pandora did not include any comedy on its service. Then, in 2011, Pandora made the business decision to offer comedy and other spoken word content in addition to music. But music still accounts for the vast majority of streams (transmissions of recordings to listeners) on the Pandora service: Today, all comedy content accounts for less than 1% of all streams on the service, and only a handful of comedians account for any significant number of streams across Pandora’s services.

1 Even so, Pandora pays out millions of dollars in royalties each year for this comedy  
2 content.

3 32. The development of Pandora's comedy streaming service is  
4 representative of how Pandora responds to listener demand for specific types of  
5 content. Other examples of Pandora expanding its output to meet listener demand  
6 include its expansion into on-demand music streaming, and its continued  
7 improvements of Pandora Plus, offering subscribers enhanced functionality. Pandora  
8 has also expanded into podcasting, to meet growing listener demand in that space.  
9 And Pandora has developed, at great upfront and ongoing expense, its content  
10 algorithms that give each Pandora user a more tailored listening experience. As a  
11 result of these substantial investments, Pandora is uniquely positioned to not only  
12 provide listeners with content they already know they want to hear, but also to  
13 introduce listeners to new content they were not previously familiar with.

14 33. For its music service, Pandora's primary competitor is AM/FM radio.  
15 But Pandora also competes with other streaming services. In comedy, Pandora  
16 competes with, among others, AM/FM radio stations, YouTube, Spotify, and other  
17 digital streaming services. To a lesser extent, Pandora also competes with certain  
18 providers of audio-visual comedy programming, such as Netflix and HBO. Pandora  
19 competes with these other services for listeners on factors including price (either  
20 directly through subscription fees or indirectly through exposing the listeners to  
21 advertisements) and the quality and range of the comedy performances it offers.

22 34. In order to offer a viable comedy streaming service, Pandora needs  
23 access, including any necessary licenses, to quality recorded comedy routines by  
24 some minimum range of comedians of various styles. Pandora does not need to have  
25 access to the recordings of all comedians, nor does it need access to all recordings of  
26 any given comedian. Stated differently, Pandora can provide a viable comedy  
27 product with a relatively modest number of comedy recordings.  
28

1           35. As a result, as inputs to a streaming service, comedians' recordings are  
2 competitive alternatives to each other. And in fact comedians do compete to have  
3 Pandora carry their recordings. They and their representatives regularly reach out to  
4 Pandora in an effort to secure more plays of their comedy recordings, all in an effort  
5 to secure the many benefits that being streamed on Pandora offers to comedians. That  
6 comedians and their representatives make such efforts provides strong evidence that  
7 the benefits comedians have been receiving from Pandora are more than adequate.  
8 Were that not the case, they would not try to secure additional plays of their  
9 recordings. These benefits include, of course, the substantial royalties that Pandora  
10 pays out pursuant to the licenses that it has entered into with the record labels that  
11 own the comedy recordings, or through Pandora's royalty payments to  
12 SoundExchange, a regulated entity and one subject to an antitrust exemption that,  
13 among other things, collects royalties on behalf of the recorded music industry from  
14 services like Pandora that qualify for certain statutory licenses, including, as relevant  
15 here, the Section 112 and 114 statutory licenses. 17 U.S.C. §§ 112, 114. The benefits  
16 also include the exposure and other promotional value that comedians receive from  
17 Pandora.

18           36. Pandora's offering adds value for both comedians and listeners alike:  
19 Pandora has developed what it refers to as the "Comedy Genome Project" (the  
20 "CGP"), whose primary purpose is to introduce listeners to comedy that they are not  
21 already aware of, but will like. The CGP's methodology is based on comedic  
22 *similarity*, without regard to popularity, creating a level playing field for all  
23 comedians. The CGP utilizes technology and human talent to map out a comedy  
24 routine's key comedic characteristics (or "genes"), which are expressed as numerical  
25 values, and uses mathematical algorithms to identify other comedy with "DNA"  
26 similar to that which a user already knows and likes.

27           37. Through the CGP, Pandora is able to expand listeners' access to comedy  
28 they will enjoy, while expanding comedians' access to listeners who do not yet know

1 their work. The CGP helps explain why comedians compete specifically to have  
2 their recordings in Pandora's active portfolio without demanding additional royalties  
3 to license their asserted literary works rights. In fact, when Pandora asked Word  
4 Collections whether it wanted Pandora to take down the comedy content that it  
5 claimed to represent after Word Collections demanded that Pandora take its blanket  
6 license, Word Collections said no, asking that the comedy content be kept up on the  
7 service.

8 38. Because Pandora and other streaming services do not need to be able to  
9 transmit all of the recordings of all prominent comedians in order to have a viable  
10 product, the services can choose among the comedians and their recordings, based  
11 on competitive factors including price, quality, and desirability to listeners. As long  
12 as it is able to assemble a critical mass of such comedy recordings, Pandora can offer  
13 viable comedy streaming services.

14 39. But if Pandora, or another service, were unable to get access to a critical  
15 mass of recordings, or could only do so at grossly elevated rates or on other onerous  
16 terms, it could no longer offer a viable comedy streaming product and, as a result,  
17 would no longer offer comedians the benefits that its current service provides.  
18 Consequently, if a single economic actor gained control over the licensing of the  
19 rights to the comedy routines embodied in the recordings of a substantial number of  
20 quality comedians, and used that control to set a single elevated price for access to  
21 those rights, a streaming service could not substitute away from that *collection* of  
22 rights and rely only on other comedians' works and survive. In other words, that  
23 economic actor would have monopoly power over Pandora and other services and  
24 could, in effect, decide whether a service's comedy offering survived or failed.

25 **B. Historic Practice of Licensing Literary Works Rights**

26 40. Pandora has a long history of respecting valid copyrights and entering  
27 into legitimate license agreements for the copyrighted content it transmits. Pandora's  
28 royalty payments have been so substantial that, in large part because of those royalty

1 payments, it has never been able to earn a sustained profit. At all times relevant to  
2 these Counterclaims, Pandora has been willing to enter into reasonable licenses  
3 negotiated in a competitive market for legitimate copyrights covering the content it  
4 transmits.

5 41. Since launching its comedy service in 2011, and pursuant to  
6 longstanding industry custom and practice (predating Pandora by many decades),  
7 Pandora has always taken licenses for the comedy recordings that it offers, and  
8 through those licenses has obtained (either explicitly or implicitly) all of the rights it  
9 needs to stream those recordings. But Pandora has not separately secured licenses  
10 just covering the underlying comedy routines embodied in comedy recordings,  
11 because it did not need any such separate licenses. As stated above, Pandora already  
12 pays out millions of dollars in royalties each year for its use of comedy recordings  
13 and no comedian, until now, has ever approached Pandora about entering into a  
14 separate license, or paying additional royalties, just for any rights that comedian may  
15 hold in the underlying comedy routines embodied in comedy recordings. Instead,  
16 comedians unilaterally determined that they were satisfied with this historic custom  
17 and practice and that they were *not* going to demand additional royalties in exchange  
18 for a literary works license on top of what they are already being paid for the comedy  
19 recordings. In other words, to the extent that separate royalties are allocable to the  
20 underlying jokes embodied in the comedy recordings, they are already “baked-in” to  
21 those paid for the use of the recordings.

22 42. Thus, until the emergence of Counterdefendant Word Collections, the  
23 competitive equilibrium among the competing owners of the jokes embodied in  
24 recorded comedy routines was the long-standing practice in which the comedians  
25 have treated the royalties received for their recordings as sufficient—no separate,  
26 additional royalties just for the underlying jokes were ever called for.

27 43. Consequently, Pandora rightfully understood that, in exchange for the  
28 many benefits that it provides comedians, each implicated comedian literary works

1 rightsholder unilaterally had decided to maintain long-standing industry custom and  
2 practice and not separately license literary works rights or demand additional  
3 royalties above what Pandora was already paying to use the comedy recordings. This  
4 understanding was no secret. Pandora’s publicly available SEC filings confirm its  
5 long-standing licensing practices. Those filings explicitly noted that, pursuant to  
6 industry custom and practice, it was not securing a separate license, or paying a  
7 separate license fee, for the use of any underlying jokes embodied in comedy  
8 recordings. For over a decade, and despite Pandora’s complete transparency as to its  
9 licensing practices, no comedian ever challenged those practices. Instead, they  
10 continued to seek increased airplay on Pandora’s service. It was only with the  
11 emergence of Word Collections that anyone has tried to upend what has been  
12 working reasonably well for all involved for decades.

13 44. While Word Collections presents itself as “the ASCAP and BMI for  
14 spoken word instead of music,” there are several ways in which ASCAP’s and BMI’s  
15 licensing of public performances of musical works is fundamentally different from  
16 comedy licensing. Some of the more salient differences include, but are not limited  
17 to, the following:

- 18 a. Unlike music rights licensing, which, as the Supreme Court has  
19 observed, involves “thousands of users, thousands of copyright  
20 owners, and millions of compositions” (*Broad. Music, Inc. v.*  
21 *Columbia Broad. Sys., Inc.*, 441 U.S 1, 20 (1979)), comedy  
22 licensing involves a far smaller universe of users, copyright  
23 owners and works. Because the total number of performing  
24 comedians that Pandora might want to secure a license from is so  
25 much smaller than the number of music composers, the alleged  
26 comedy literary works rights are far less widely held than are  
27 public performance rights in musical compositions. As a result,  
28



1 the benefits of consolidating them into a performance rights  
2 organization (“PRO”) are minimal.

3 b. As explained above, Pandora does not need access to the  
4 recordings of all, or even most, comedians in order to offer a  
5 viable comedy streaming service. Nor does Pandora need access  
6 to all of any one comedian’s available recordings. Pandora needs  
7 only a critical mass of quality comedy recordings by a range of  
8 comedians in order to offer a viable and competitive product.

9 c. The number of potential licensees of comedy literary works rights  
10 is far smaller than the number of users of musical works public  
11 performance rights. And, in fact, Counterdefendants have  
12 targeted only a handful of services for Word Collections’  
13 licensing activities.

14 d. Unlike with music, the author of the comedic routine and the  
15 comedian featured on the comedy recording are, in almost all  
16 instances, the same. Indeed, for each work listed in the Amended  
17 Consolidated Complaint, the performing comedian is also the  
18 alleged author of the literary work. Accordingly, it is not only  
19 inefficient to depart from historic practice (in which a single  
20 license conveys all of the necessary rights) by imposing a separate  
21 licensing obligation, but doing so after the owner of the sound  
22 recording has already granted a license can only serve to create  
23 additional hold-up power over services like Pandora.

24 45. Consequently, there is no need for any performing rights organization  
25 to jointly deal with services offering comedy content on behalf of the relatively  
26 modest number of comedians whose works are of sufficient interest to listeners that  
27 Pandora might want to use them on its service. Any comedian could easily deal with  
28 the entities that are interested in transmitting performances of his or her works.

1           46. Indeed, the Amended Consolidated Complaint alleges that Pandora  
2 needed only to “take the *simplest of steps* to ask [the rights-holding  
3 Counterdefendants] or [their] representatives for licenses for the works.” (emphasis  
4 added). In other words, if Pandora had to separately license the jokes embodied in  
5 comedy recordings from comedians, it could do so directly in a simple and reasonably  
6 competitive marketplace. And those comedians could deal individually with Pandora  
7 without difficulty.

8           47. Further, there is no valid justification for a licensing cartel like Word  
9 Collections to offer a blanket license covering the rights to all of the works of its co-  
10 conspirator “clients,” particularly when it makes that blanket license the only means  
11 of obtaining *any* license to *any* of the works. These blanket licensing practices force  
12 Pandora and other services to take, and pay for, a license covering far more material  
13 than it would ever need; they could succeed only as a result of the collective having  
14 accumulated market power that forces services to take the license covering the  
15 collective’s entire portfolio if they are to get a license to any of it. And unlike ASCAP  
16 and BMI, which are subject to antitrust consent decrees that require them to offer,  
17 among other things, meaningful alternatives to their blanket licenses, Word  
18 Collections’ blanket license faces not even a hypothetical constraint from other  
19 competitive alternatives. The only alternative to the blanket license for all of the  
20 rights that Word Collections controls in a world that deviates from historic custom  
21 and practice is no license for any of those rights.

22           48. For all of these reasons, there is no valid justification for moving away  
23 from what has worked well for decades and towards collective licensing of the rights  
24 to the jokes embodied in comedy recordings. Should comedians decide unilaterally  
25 to license their literary works rights separately, there would be plenty of room for  
26 competition between them to have their works performed on Pandora. If the owners  
27 of literary works rights for jokes embodied in comedy recordings asserted them  
28 against Pandora and others without colluding, Pandora—and in turn, its customers—

1 would benefit from a free competitive market, in which the rights owners would  
2 compete against each other in order to attract Pandora to obtain the rights necessary  
3 to use their literary works. On information and belief, the same would be true for  
4 other services that offer comedy. But Word Collections and the other  
5 Counterdefendants have conspired to not only disrupt long-standing custom and  
6 practice, but to also ensure that the competitive market that would otherwise emerge  
7 will never take hold.

8  
9 **C. Word Collections’ Scheme to Fix Prices and Monopolize the**  
10 **Market for Literary Works Rights Embodied in Comedy**  
11 **Recordings**

12 49. In October 2020, a press release announced Word Collections’ launch,  
13 asserting that “[t]ech has allowed comedy to be everywhere, but the necessary  
14 pipelines and infrastructure to ensure licensing and payment have not been built.  
15 Word Collections fixes that problem.” But as shown above, Word Collections is a  
16 solution in search of a problem: for the first time, someone would “collect[] the  
17 royalties and get[] the money into the pockets of the comedian” for licenses for rights  
18 that their owners have long agreed would call for no additional royalties on top of  
19 what is already being paid for the use of the comedy recordings. Worse, by design,  
20 Word Collections’ “solution” breaks the market instead of repairing it.

21 50. Warning that its co-founder Jeff Price had “irrevocably upended the  
22 global music industry” in his prior positions at TuneCore and Audiam (both of which  
23 terminated him), the October 2020 press release announced that Word Collections  
24 “currently represents over 1,300 literary works including works by George Carlin,  
25 Roy Wood Jr., Jake Johannsen, Milton Berle, Bob Zany, Bill Dana (José Jimenez),  
26 Rich Vos, John Valby, Steve Sweeney and many others.” According to the Amended  
27 Consolidated Complaint, Word Collections contacted Pandora in August 2020 on  
28 behalf of “various copyright owners,” whom it does not identify.

1           51. Word Collections’ website describes a simple collective licensing  
2 scheme: instead of maintaining past practice, comedians (or the entities holding the  
3 rights to the comedians’ literary works) sign a required “exclusive affiliation  
4 agreement” with Word Collections. That “exclusive affiliation agreement”  
5 empowers Word Collections to grant licenses for the comedians’ rights to services  
6 and collect royalties from services. It thus gives Word Collections power to set a  
7 single fixed price for access to all of these comedians’ literary works rights—rights  
8 that otherwise would be offered in competition with each other.

9           52. Moreover, the agreements between Word Collections and its co-  
10 conspirator comedians, including the other Counterdefendants, mean that Word  
11 Collections’ price for these works is the *only* price in the market. Individual licenses  
12 from Word Collections’ co-conspirator comedians—even if they were available—  
13 would be useless to Pandora and other services: Word Collections licenses its  
14 comedians’ rights only through a blanket license covering its entire portfolio. Once  
15 it forces a service to take that blanket license, taking an individual license from a  
16 Word Collections comedian would mean that the service is paying twice (and actually  
17 three times, given that the rights were already paid for pursuant to the sound  
18 recording licenses) for that member’s literary works rights. Consequently, once a  
19 comedian signs up with Word Collections, Word Collections effectively controls  
20 access to that comedian’s literary works rights.

21           53. Worse, on information and belief, through its “exclusive affiliation  
22 agreement,” Word Collections ensures that Pandora and other services will have no  
23 choice but to license any of the comedians’ rights through Word Collections. The  
24 comedians have contracted away their rights to license independently and have  
25 ensured that the only option available to services like Pandora is to deal directly with  
26 Word Collections.

27           54. Counterdefendants have conspired not only to fix the price of the rights  
28 to their competing works through Word Collections, but also to not undermine those

1 fixed prices by licensing independently outside of the cartel. The result of this price-  
2 fixing scheme is that Pandora and other services are unable to get licenses for literary  
3 works rights at the competitive prices that would prevail if the comedians competed  
4 against each other to offer licenses to their works.

5 55. But Word Collections and its co-conspirator comedians have not only  
6 engaged in naked horizontal price fixing. In assembling its portfolio of the rights to  
7 the works of conspiring comedians, Word Collections also presents a genuine threat  
8 of achieving monopoly power in the market for the rights to perform, distribute, and  
9 reproduce the comedy routines embodied in comedy recordings, power that it can  
10 and will exert over Pandora and other services that offer comedy. As explained  
11 above, because Pandora and other services need access to a sufficient number of  
12 quality comedy recordings in order to offer a viable comedy product, any entity that  
13 gained control over a critical mass of such recordings would have monopoly power—  
14 the power to set prices undisciplined by competition—over Pandora and other  
15 services. Word Collections has created a dangerous probability that, unless stopped  
16 by this Court, it will do exactly this.

17 56. While Word Collections' joint action on behalf of the otherwise  
18 competing comedians listed in the October 2020 press release necessarily constituted  
19 price fixing as to those comedians' literary works rights, that early portfolio may not  
20 have been of sufficient size and breadth to give Word Collections monopoly power  
21 in the market for the rights to the comedy routines embodied in comedy recordings.  
22 At that time, Pandora and, on information and belief, other services that offer comedy  
23 likely would have been able to continue operating a viable comedy service even if it  
24 were unable to stream any material of the listed comedians.

25 57. But less than a year later, Word Collections had upped the ante.  
26 According to the Amended Consolidated Complaint, Word Collections was  
27 contacting Pandora by April 2021 on behalf of the late Mr. Carlin, Andrew Clay  
28 Silverstein, Bill Engvall, Ron White, and the Williams Estate. And in a July 22, 2021

1 press release, Word Collections announced that it had “add[ed] licensing and  
2 collections for Ron White, Bill Engvall, Robin Williams Estate; George Carlin  
3 Estate; Margaret Cho, Muhammed Ali Estate, Waddie Mitchell and many more.”

4 58. Barely a month later, on August 26, 2021, another press release  
5 announced that Word Collections had added Billy Crystal and Drew Carey, and that  
6 it was “[a]lready representing” Louie Anderson, the Bill Hicks Estate, Jim Breuer,  
7 and Andrew Dice Clay. These new additions to Word Collections’ portfolio showed  
8 that Word Collections was serious about obtaining monopoly power and forming a  
9 cartel that Pandora and other streaming services could not ignore.

10 59. As of today, Word Collections’ cartel has grown even further:  
11 According to its website, Word Collections “currently represents thousands of  
12 Musical Compositions and Literary Works, including the works of . . . George Carlin,  
13 Robin Williams, Billy Crystal, Drew Carey, David Cross, Bill Engvall, Dick  
14 Gregory, Muhammed Ali, Louie Anderson, Steven Wright, Andrew Dice Clay,  
15 Buddy Hackett, Waddie Mitchell, Bill Hicks, Robert Schimmel, Margaret Cho, Jim  
16 Breuer, Tommy Tiernan, Sinbad, Milton Berle, Bob Zany, Bill Dana (José Jimenez),  
17 Rich Vos, John Valby, Steve Sweeney and many others.” The website also lists,  
18 among others, Paul Mecurio, Dwayne Kennedy, Corey Rodrigues, Matt Ruby, and  
19 Nick Griffin as clients.

20 60. By taking control of the rights of not only its fellow Counterdefendants,  
21 but also those of Louie Anderson, Margaret Cho, Billy Crystal, Drew Carey, Dick  
22 Gregory, Steven Wright, Buddy Hackett, and Milton Berle, and, as its website brags,  
23 “many others,” and continuing to aggressively recruit additional cartel members,  
24 Word Collections has come dangerously close to making its portfolio a true “must-  
25 have”; once it achieves that level, no streaming service will be able to avoid taking a  
26 license from it for the entire Word Collections portfolio, on Word Collections’ terms,  
27 if it wishes to continue offering a viable comedy product, should historic custom and  
28 practice be upheld. Word Collections and its co-conspirator comedians, though

1 their “exclusive affiliation agreements,” have agreed to give, and have created a  
 2 dangerous probability of giving, Word Collections monopoly power over services  
 3 that have comedy offerings.

4 61. Obtaining and exerting monopoly power is Word Collections’ business  
 5 plan. Not only does its website trumpet its huge portfolio of comedians, but it brags  
 6 that “Word Collections is *the ASCAP and BMI* for spoken word instead of music.”  
 7 (Emphasis added.) Word Collections transparently seeks to position itself as the go-  
 8 to source for licenses under this newly-asserted right. When co-conspirator  
 9 comedians sign their “exclusive affiliation agreements,” they are buying into that  
 10 business plan, engaging in horizontal price fixing, and agreeing to help make Word  
 11 Collections a monopolist.

12 62. In a recent interview given by Jeff Price, Word Collection’s current  
 13 CEO and one of its co-founders, Mr. Price brags that Word Collections is “the *only*  
 14 *entity on the planet* where these services [like Pandora] can come to get a license to  
 15 use their literary works” of all of the members of the Word Collections cartel. Who  
 16 Knew, *The Smartest People In The Room - Jeff Price and Rick Krim*, YouTube (Mar.  
 17 31, 2022), <https://www.youtube.com/watch?v=TwaS5Qo5MtA&t=3868s>.  
 18 (Emphasis added). That Word Collections has engaged in exclusive licensing with  
 19 its co-conspirator comedians to foreclose any potential competition to its blanket  
 20 license is plain.

21 **D. Word Collections Uses a Blanket License to Cement and Exploit**  
 22 **Its Intended Monopoly Power**

23 63. There can be no doubt that the very purpose of joining the Word  
 24 Collections cartel is to fix prices and create and exploit monopoly power. As the  
 25 Word Collections website assures comedians, “Digital radio and AM/FM radio either  
 26 have to pay for *all* broadcasts of comedy and other spoken word performances or  
 27 choose to broadcast *none* of it.” (emphases added). This is not just rhetoric: it is how  
 28 Word Collections licenses the rights it has consolidated. Instead of offering a license

1 for each of its comedians' literary works rights at separate prices or some flexible  
2 license type, the fee for which is reduced if Pandora is able to license the rights to  
3 some works outside of the cartel, Word Collections offers the rights only in a single  
4 package: an "all-or-nothing" blanket license. The only license that is available  
5 anywhere to services for the rights of a comedian that joins the Word Collections  
6 cartel in a world in which historic custom and practice has been upended is one that  
7 includes not just that comedian's works, but the works of all of Word Collections'  
8 co-conspirator "clients," whether or not the service has any use for them. This price-  
9 fixed "all-or-nothing" blanket license is the very license type that Word Collections  
10 has insisted that Pandora and, on information and belief, other services, must take  
11 from it.

12 64. This blanket license serves several purposes for Word Collections.  
13 First, it disguises its price-fixing agreement with its co-conspirator comedians:  
14 instead of a catalogue of licenses for individual comedians' works whose uniform  
15 prices would make the price-fixing agreement obvious to the most unsuspecting  
16 licensee, Word Collections is able to slap a single price onto the consolidated blanket  
17 license and pretend that it is putting together a new product of its own, rather than  
18 throttling competition among competing products. But unlike combinations of  
19 complementary resources, which can create new value for users, the Word Collection  
20 blanket license does nothing but consolidate competitors and fix their prices. This  
21 blanket license is no more a new product than is the output of any other cartel.

22 65. Second, by agglomerating the rights of all of its comedians, the blanket  
23 license eliminates any incentive for Word Collections' comedians to break loose of  
24 the cartel and offer independent licenses. If a service such as Pandora is forced to  
25 take a blanket license for the rights to the works of all Word Collections' comedians,  
26 it will have no incentive to negotiate a separate, more competitive individual license  
27 with any of those comedians. Any such individual license, however priced, would  
28 mean that the service was paying twice (and really three times in light of the sound



1 recording licenses) for a license to the same comedian's works. And, as noted above,  
2 Word Collections has gone even further to assure that no member of its cartel will be  
3 able to license any service individually. Through its "exclusive affiliation  
4 agreement," Word Collections has eliminated this ability altogether.

5 66. Third, the blanket license enables Word Collections to further harm  
6 services through tying. Having acquired, at the very least, market power through its  
7 consolidation of rights to comedy routines embodied in desired comedy recordings,  
8 Word Collections ties that critical mass to its other, less desirable material, including  
9 not just comedy but other spoken-word material as well, and forces services to take  
10 the entire package, even if they have no need for this additional material. As a result  
11 of this tie, services like Pandora will end up paying more for the license than they  
12 would for one that just covers the desired material because they must pay for streams  
13 of the additional material at the price driven by the desired material, not the price  
14 they would pay for the undesirable material offered alone. Pandora and other services  
15 would accept this tie only because, without it, Word Collections will not give them a  
16 license to the rights that they do need, and Word Collections' exclusivity agreements  
17 with its co-conspirator comedians ensure that the rights the licensees need will not  
18 be available separately from the comedians in a world in which historic custom and  
19 practice has been upended. Again, Word Collections and its comedians have agreed  
20 to this scheme that unites them all collectively against Pandora and other services,  
21 and forces the services to pay substantially more for literary works rights than they  
22 would in a competitive market.

23 67. There is no valid efficiency justification for Word Collections'  
24 insistence on an exclusive blanket license. As explained above, streaming services  
25 like Pandora need access to the recordings of only a relatively modest number of  
26 comedians in order to offer a viable comedy product. They have no need for a blanket  
27 license to help them get access to the recordings they need, to protect themselves  
28 against inadvertent infringement liability, or to help keep their portfolios current. The

1 relatively small number of users of the rights to comedy performances makes  
2 monitoring by rights owners relatively easy. And any efficiencies that could come  
3 from joint license administration and monitoring could easily be accomplished  
4 without also consolidating all licensing power and pricing decisions into Word  
5 Collections' hands. Moreover, whatever administrative savings Word Collections  
6 enjoys from its blanket licensing exist only because it has consolidated its monopoly  
7 portfolio in the first place. And those savings do not offset the monopoly profits  
8 Word Collections collects as a result of having built its monopoly and setting a fixed  
9 monopoly price for its portfolio.

10 **E. Harm to Competition and to Pandora**

11 68. If Counterdefendants had not agreed to fix the price at which Word  
12 Collections would grant licenses to their literary works rights, Pandora and other  
13 services would be able to obtain the rights to the comedy routines embodied in  
14 comedy recordings that Pandora and other services wished to perform, distribute, or  
15 reproduce at competitive, and substantially lower, rates set by competition among the  
16 owners of the literary works rights. That competition might very well result in the  
17 historic custom and practice that worked well for all involved. As noted above, for  
18 many decades before Word Collections was created, comedians chose to license any  
19 necessary rights to use comedy recordings through a single license. The owner of  
20 the comedy recording typically obtained all necessary rights from the comedian and  
21 passed those on to the service, either explicitly or implicitly. And the royalty paid  
22 for the use of the recording was all that comedians ever sought. They never before  
23 sought to bifurcate the licensing requirement into two (one license just for the  
24 recording and a separate license just for the underlying jokes embodied in the  
25 recording) and they never sought to tack on an additional royalty on top of what was  
26 already being paid for the use of the comedy recording. Comedians instead chose  
27 unilaterally not to separately assert their literary works rights in favor of reaping the  
28 benefits they gained from the services playing their recordings. Now, however,

1 through Counterdefendants’ price-fixing scheme, Word Collections seeks to raise the  
2 price for the rights it has consolidated from their longstanding competitive  
3 equilibrium level to a price substantially above that level. Word Collections’ aim is  
4 to upend long-standing custom and practice and require Pandora and other services  
5 to secure, instead of a single license, two separate licenses—one for the comedy  
6 recording and a separate license for the underlying comedy routine embodied in the  
7 recording—and to impose a substantial additional royalty for the literary works rights  
8 on top of what is already being paid. Word Collections is not suggesting that the  
9 royalty paid for the recording should be reduced to offset any additional royalty for  
10 the literary work. It only wants to add a substantial additional royalty obligation to  
11 force Pandora and other services to pay far more than they historically have, just so  
12 that Pandora and other services can do exactly the same thing they always have—  
13 provide consumers with a compelling comedy offering to the benefit of the  
14 comedians.

15 69. Moreover, because the literary work author and the recording artist are,  
16 in the case of comedy, typically the same person, there is no rational reason for  
17 having separate literary-works and sound recording licenses, except to create  
18 additional hold-up power by any licensor that has amassed market power over such  
19 rights. Under a regime in which separate licenses are required, each license is useless  
20 to a service like Pandora without the other—even with the sound recording license  
21 in hand, Word Collections’ contention is that Pandora cannot legally play the  
22 recording without the literary works license. This need to secure multiple licenses  
23 before a comedy recording can be performed does not exist in the current licensing  
24 regime, in which a single license covers all of the necessary rights. But by forcing a  
25 change to historic licensing practice, and by collectively licensing the literary works  
26 rights of a critical mass of comedians, Word Collections is creating for itself hold-up  
27 power over services like Pandora. Under such a licensing regime, even though  
28 services like Pandora have already secured and paid for the necessary rights to exploit

1 the comedy recordings, they cannot do so until they secure a separate license for the  
2 jokes from Word Collections on terms dictated by Word Collections.

3 70. Similarly, if Counterdefendants had not agreed that Word Collections  
4 would offer only a blanket license to all of the literary works rights they purport to  
5 control, Pandora and other streaming services would license only the literary works  
6 rights of the comedians whose works they wished to stream, and even then would  
7 license the rights only to the particular works of those comedians they wanted to  
8 include in their offerings. Instead, if Counterdefendants' tying scheme succeeds,  
9 Pandora and other services will be forced to pay Word Collections for literary works  
10 rights for the works of comedians (and others) they do not need to use, and might not  
11 seek to obtain in a competitive market, at a total price substantially greater than they  
12 would pay in a competitive market for the rights they actually require.

13 **VI. THE RELEVANT PRODUCT AND GEOGRAPHIC MARKETS**

14 71. The relevant product market in which to assess the anticompetitive  
15 effect of Counterdefendants' conduct is the U.S. market for the rights to comedy  
16 routines embodied in comedy recordings.

17 72. The relevant product market does not include all written comedy  
18 routines. The only written comedic works to which Pandora would ever need a  
19 literary works rights license are ones that have been recorded and for which the  
20 recording is available to Pandora for streaming.

21 73. Because consumer demand for streaming of comedy recordings is  
22 specific to recorded comedy, rights for other types of written works, even ones  
23 embodied in recorded performances of some kind, are not a substitute for the rights  
24 to the comedy routines embodied in comedy recordings.

25 74. Pandora's customers, and those of other services, whose demand  
26 ultimately determines the content that the services provide in competition with each  
27 other, have a pronounced demand for comedy recordings. If comedy recordings  
28 became unavailable, or if a service was somehow able to pass along increased

1 comedy-rights costs to comedy listeners, those listeners would not readily shift to  
2 other types of streamed content.

3 75. Because it must respond to listener demand in a competitive market,  
4 Pandora would not and could not respond to a sustained price increase for the rights  
5 to comedy routines embodied in comedy recordings by shifting its programming  
6 towards other recorded spoken word content, such as famous speeches or poetry.  
7 Similarly, Pandora would not and could not shift its programming further towards  
8 music in response to a sustained price increase for the rights to comedy routines  
9 embodied in comedy recordings; comedy programming answers consumer demand  
10 that is different from consumer demand for music programming.

11 76. As explained above, a person or entity that, like Word Collections,  
12 gained control over the rights to a critical mass of comedy routines embodied in  
13 comedy recordings would be able to impose a substantial price increase over  
14 competitive levels without seeing shifts by Pandora and other services to other  
15 products.

16 77. Counterdefendants are competitors in the relevant market. But for their  
17 agreements with Word Collections, they would be competing against each other to  
18 persuade Pandora and other services to include their comedy in the service offerings.  
19 That competition would manifest itself in license royalties at competitive levels,  
20 reflecting the ability of services like Pandora to pick and choose among individual  
21 comedians and individual comedy recordings, knowing that they need only a critical  
22 mass of content to offer listeners, and not access to all comedy recordings.

23 78. The relevant geographic market is the United States. The rights  
24 Counterdefendants are asserting against Pandora are based on federal copyright law,  
25 and are exercisable and enforceable nationwide. Counterdefendants have not  
26 attempted to license on different terms in different geographic areas within the United  
27 States, and Pandora operates throughout the United States.

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**VII. ANTICOMPETITIVE EFFECTS OF COUNTERDEFENDANTS’  
CONDUCT**

**A. Harm to Competition in the Relevant Market**

79. Word Collections’ scheme of consolidating the rights to comedy routines embodied in comedy recordings, fixing prices for them, and exclusively licensing them through its blanket license has already throttled competition among Counterdefendants and the other comedians that have joined Word Collections.

80. Word Collections’ website makes clear that the competition that would and easily could exist in the Relevant Market among its co-conspirator “clients” and other comedians will not happen. Word Collections’ mission, adopted by Counterdefendants and Word Collections’ other comedians, is to force Pandora and other services to take and pay for its entire portfolio—at a price that it alone will set—or to get none of it, and have no choice but to drop its comedy offering entirely.

81. The likely results of this anticompetitive scheme will be not only higher prices but a reduced supply of comedy programming by services than would be available if the market for comedy literary works rights were competitive. The higher prices will also affect Pandora’s and other services’ overall efficiency and competitiveness, possibly even leading to decisions to abandon comedy services; in any case, the actions of Word Collections will lead to overall higher consumer prices and/or less output, and to less consumer satisfaction than would exist if Counterdefendants had not eliminated competition in the Relevant Market.

**B. Harm to Pandora**

82. Pandora has already borne the brunt of Counterdefendants’ scheme. Despite the publicity surrounding this new effort spearheaded by Word Collections to force Pandora and other services to take a second license just covering the literary works embodied in the recordings that they already license (and pay substantial royalties for), and the substantial resources available to any number of the comedian Counterdefendants, no individual Counterdefendant, or any other comedian member

1 of Word Collections, has approached Pandora about the possibility of a license for  
2 that comedian’s works. Word Collections, on the other hand, has approached  
3 Pandora repeatedly on behalf of its consolidated portfolio of comedians. Instead of  
4 offering Pandora licenses for individual comedians’ work at prices set unilaterally by  
5 the comedians, or licenses for just the comedy content Pandora actually wants to use,  
6 Word Collections has insisted that Pandora must take its price-fixed “all-or-nothing”  
7 blanket license. As a result, it has given Pandora the Hobson’s Choice between this  
8 price-fixed and economically unviable bundle—its blanket license—and litigation.  
9 Because Pandora could not accept the former, Word Collections, through the other  
10 Counterdefendants, has imposed the latter onto it in the form of Counterdefendants’  
11 infringement suits.

12 83. The costs of defending against these litigations are themselves a  
13 substantial burden for Pandora’s business, making it less efficient and competitive  
14 than it otherwise would be. But if Counterdefendants prevailed in carrying out their  
15 scheme, Pandora would be even more badly harmed. Pandora would be forced to  
16 pay an ongoing stream of supracompetitive royalties for access to a critical mass of  
17 recordings that it must have if it is to provide comedy to its listeners at all. These  
18 increased prices will harm Pandora’s cost-competitiveness, unreasonably limit the  
19 return on its investment in its comedy offering, and sap resources that otherwise  
20 might have been used to improve Pandora’s products to the benefit of consumers.

21 **COUNT I**

22 **(Sherman Act § 1 – Price Fixing (against all Counterdefendants))**

23 84. Pandora re-alleges and incorporates by reference the preceding  
24 paragraphs of these Counterclaims as though fully set forth herein.

25 85. Counterdefendants agreed among themselves and through a series of  
26 “exclusive affiliation agreements” between Word Collections on the one hand and  
27 the other Counterdefendants on the other, to fix the price at which the other  
28 Counterdefendants’ literary works rights would be licensed.

1           86. Counterdefendants’ conspiracy to fix prices has been carried out  
2 through Word Collections’ efforts to license the literary works rights of its co-  
3 conspirator comedians, including the other Counterdefendants, exclusively through  
4 a blanket license for all of the literary works rights Word Collections has  
5 consolidated, at a fixed price set pursuant to the agreements with and among  
6 Counterdefendants.

7           87. By eliminating the direct price competition that otherwise would have  
8 existed among Counterdefendants in the Relevant Market, the alleged conspiracy  
9 directly has harmed, and threatens to further harm, competition in the Relevant  
10 Market in the course of interstate commerce, and has harmed Pandora, by: (a)  
11 increasing Pandora’s costs in operating its comedy offering; and (b) impairing  
12 Pandora’s ability to present high-quality comedy offerings in response to consumer  
13 demand.

14           88. Counterdefendants’ conspiracy to fix prices is a *per se* violation of  
15 Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1. Alternatively,  
16 Counterdefendants’ conduct also violates Section 1 of the Sherman Antitrust Act  
17 under the rule of reason, in that the blatant harm to competition and Pandora and  
18 other services caused directly and proximately by the Counterdefendants’ agreement  
19 to place pricing decisions for their competing rights into the hands of Word  
20 Collections vastly outweighs any conceivable procompetitive benefit created by the  
21 agreement.

22           89. Such injury to Pandora flows directly from that which makes  
23 Counterdefendants’ acts unlawful.

24           90. Pandora seeks money damages from Counterdefendants’ violation of  
25 Section 1 of the Sherman Antitrust Act and injunctive relief against continued and  
26 further violations.

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**COUNT II**

**(Sherman Act § 1 – Tying (against all Counterdefendants))**

91. Pandora re-alleges and incorporates by reference the preceding paragraphs of these Counterclaims as though fully set forth herein.

92. Counterdefendants agreed among themselves that Word Collections would license the literary works rights in written comedy that they owned to Pandora and other services exclusively through a blanket license, by which Word Collections would use the market power it had accumulated through its “exclusive affiliation agreements” with co-conspirator comedians to force Pandora and other services to agree to take a license for Word Collections’ entire portfolio of literary works rights (including comedy and other literary works), and pay Word Collections more for that license than such services would have paid Word Collections or the rights owners directly in total for the licenses that Pandora and other services want in a competitive market.

93. The conspiracy to tie the rights to the various desirable comedy routines embodied in comedy recordings that created Word Collections’ market power to the other, less desirable, literary works rights in Word Collections’ portfolio, including both comedy routines and other literary works that Pandora does not need, has harmed, and threatens to further harm, competition in the Relevant Market in interstate commerce by increasing prices, foreclosing competition, and reducing consumer choice for licenses to literary works rights, and has harmed and threatens to further harm Pandora by: (a) increasing Pandora’s costs in operating its comedy offerings; (b) impairing Pandora’s ability to present high-quality comedy offerings in response to consumer demand; and (c) foreclosing licensing to streaming services by the actual owners of the rights to comedy routines embodied in comedy recordings, in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1.

94. Such injury to Pandora flows directly from that which makes Counterdefendants’ acts unlawful.

1 95. Pandora seeks money damages from Counterdefendants’ violation of  
2 Section 1 of the Sherman Antitrust Act and injunctive relief against continued and  
3 further violations.

4 **COUNT III**

5 **(Sherman Act § 2 – Attempted Monopolization and Monopolization (against**  
6 **all Counterdefendants))**

7 96. Pandora re-alleges and incorporates by reference the preceding  
8 paragraphs of these Counterclaims as though fully set forth herein.

9 97. Counterdefendants have, through a series of agreements among  
10 themselves and with other co-conspirator “clients” of Word Collections, accumulated  
11 and consolidated control within Word Collections over the licensing of a critical mass  
12 of rights to comedy routines embodied in comedy recordings such that they have  
13 achieved monopoly power, or, in the alternative, pose a dangerous probability of  
14 achieving monopoly power, in the Relevant Market.

15 98. Counterdefendants’ intent in entering into these agreements among  
16 themselves and with other co-conspirator “clients” of Word Collections was  
17 specifically to achieve monopoly power in the Relevant Market, which none of them  
18 could have achieved through competition on the merits, and thereby control the prices  
19 at which their respective literary works rights were made available to Pandora and  
20 other services—exclusively through the mandatory blanket license for Word  
21 Collections’ entire portfolio of literary works rights, unconstrained by competition  
22 from owners of the rights to comedy routines embodied in comedy recordings.

23 99. By obtaining, or creating a dangerous probability of obtaining,  
24 monopoly power—specifically, the ability to control prices free from competitive  
25 discipline—in the Relevant Market, Counterdefendants have directly and  
26 proximately harmed competition in the Relevant Market, and threaten directly and  
27 proximately to further harm, competition in the Relevant Market in the course of  
28 interstate commerce, and have directly and proximately harmed, and threaten directly

1 and proximately to further harm, Pandora by: (a) depriving Pandora of the ability to  
2 benefit from competition in the Relevant Market between Counterdefendants and  
3 other owners of literary works rights embodied in comedy recordings; (b) increasing  
4 Pandora’s costs in operating its comedy offerings; and (c) impairing Pandora’s ability  
5 to present high-quality comedy programming in response to consumer demand, in  
6 violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2.

7 100. Such injury to Pandora flows directly from that which makes  
8 Counterdefendants’ acts unlawful.

9 101. Pandora seeks money damages from Counterdefendants’ violation of  
10 Section 2 of the Sherman Antitrust Act and injunctive relief against continued and  
11 further violations.

12 **COUNT IV**

13 **(Sherman Act § 2 – Conspiracy to Monopolize (against all**  
14 **Counterdefendants))**

15 102. Pandora re-alleges and incorporates by reference the preceding  
16 paragraphs of these Counterclaims as though fully set forth herein.

17 103. Counterdefendants have conspired to monopolize the Relevant Market  
18 by agreeing to accumulate and consolidate control within Word Collections over the  
19 licensing of the rights to a sufficiently great number of comedy routines embodied in  
20 comedy recordings that they would achieve monopoly power in the Relevant Market.

21 104. In furtherance of this conspiracy, Counterdefendants have undertaken  
22 specific acts, including: (a) entering into “exclusive affiliation agreements” between  
23 Word Collections and other Counterdefendants; (b) agreeing not to license their  
24 literary works rights other than through Word Collections; (c) refraining from  
25 licensing their literary works rights other than through Word Collections; and (d)  
26 initiating a series of copyright infringement actions against Pandora in response to  
27 Pandora’s refusal to submit to Word Collections’ blanket-license demand.  
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1           105. Counterdefendants’ specific intent in entering into this conspiracy to  
2 monopolize was to achieve monopoly power in the Relevant Market, which none of  
3 them could have achieved through competition on the merits, and thereby control the  
4 prices at which their respective literary works rights were made available to Pandora  
5 and other services—exclusively through the mandatory blanket license for Word  
6 Collections’ entire portfolio of literary works rights, unconstrained by competition  
7 from owners of the rights to comedy routines embodied in other recorded comedy  
8 routines.

9           106. Through their conspiracy to monopolize the Relevant Market,  
10 Counterdefendants have directly and proximately harmed competition in the  
11 Relevant Market, and threaten directly and proximately to further harm competition  
12 in the Relevant Market in the course of interstate commerce, and have directly and  
13 proximately harmed, and threaten directly and proximately to further harm, Pandora  
14 by: (a) depriving Pandora of the ability to benefit from competition in the Relevant  
15 Market between Counterdefendants and other owners of the rights to comedy  
16 routines embodied in comedy recordings; (b) increasing Pandora’s costs in operating  
17 its comedy offerings; and (c) impairing Pandora’s ability to present high-quality  
18 comedy programming in response to consumer demand, in violation of Section 2 of  
19 the Sherman Antitrust Act, 15 U.S.C. § 2.

20           107. Such injury to Pandora flows directly from that which makes  
21 Counterdefendants’ acts unlawful.

22           108. Pandora seeks money damages from Counterdefendants’ violation of  
23 Section 2 of the Sherman Antitrust Act and injunctive relief against continued and  
24 further violations.

25   **PRAYER FOR RELIEF**

26           WHEREFORE, Pandora respectfully prays for judgment in its favor on each  
27 of the foregoing claims and for the following relief against Counterdefendants:  
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- a) An injunction prohibiting any one or more Counterdefendants, and those acting in concert with them, from agreeing, directly or indirectly, with each other as to the assertion or non-assertion of any literary works rights any of them controls, or the terms on which any one or more of them will license such literary works rights;
- b) An injunction prohibiting Word Collections’ use of a blanket license, or any other method by which it bundles literary works rights, and requiring that Word Collections offer separate, economically viable and individually priced licenses to the literary works rights of each of its “clients”;
- c) An injunction prohibiting Word Collections from obtaining, by license or otherwise, directly or indirectly, the exclusive power to grant licenses to any literary works rights;
- d) An injunction prohibiting any one or more Counterdefendants from granting, by license or otherwise, directly or indirectly, the exclusive power to grant licenses to any literary works rights;
- e) An injunction prohibiting Counterdefendants and all other members of the Word Collections cartel from instituting, or threatening to institute, copyright infringement actions directed against the use by Pandora of copyrighted works licensed by Word Collections until such time as the effects of the anticompetitive conduct described herein have dissipated;
- f) An order declaring unenforceable the copyrights licensed by Word Collections as a result of the misuse of those copyrights for anticompetitive and unlawful purposes, the adverse effects of such misuse are continuing, until such time as adequate relief is entered to remedy the violations alleged herein, and the effects of the violations have dissipated;

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- g) An award to Pandora of three times any damages suffered as a result of the above-described anticompetitive conduct, as well as reasonable attorneys’ fees; and
- h) Any other relief the Court deems appropriate.

**DEMAND FOR JURY TRIAL**

Pandora hereby demands a trial by jury on all issues so triable.

Dated: May 5, 2022

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