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9 Tempo Music Investments, LLC

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 TEMPO MUSIC INVESTMENTS, LLC Case No. 2:24-CV-07910

14 Plaintiff,

15 v.

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT (17 U.S.C. § 101 et
seq.)**

DEMAND FOR JURY TRIAL

16 MILEY CYRUS, an individual;
17 GREGORY HEIN, an individual;
MICHAEL POLLACK, an individual;
18 SONY MUSIC PUBLISHING (US)
LLC; CONCORD MUSIC
19 PUBLISHING LLC; WARNER-
TAMERLANE PUBLISHING CORP.;
20 MCEO PUBLISHING; WHAT KEY
DO YOU WANT IT IN MUSIC;
21 SONGS WITH A PURE TONE;
SONGS BY GREGORY HEIN;
22 DROOG PUBLISHING; THESE ARE
PULSE SONGS; WIDE EYED
23 GLOBAL; MCEO, INC.; SONY
MUSIC ENTERTAINMENT; APPLE
24 INC.; IHEARTMEDIA, INC.;
PANDORA MEDIA, LLC; DEEZER
25 S.A.; AMAZON.COM SERVICES
LLC; SOUND CLOUD GLOBAL
26 LIMITED & CO. KG; TIDAL MUSIC
LLC; XANDRIE SA; LIVE NATION
27 ENTERTAINMENT, INC.; TARGET
CORP.; WAL-MART.COM USA, LLC;
28 WALMART INC.; BARNES &
NOBLE BOOKSELLERS, INC.;
DISNEY PLATFORM

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1 DISTRIBUTION, INC.; and DOES 1-
2 10, inclusive.

3 Defendants.
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MUSIC Business Worldwide (copy)

1 Plaintiff Tempo Music Investments, LLC (“Tempo” or “Plaintiff”) alleges
2 the following against Defendants Miley Cyrus; Gregory Hein; Michal Pollack;
3 Sony Music Publishing (US) LLC; Concord Music Publishing LLC; Warner-
4 Tamerlane Publishing Corp.; MCEO Publishing; What Key Do You Want It In
5 Music; Songs With A Pure Tone; Songs By Gregory Hein; DROOG Publishing;
6 These Are Pulse Songs; Wide Eyed Global; MCEO, Inc.; Sony Music
7 Entertainment; Apple Inc.; iHeartMedia, Inc.; Pandora Media, LLC; Deezer S.A.;
8 Amazon.com Services LLC; Soundcloud Global Limited & CO. KG; Tidal Music
9 LLC; Xandrie SA; Live Nation Entertainment, Inc.; Target Corp.; Wal-Mart.com
10 USA LLC; Walmart Inc.; Barnes & Noble Booksellers, Inc.; Disney Platform
11 Distribution, Inc.; and Does 1 through 10, inclusive (collectively, “Defendants”):

12 **INTRODUCTION**

13 1. This action arises out of Defendants’ infringement of the copyright of
14 the hit song entitled “When I Was Your Man” that was released by internationally
15 renowned recording artist Bruno Mars in 2013. Mars released the song in January
16 2013 as the third promotional single from his second album, *Unorthodox Jukebox*.

17 2. By April 2013, after more than 16 weeks on the Billboard Hot 100
18 charts, “When I Was Your Man” had climbed to No. 1. Mars also received a
19 Grammy nomination for Best Pop Solo Performance for the song in December
20 2013, and in 2014, the song won the award of “Most Performed Song” at the Pop
21 Music Awards hosted by the American Society of Composers, Authors and
22 Publishers (ASCAP). In May 2021, “When I was Your Man” was awarded its
23 eleventh platinum certification.

24 3. Plaintiff Tempo Music Investments, LLC owns a share of the
25 copyright in “When I Was Your Man” through its acquisition of the catalog of
26 songwriter Philip Lawrence, a co-author of the song along with Mars and others.

27 4. Mars and the writers behind “When I was Your Man” have achieved
28 great success with the song, and now, so have Defendants. In January 2023, Miley

1 Cyrus, another well-known recording artist and a Defendant in this action, released
2 the song “Flowers.” Immediately upon the release of “Flowers,” the public
3 recognized the striking similarities between the song and “When I Was Your
4 Man.” Although Michael Pollack, one of the co-authors of “Flowers,” apparently
5 refused to comment on the song’s connection to “When I Was Your Man” in an
6 interview with *Billboard* in March 2023, the article notes that the similarities
7 between the two songs have been identified by many, and that “any listener can
8 detect that the song boasts a chorus that is the inverse of what Cyrus sings on
9 ‘Flowers.’”¹

10 5. “Flowers” became an overnight sensation, debuting at No. 1 on the
11 *Billboard* Hot 100 chart and breaking the record to become the fastest song to
12 reach one billion streams on streaming service Spotify. The song also earned
13 Cyrus her first set of Grammy wins for Record of the Year and Best Pop Solo
14 Performance at the 66th Annual Grammy Awards in February 2024. Cyrus even
15 performed the song live at the ceremony. Additionally, “Flowers” won Best
16 International Song at the Brit Awards 2024.

17 6. Any fan of Bruno Mars’ “When I Was Your Man” knows that Miley
18 Cyrus’ “Flowers” did not achieve all of that success on its own. “Flowers”
19 duplicates numerous melodic, harmonic, and lyrical elements of “When I Was
20 Your Man,” including the melodic pitch design and sequence of the verse, the
21 connecting bass-line, certain bars of the chorus, certain theatrical music elements,
22 lyric elements, and specific chord progressions.

23 7. It is undeniable based on the combination and number of similarities
24 between the two recordings that “Flowers” would not exist without “When I Was

25 _____
26 ¹ In fact, the week after “Flowers” was released, on-demand streaming for “When I
27 Was Your Man” – “always a productive streamer” in the ten years since its release
28 according to *Billboard* – reportedly rose from 4.5 million to 5.3 million, a 19.5%
gain. *Billboard* credits the “chatter over the relationship between the two songs,”
including speculation by fans that “Flowers” was inspired by “When I Was Your
Man,” with the boost in streaming of the latter.

1 Your Man.” Accordingly, Plaintiff brings this action for copyright infringement
2 arising out of Defendants’ unauthorized reproduction, distribution, and exploitation
3 of “When I Was Your Man.”

4 **JURISDICTION AND VENUE**

5 8. This Court has subject matter jurisdiction over this action pursuant to
6 28 U.S.C. § 1338(a) and 28 U.S.C. § 1331 because it arises under the Copyright
7 Act (17 U.S.C. § 101 *et seq.*).

8 9. The Court has personal jurisdiction over Defendants because some or
9 all: (1) reside or have their principal place of business in California; and/or (2)
10 conduct systematic and continuous business activities within California and this
11 judicial district.

12 10. Venue is proper in this judicial district pursuant to 28 U.S.C. §
13 1391(b)-(d) and 28 U.S.C. §1400(a) because a substantial part of the acts or
14 omissions giving rise to the claims set forth herein occurred in this judicial district
15 and/or Defendants reside or have their principal place of business in this judicial
16 district.

17 **PARTIES**

18 11. Plaintiff Tempo Music Investments, LLC is a limited liability
19 company organized under the laws of the State of Delaware, with its principal
20 place of business in New York, New York. Plaintiff invests in and owns rights to
21 an extensive portfolio of songs and musical compositions by global artists.
22 Plaintiff acquired a percentage of the copyright in “When I Was Your Man”
23 through a transaction with one of the song’s co-authors, Philip Lawrence. On
24 March 6, 2020, Lawrence’s assignment of his rights in “When I Was Your Man” to
25 Plaintiff was recorded with the United States Copyright Office under Recordation
26 No. V9975D044. Plaintiff is engaged in the commercial exploitation of the
27 copyright it acquired from Lawrence in “When I Was Your Man.”
28

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1 12. Defendant Miley Cyrus is an individual who, upon information and
2 belief, resides in Los Angeles County, California. Cyrus is an accomplished
3 singer, songwriter, and actress. Cyrus has received several Grammy nominations
4 for her work – and thanks to “Flowers,” two Grammy awards – and has won Teen
5 Choice Awards, Billboard Music Words, World Music Awards, MTV Video
6 Music Awards, a People’s Choice Award, and a GLAAD Media Award. Cyrus
7 performs “Flowers” and is credited as a co-author of the song. Upon information
8 and belief, Cyrus participated in, caused, and/or induced the infringing conduct
9 alleged herein.

10 13. Defendant Gregory “Algae” Hein is an individual who, upon
11 information and belief, resides in Los Angeles County, California. Hein is a
12 songwriter and music producer who has co-written hit songs for artists including
13 Justin Bieber, Shawn Mendes, and John Legend. Hein is credited as a co-author of
14 “Flowers” and has received Grammy nominations for Song of the Year and Album
15 of the Year for his work on “Flowers.” Upon information and belief, Hein
16 participated in, caused, and/or induced the infringing conduct alleged herein.

17 14. Defendant Michael Pollack is an individual who, upon information
18 and belief, resides in Los Angeles County, California. Pollack is an accomplished
19 songwriter and producer whose songs for artists such as Maroon 5 and Justin
20 Bieber have topped the Billboard music charts. Pollack is credited as a co-author
21 of “Flowers.” Pollack has received seven Grammy nominations, three of which
22 are for Pollack’s work on “Flowers.” Upon information and belief, Pollack
23 participated in, caused, and/or induced the infringing conduct alleged herein.

24 15. Defendant Sony Music Publishing (US) LLC (“Sony Music
25 Publishing”) is a limited liability company organized under the laws of the State of
26 Delaware, with its principal place of business in New York, New York. Upon
27 information and belief, Sony Music Publishing is a music publisher that
28

1 participated in the production, preparation, distribution, performance, licensing,
2 marketing, promotion, and/or other exploitation of “Flowers.”

3 16. Defendant Sony Music Entertainment is a general partnership
4 organized under the laws of the State of Delaware, with its principal place of
5 business in New York, New York. Upon information and belief, Sony Music
6 Entertainment participated in the production, preparation, distribution,
7 performance, licensing, marketing, promotion, and/or other exploitation of
8 “Flowers.”

9 17. Defendant Concord Music Publishing LLC (“Concord”) is a limited
10 liability company organized under the laws of the State of Delaware, with an office
11 in Los Angeles, California. Upon information and belief, Concord is a music
12 publisher that participated in the production, preparation, distribution,
13 performance, licensing, marketing, promotion, and/or other exploitation of both
14 “When I Was Your Man” and “Flowers.”

15 18. Defendant Warner-Tamerlane Publishing Corp. (“Warner”) is a
16 corporation organized under the laws of the State of Delaware, with its principal
17 place of business in Los Angeles, California. Upon information and belief, Warner
18 is a music publisher that participated in the production, preparation, distribution,
19 performance, licensing, marketing, promotion, and/or other exploitation of both
20 “When I Was Your Man” and “Flowers.”

21 19. Defendant MCEO, Inc. (“MCEO”) is a corporation organized under
22 the laws of the State of Tennessee, with its principal place of business in Nashville,
23 Tennessee. Upon information and belief, MCEO is a music publisher that
24 participated in the production, preparation, distribution, performance, licensing,
25 marketing, promotion, and/or other exploitation of “Flowers.”

26 20. Defendant Apple Inc. (“Apple”) is a corporation organized under the
27 laws of the State of California, with its principal place of business in Cupertino,
28 California. Apple, through its music streaming service Apple Music, has

1 participated in the reproduction and distribution of both “When I Was Your Man”
2 and “Flowers.”

3 21. Defendant iHeartMedia, Inc. (“iHeartMedia”) is a corporation
4 organized under the laws of the State of Delaware, with its principal place of
5 business in San Antonio, Texas. iHeartMedia, through its music streaming service
6 iHeartRadio, has participated in the reproduction and distribution of both “When I
7 Was Your Man” and “Flowers.”

8 22. Defendant Pandora Media, LLC (“Pandora”) is a limited liability
9 company organized under the laws of the State of Delaware, with its principal
10 place of business in Oakland, California. Pandora, through its music streaming
11 service, has participated in the reproduction and distribution of both “When I Was
12 Your Man” and “Flowers.”

13 23. Defendant Amazon.com Services LLC (“Amazon”) is a corporation
14 organized under the laws of the State of Delaware, with its principal place of
15 business in Seattle, Washington. Amazon, through its music streaming service
16 Amazon Music, has participated in the reproduction, distribution, and sale of both
17 “When I Was Your Man” and “Flowers.”

18 24. Defendant Tidal Music LLC (“Tidal”) is a limited liability company
19 organized under the laws of the State of Delaware, with its principal place of
20 business in New York, New York. Tidal, through its music streaming service, has
21 participated in the reproduction and distribution of both “When I Was Your Man”
22 and “Flowers.”

23 25. Defendant Soundcloud Global Limited & Co. KG (“Soundcloud”) is a
24 limited liability partnership organized under the laws of Germany, with its
25 principal place of business in Berlin, Germany. Soundcloud, through its music
26 streaming service, has participated in the reproduction and distribution of both
27 “When I Was Your Man” and “Flowers.”

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1 26. Defendant Deezer S.A. (“Deezer”) is a limited company organized
2 under the laws of France, with its principal place of business in Paris, France.
3 Deezer, through its music streaming service, has participated in the reproduction
4 and distribution of both “When I Was Your Man” and “Flowers.”

5 27. Defendant Xandrie SA (“Xandrie”) is a limited company organized
6 under the laws of France, with its principal place of business in Paris, France.
7 Xandrie, through its music streaming service Qobuz, has participated in the
8 reproduction and distribution of both “When I Was Your Man” and “Flowers.”

9 28. Defendant Disney Platform Distribution, Inc. (“Disney”) is a
10 corporation organized under the laws of the State of Delaware, with its principal
11 place of business in Burbank, California. Disney has participated in the
12 reproduction, distribution, and/or performance of “Flowers,” including by releasing
13 a documentary concert series featuring Cyrus’ performance of “Flowers” on March
14 10, 2023.

15 29. Defendant Live Nation Entertainment, Inc. (“Live Nation”) is a
16 corporation organized under the laws of the State of Delaware, with its principal
17 place of business in Beverly Hills, California. Live Nation has participated in the
18 reproduction, distribution, sale, and/or other exploitation of “Flowers,” including
19 by selling copies of the song through Cyrus’s official online store
20 (shop.mileycyrus.com).

21 30. Defendant Target Corp. (“Target”) is a corporation organized under
22 the laws of the State of Minnesota, with its principal place of business in
23 Minneapolis, Minnesota. Target has hundreds of retail locations in California.
24 Target has participated in the reproduction, distribution, sale, and/or other
25 exploitation of both “When I Was Your Man” and “Flowers,” including by selling
26 copies of the songs in stores and online.

27 31. Defendant Wal-Mart.com USA LLC (“Wal-Mart.com”) is a limited
28 liability company organized under the laws of the State of California, with its

1 principal place of business in San Bruno, California. Wal-Mart.com has
2 participated in the reproduction, distribution, sale, and/or other exploitation of both
3 “When I Was Your Man” and “Flowers,” including by selling copies of the songs
4 online.

5 32. Defendant Walmart Inc. (“Walmart”) is a corporation organized under
6 the laws of the State of Delaware, with its principal place of business in
7 Bentonville, Arkansas. Walmart has hundreds of retail locations in California.
8 Walmart has participated in the reproduction, distribution, sale, and/or other
9 exploitation of both “When I Was Your Man” and “Flowers,” including by selling
10 copies of the songs in its brick-and-mortar stores.

11 33. Defendant Barnes & Noble Booksellers, Inc. (“Barnes & Noble”) is a
12 corporation organized under the laws of the State of Delaware, with its principal
13 place of business in New York, New York. Barnes & Noble has participated in the
14 reproduction, distribution, sale, and/or other exploitation of both “When I Was
15 Your Man” and “Flowers,” including by selling copies of the songs in stores and
16 online.

17 34. Defendant MCEO Publishing is a business of unknown form with an
18 unknown principal place of business that, upon information and belief, is a music
19 publisher that participated in the production, preparation, distribution,
20 performance, licensing, marketing, promotion, and/or other exploitation of
21 “Flowers.”

22 35. Defendant What Key Do You Want It In Music is a business of
23 unknown form with an unknown principal place of business that, upon information
24 and belief, is a music publisher that participated in the production, preparation,
25 distribution, performance, licensing, marketing, promotion, and/or other
26 exploitation of “Flowers.”

27 36. Defendant Songs With A Pure Tone is a business of unknown form
28 with an unknown principal place of business that, upon information and belief, is a

1 music publisher that participated in the production, preparation, distribution,
2 performance, licensing, marketing, promotion, and/or other exploitation of
3 “Flowers.”

4 37. Defendant Songs By Gregory Hein is a business of unknown form
5 with an unknown principal place of business that, upon information and belief, is a
6 music publisher that participated in the production, preparation, distribution,
7 performance, licensing, marketing, promotion, and/or other exploitation of
8 “Flowers.”

9 38. Defendant DROOG Publishing is a business of unknown form with an
10 unknown principal place of business that, upon information and belief, is a music
11 publisher that participated in the production, preparation, distribution,
12 performance, licensing, marketing, promotion, and/or other exploitation of
13 “Flowers.”

14 39. Defendant These Are Pulse Songs is a business of unknown form with
15 an unknown principal place of business that, upon information and belief, is a
16 music publisher that participated in the production, preparation, distribution,
17 performance, licensing, marketing, promotion, and/or other exploitation of
18 “Flowers.”

19 40. Defendant Wide Eyed Global is a business of unknown form with an
20 unknown principal place of business that, upon information and belief, is a music
21 publisher that participated in the production, preparation, distribution,
22 performance, licensing, marketing, promotion, and/or other exploitation of
23 “Flowers.”

24 41. The true names and capacities (whether individual, corporate, or
25 otherwise) of Defendants named herein as Does 1 through 10, inclusive, are
26 presently unknown to Plaintiff. Therefore, Plaintiff sues these Defendants by such
27 fictitious names. Plaintiff will seek leave to amend pursuant to Federal Rules of
28 Civil Procedure 15(a)(2) and 21 to allege the true names and capacities of Does 1

1 through 10, inclusive, when the same have been ascertained. Additionally,
2 Plaintiff is informed and believes, and on that basis alleges, that each of the Doe
3 Defendants are legally responsible for the acts and omissions alleged herein.

4 42. Plaintiff is informed and believes, and on that basis alleges, that at all
5 relevant times: (a) Defendants and Does 1 through 10 are each the alter ego, co-
6 conspirator, duly registered agent, servant, employee, customer, and/or
7 representative of each of the other Defendants; and (b) Defendants acted within the
8 course, scope, and authority of their profession, employment, agency, and/or
9 management roles in committing the acts and omissions alleged herein.

10 **FACTUAL BACKGROUND**

11 **I. Plaintiff Acquires a Share of the Copyright in “When I Was Your Man”**

12 43. “When I Was Your Man” was written by Bruno Mars, Philip
13 Lawrence, Ari Levine, and Andrew Wyatt. The musical composition of “When I
14 Was Your Man” was registered in the United States Copyright Office in 2013 with
15 Registration Nos. PA0001850617 (dated March 18, 2013 with December 11, 2012
16 as the date of publication), PA0001869828 (dated October 24, 20213 with
17 December 11, 2012 as the date of publication), PA0001852243 (dated May 13,
18 2013 with December 10, 2012 as the date of publication), and PA0001834773
19 (dated March 11, 2013 with December 6, 2012 as the date of publication, and
20 supplemented by PA0002186926 on October 23, 2018).

21 44. “When I Was Your Man” was a smash hit upon its release on January
22 15, 2013, climbing to No. 1 on the Billboard Hot 100 charts and earning co-author
23 and performer Bruno Mars a Grammy nomination.

24 45. In or around 2020, Plaintiff acquired the copyright interests in “When
25 I Was Your Man” held by Lawrence and his publishing entities.

1 **II. Defendants Have Access to “When I Was Your Man” Prior to Creating**
2 **and Exploiting “Flowers”**

3 46. There are countless examples of Defendants having had access to
4 “When I Was Your Man” in the ten years between the release of “When I Was
5 Your Man” and “Flowers.” For example:

6 a. Defendants Concord and Warner are credited as music
7 publishers for both “When I Was Your Man” and “Flowers;”

8 b. Mars performed “When I Was Your Man” at the iHeartRadio
9 Music Festival in Las Vegas, Nevada on September 21, 2013, where Cyrus also
10 appeared and performed her hit song “Wrecking Ball;”

11 c. “When I Was Your Man” has been widely available for online
12 and in-store purchase, as well on numerous music streaming platforms following
13 its release; and

14 d. “When I Was Your Man” has been played frequently by radio
15 stations across the country, which is no surprise given its No. 1 ranking on the
16 Billboard Hot 100 and Billboard Radio Songs chart.

17 **III. “Flowers” Is Substantially Similar to “When I Was Your Man”**

18 47. Cyrus’ song “Flowers” was released on January 13, 2023 –
19 approximately ten years after “When I Was Your Man” was released.

20 48. There are substantial similarities between “When I Was Your Man”
21 and “Flowers” that demonstrate that “Flowers” is the result of intentional copying.

22 **A. Comparison of the Verse of “When I Was Your Man” and the**
23 **Chorus of “Flowers”**

24 49. The melody (single lines of music) and harmony (chords and chord
25 progressions) of the chorus in “Flowers” are substantially similar to those of the
26 verse in “When I Was Your Man.” Indeed, the opening vocal line from the chorus
27 of “Flowers” begins and ends on the same chords as the opening vocal line in the
28 verse of “When I Was Your Man.” Additionally, melodic Units 1 and 3 in

1 “Flowers” identified below duplicate the basic melodic and harmonic design of E-
 2 D-C-E-F at the end of Unit 1 in “When I Was Your Man.”

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The image shows musical notation for two songs. The top staff is for 'MAN (Verse) Unit 1' with chords Am, C, and Dm. The melody notes are E, E, E, D, E, E, D, E, D, C, E, F, F. The lyrics are 'Same bed but it feels just a lit - tle bit big - ger now'. The bottom staff is for 'FLOWERS (Chorus) Unit 1' with chords Am and Dm. The melody notes are E, E, E, D, C, E, F. The lyrics are 'I can buy my - self flow - ers'. Below this is 'Unit 3' for 'FLOWERS' with chords Am and Dm. The melody notes are D, E, E, E, D, C, E, F. The lyrics are 'Talk to my - self for hou - rs'.

10 50. Additionally, as shown below, melodic Unit 2 of the chorus of
 11 “Flowers” is significant in that it duplicates the developmental process of the
 12 music in Unit 2 in the verse of “When I Was Your Man.” Each unit begins with a
 13 G major chord and ends the melody on a C major chord. The overall melodic
 14 design in both songs begins after a rest on the downbeat, repeats the pitch D, and
 15 moves to pitch E. In the bracketed portion below, the line repeats the pitch D,
 16 descends through C to the lowest pitch A, then leaps up ending with the pitches D
 17 to E against the C major chord. It is notable that the pitch D (marked with an
 18 asterisk) is a dissonant non-chord tone that resolves upward to the E. This
 19 distinctive melodic element is duplicated in “Flowers” and represents a kind of
 20 musical fingerprint.

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The image shows musical notation for Unit 2 of both songs. The top staff is for 'MAN (Verse) Unit 2' with chords G, G7, C, Em/B, and Am. The melody notes are D, D, D, C, D, C, D, D, C, A, D, E, E. The lyrics are 'Our song on the ra - di - o but it don't sound the same'. A bracket labeled 'Bass Line: C-B-A' spans the notes D, C, A. An asterisk is placed above the second D note. The bottom staff is for 'FLOWERS (Chorus) Unit 2' with chords G, C, G/B, and Am. The melody notes are D, D, D, C, A, E, D, E. The lyrics are 'Write my name in the sand'. A bracket labeled 'Bass Line: C-B-A' spans the notes D, C, A. An asterisk is placed above the second D note.

26 51. As shown above in brackets, both songs also feature a connecting
 27 bass-line C-B-A that moves to the next melodic unit beginning on the A minor
 28

1 chord, is stated several times through the songs using two different rhythmic
2 patterns, and is a featured element.

3 B. Comparison of the Chorus of “When I Was Your Man” and the 4 Chorus of “Flowers”

5 52. As shown below, the first eight bars of each chorus section illustrate
6 the significant similarity in the lyrics, melodic, harmonic, and structural musical
7 content between the two songs. Both follow the same 4+4 structural phase design
8 (labeled Phrase 1 and Phrase 2), with each phrase being subdivided into two 2-bar
9 units (as shown in brackets labeled Unit 1, 2, 3, and 4).

The image shows a musical score comparing the choruses of "When I Was Your Man" (Man) and "Flowers" (Flowers). The score is divided into two phrases, each with four units. The lyrics and chord progressions are shown for both songs.

PHRASE 1

Unit 1: Man: G, F; Lyrics: That I... should have bought you flow - ers...
Flowers: Am, Dm; Lyrics: I can buy my - self flow - ers

Unit 2: Man: G, C; Lyrics: And held your hand
Flowers: C, G/B; Lyrics: Write my name in the sand

PHRASE 2

Unit 3: Man: C, F; Lyrics: Should have gave you all my hou - rs...
Flowers: Am, Dm; Lyrics: Talk to my - self for hou - rs

Unit 4: Man: G, C; Lyrics: When I had the chance
Flowers: G, C; Lyrics: Say things you don't un - der - stand

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23 53. Lyrically the first two-bar units of each 4-bar phrase end with the
same words, “flowers” in Unit 1 and “hours” in Unit 3. Although the words are
not the same at the end of Unit 2, “sand” in “Flowers” rhymes with “hand” in
“When I Was Your Man.”

24 54. Furthermore, the start of each chorus in “Flowers” duplicates the
25 dramatic pause in the accompaniment in “When I was Your Man” that precedes the
26 start of the “flowers” lyric phase.

27 55. Units 2 and 4 above also share the same chord progression of G to C,
28 and both songs end the first bar of Unit 2 by moving up from the pitch A to pitch E

1 and end with E-D-E pitches. And, Unit 4 of the choruses of both songs ends using
 2 pitch C. Thus, “Flowers” duplicates the pitch ending pattern used in Units 2 and 4
 3 in “When I Was Your Man,” as marked with an asterisk above.

4 56. A comparison of the lyrics of the two songs also suggests that the
 5 musical similarities are no coincidence. As shown below, the lyrics in “Flowers”
 6 clearly have a meaningful connection to the lyrics in “When I Was Your Man.”

“When I Was Your Man”	“Flowers”
That I should have brought you flowers	I can buy myself flowers
And held your hand	And I can hold my own hand
Should have gave you all my hours	Talk to myself for hours
Take you to every party cause all you	I can take myself dancing
wanted to do was dance	

13 57. Along with the word relationship between the “dancing” lyric above, in the
 14 below lyric phrases that end with the word “dancing,” “Flowers” contains
 15 significant and substantial melodic similarity to the melodic phrase in “When I
 16 Was Your Man.”

The image displays two musical staves. The top staff, labeled "Man", is in 4/4 time and features a melodic line with notes A, A, G, G, A, E, D, C. Chords Am, D7, and F are indicated above the staff. Lyrics "Now my baby's dancing" are written below the notes. The bottom staff, labeled "Flowers", also in 4/4 time, features a melodic line with notes G, E, G, E, G, A, E, D, C. Chords Am and Dm are indicated above the staff. Lyrics "I can take myself dancing" are written below the notes. Both staves use slurs to group the final notes (E, D, C).

24 58. The “Flowers” unit above represents a kind of “paraphrase” – *i.e.*, it
 25 musically contains and accents the same pitches. Both melodic lines after reaching
 26 and stressing the high point on the pitch A, leap down the interval of a fourth to the
 27 melodic pitch group E-D-C. Both units also end with a melodic slur on the
 28

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1 syllable “ing” (a slur refers to the common vocal element in which more than one
2 note is sung to a word or syllable).

3 C. The Closing or Post-Chorus Sections of “Flowers”

4 59. The section after the chorus and final section of the recording of
5 “Flowers” has the vocal lyric “Can love me better, I” which, as shown below,
6 corresponds musically to Units 1 and 2 of the chorus. The first iteration is E-E-E-
7 E-E, F and the second is sequenced down a step D-D-D-D-D, E. These melodic
8 statements emulate Units 1 and 2; the pitch E moves up to the ‘goal’ F (>) and the
9 second statement starting on the pitch D moves up to the ‘goal’ E (>). These
10 melodic lines represent developed or varied forms of repetition, and as shown
11 above, this melodic design was taken from “When I Was Your Man.”

12 **FLOWERS**

13 (Chorus) Unit 1 Unit 2

14 E E E D C E F D D D C A E D E
I can buy my - self flow - ers Write my name in the sand

15 (Post-Chorus) Am Dm G C

16 E E E E E F D D D D D E
Can love me bet - ter I can love me bet-ter, ba-by Can love me bet - ter I can love me bet - ter, ba - by

17 60. The combination of elements – both musical and lyrical – confirm
18 that “Flowers” copies extensively from “When I Was Your Man.”

19 **IV. Defendants Willfully and Knowingly Exploit “Flowers” Despite Its** 20 **Infringement of “When I Was Your Man”**

21 61. With “Flowers,” Cyrus, Hein, and Pollack have created a derivative
22 work of “When I Was Your Man” without authorization.

23 62. Upon information and belief, Defendants comprise the writers,
24 composers, performers, producers, record labels, distributors, and publishers who
25 willingly and knowingly participated in the production, preparation, distribution,
26 public performance, licensing, marketing, promotion, and/or other exploitation of
27 “Flowers,” embodied in all forms of media, including, but not limited to, videos,
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1 digital downloads, records, motion pictures, and advertisements. Defendants have
2 engaged in this conduct for their own pecuniary gain.

3 63. Upon information and belief, Cyrus has performed and continues to
4 perform “Flowers” at concerts and personal appearances, in videos, and on
5 television, and Defendants have exploited and continue to exploit “Flowers.”

6 **CLAIMS FOR RELIEF**

7 **FIRST CLAIM FOR RELIEF**

8 **(COPYRIGHT INFRINGEMENT (17 U.S.C. § 101 *et seq.*) AGAINST**
9 **ALL DEFENDANTS)**

10 64. Plaintiff realleges and incorporates by reference Paragraphs 1 through
11 63 as if fully alleged herein.

12 65. “When I Was Your Man” is an original musical composition
13 registered with the U.S. Copyright Office under Registration Nos. PA0001850617,
14 PA0001869828, PA0001852243, PA0001834773, and PA0002186926.

15 66. Plaintiff owns a portion of the U.S. copyright in all rights, titles, and
16 interests in the musical composition “When I Was Your Man,” which it acquired
17 from one of the song’s co-authors, Philip Lawrence, and his publishing entities.
18 The assignment of rights in “When I Was Your Man” to Plaintiff was recorded
19 with the U.S. Copyright Office under Recordation No. V9975D044 on March 6,
20 2020. Plaintiff is engaged in the commercial exploitation of the copyright it
21 acquired from Lawrence in “When I Was Your Man.”

22 67. Upon information and belief, Defendants, had access to, and did
23 access, “When I Was Your Man” following its release in January 2013.

24 68. “Flowers” copies a substantial portion of distinct, important, and
25 recognizable portions of “When I Was Your Man,” including, but not limited to, its
26 melodic and harmonic material, pitch ending pattern, bass-line structure, and
27 lyrics.

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1 69. Defendants did not seek or receive permission to copy or interpolate
2 any portion of “When I Was Your Man” into “Flowers.”

3 70. Defendants’ unauthorized reproduction, distribution, public
4 performance, display, and/or creation of a derivative work of “When I Was Your
5 Man” infringes Plaintiff’s exclusive rights in violation of the Copyright Act.

6 71. Defendants have infringed Plaintiff’s copyright in “When I Was Your
7 Man” by, among other things: (a) substantially copying and publicly performing,
8 or authorizing the copying and public performance, of “Flowers;” (b) authorizing
9 the reproduction, distribution, licensing, sale, and/or other exploitation of records
10 or digital downloads of “Flowers;” and/or (c) participating in and furthering the
11 aforementioned infringing acts and/or sharing in the proceeds therefrom.

12 72. Upon information and belief, Defendants knew or had reason to know
13 that “Flowers” is an unauthorized derivative work based on “When I Was Your
14 Man.”

15 73. Upon information and belief, Defendants induced, caused, and
16 materially contributed to the production, preparation, distribution, public
17 performance, licensing, marketing, promotion, and/or other exploitation of
18 “Flowers” and are continuing to do so in order to profit therefrom.

19 74. Upon information and belief, Defendants had the right and ability to
20 control one another and have derived a direct financial benefit from their
21 infringement.

22 75. Defendants’ conduct has been, and continues to be, willful and
23 knowing.

24 76. As a direct and proximate result of Defendants’ conduct, Plaintiff has
25 suffered actual damages, including, but not limited to, lost profits.

26 77. Plaintiff has been irreparably harmed and suffered actual damages,
27 and Defendants have profited in an amount to be determined at trial. Plaintiff’s
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1 actual damages include lost license fees and decreased value for “When I Was
2 Your Man.”

3 78. Pursuant to 17 U.S.C. § 504(b)(c), Plaintiff is entitled, at its election,
4 to an award of: (a) actual damages, including its own damages and the substantial
5 profits of Defendants to be proven at trial; or (b) statutory damages in the
6 maximum amount of \$150,000 per infringement.

7 79. Plaintiff is entitled to declaratory and injunctive relief (17 U.S.C. §
8 502).

9 80. Plaintiff is also entitled to its costs, including reasonable attorneys’
10 fees pursuant to 17 U.S.C. § 505.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays for judgment in its favor and against
13 Defendants as follows:

- 14 1. For judgment that Defendants willfully infringed Plaintiff’s copyright;
 - 15 2. For judgment entering a permanent injunction enjoining and
16 restraining Defendants from infringing Plaintiff’s copyright by reproducing,
17 distributing, or publicly performing “Flowers;”
 - 18 3. For judgment assessing Defendants the damages suffered by Plaintiff,
19 including, but not limited to, actual damages, lost profits, and statutory damages;
 - 20 4. For judgment granting Plaintiff’s costs, reasonable attorneys’ fees,
21 and interest at the maximum rate permitted by law; and
 - 22 5. Such other relief as may be just and proper.
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Dated: September 16, 2024

WILLKIE FARR & GALLAGHER LLP

By: /s/ Alex M. Weingarten
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REQUEST FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff requests a trial by jury of all issues triable of right by a jury.

Dated: September 16, 2024

WILLKIE FARR & GALLAGHER LLP

By: /s/ Alex M. Weingarten

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