

JS 44 (Rev. 09/11)

**CIVIL COVER SHEET**

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
Radio Music License Committee, Inc., 1616 Westgate Circle, Brentwood, Tennessee 37027

**(b)** County of Residence of First Listed Plaintiff Williamson County, TN  
(EXCEPT IN U.S. PLAINTIFF CASES)

**(c)** Attorneys (Firm Name, Address, and Telephone Number)  
Peter J. Mooney, White and Williams LLP, 1650 Market Street, One Liberty Place, Suite 1800, Philadelphia, PA 19103-7395 215.864.7164

**DEFENDANTS**

SESAC, Inc., 80 State St., Albany, New York 12207  
SESAC, LLC, 920 N King St., Floor 2, Wilmington, DE 19801  
SESAC Holdings, Inc., 152 W. 57th St., 57th Fl, New York, NY 10019  
County of Residence of First Listed Defendant Davidson County, TN  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in one box only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in one box for Plaintiff and one box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in one box only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN**

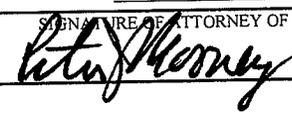
- (Place an "X" in one box only)
- 1 Original Proceeding
  - 2 Removed from State Court
  - 3 Remanded from Appellate Court
  - 4 Reinstated or Reopened
  - 5 Transferred from another district (specify)
  - 6 Multidistrict Litigation

**VI. CAUSE OF ACTION** Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 U.S.C. §§ 1, 2 & 26

Brief description of cause:  
Seeking injunctive relief for violations of the federal antitrust laws.

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** \_\_\_\_\_ **CHECK YES only if demanded in complaint:**  
**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY** (See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: 10/11/2012  
SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY: RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 1616 Westgate Circle, Brentwood, Tennessee 37027

Address of Defendant: SESAC, LLC and SESAC, Inc., 55 Music Square East, Nashville, Tennessee 37203; SESAC Holdings, Inc., 152 W. 57th St., 57th Floor, New York, NY 10019-3301

Place of Accident, Incident or Transaction: The United States, including in this district where certain of Plaintiff's members reside. (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock? (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes [ ] No [x]

Does this case involve multidistrict litigation possibilities? Yes [ ] No [x]

RELATED CASE, IF ANY: Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes [ ] No [x]
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes [ ] No [x]
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes [ ] No [x]
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes [ ] No [x]

CIVIL: (Place [x] in ONE CATEGORY ONLY)

- A. Federal Question Cases:
1. [ ] Indemnity Contract, Marine Contract, and All Other Contracts
2. [ ] FELA
3. [ ] Jones Act-Personal Injury
4. [x] Antitrust
5. [ ] Patent
6. [ ] Labor-Management Relations
7. [ ] Civil Rights
8. [ ] Habeas Corpus
9. [ ] Securities Act(s) Cases
10. [ ] Social Security Review Cases
11. [ ] All other Federal Question Cases (Please specify)

- B. Diversity Jurisdiction Cases:
1. [ ] Insurance Contract and Other Contracts
2. [ ] Airplane Personal Injury
3. [ ] Assault, Defamation
4. [ ] Marine Personal Injury
5. [ ] Motor Vehicle Personal Injury
6. [ ] Other Personal Injury (Please specify)
7. [ ] Products Liability
8. [ ] Products Liability — Asbestos
9. [ ] All other Diversity Cases (Please specify)

ARBITRATION CERTIFICATION (Check Appropriate Category)

I, Peter J. Mooney, counsel of record do hereby certify: Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs; Relief other than monetary damages is sought.

DATE: October 11, 2012 Peter J. Mooney 37078 Attorney-at-Law Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: October 11, 2012 Peter J. Mooney 37078 Attorney-at-Law Attorney I.D.#

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 1616 Westgate Circle, Brentwood, Tennessee 37027

Address of Defendant: SESAC, LLC and SESAC, Inc., 55 Music Square East, Nashville, Tennessee 37203; SESAC Holdings, Inc., 152 W. 57th St., 57th Floor, New York, NY 10019-3301

Place of Accident, Incident or Transaction: The United States, including in this district where certain of Plaintiff's members reside.  
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes  No

Does this case involve multidistrict litigation possibilities? Yes  No

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes  No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes  No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes  No
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes  No

CIVIL: (Place  in ONE CATEGORY ONLY)

A. Federal Question Cases:

1.  Indemnity Contract, Marine Contract, and All Other Contracts
2.  FELA
3.  Jones Act-Personal Injury
4.  Antitrust
5.  Patent
6.  Labor-Management Relations
7.  Civil Rights
8.  Habeas Corpus
9.  Securities Act(s) Cases
10.  Social Security Review Cases
11.  All other Federal Question Cases  
(Please specify) \_\_\_\_\_

B. Diversity Jurisdiction Cases:

1.  Insurance Contract and Other Contracts
2.  Airplane Personal Injury
3.  Assault, Defamation
4.  Marine Personal Injury
5.  Motor Vehicle Personal Injury
6.  Other Personal Injury (Please specify)
7.  Products Liability
8.  Products Liability — Asbestos
9.  All other Diversity Cases  
(Please specify) \_\_\_\_\_

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Peter J. Mooney, counsel of record do hereby certify:

- Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- Relief other than monetary damages is sought.

DATE: October 11, 2012

Attorney-at-Law

37078

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: October 11, 2012

Attorney-at-Law

37078

Attorney I.D.#

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

Radio Music License Committee, Inc. :

V. :

SESAC, Inc., et al. :

Civil Action

No: \_\_\_\_\_

DISCLOSURE STATEMENT FORM

Please check one box:



The nongovernmental corporate party, Radio Music License Committee, in the above listed civil action does not have any parent corporation and publicly held corporation that owns 10% or more of its stock.



The nongovernmental corporate party, \_\_\_\_\_, in the above listed civil action has the following parent corporation(s) and publicly held corporation(s) that owns 10% or more of its stock:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

October 11, 2012

Date



Signature

Counsel for: Radio Music License Committee, Inc.

**Federal Rule of Civil Procedure 7.1 Disclosure Statement**

(a) WHO MUST FILE; CONTENTS. A nongovernmental corporate party must file two copies of a disclosure statement that:

(1) identifies any parent corporation and any publicly held corporation owning 10% or more of its stock; or

(2) states that there is no such corporation.

(b) TIME TO FILE; SUPPLEMENTAL FILING. A party must:

(1) file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court; and

(2) promptly file a supplemental statement if any required information changes.



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

**INFORMATION FORM**

Name: Peter J. Mooney Bar Id No.: 37078

Firm: White and Williams LLP

Address: 1650 Market Street, One Liberty Place, Suite 1800

City: Philadelphia State: PA Zip Code\*: 19103 - 7395

Facsimile No: 215.789.7664

Please return completed form to:

Michael E. Kunz  
Clerk of Court  
United States District Court  
for the Eastern District of Pennsylvania  
U.S. Courthouse  
601 Market Street, Room 2609  
Philadelphia, PA 19106-1797

- or -

FAX to:

(215) 597-6390  
(267) 299-7135  
(610) 434-6174

**\* Please include zip code and 4-digit extension number**

Indicate here if you would like to receive information on the Pilot Fax Notice Program

Indicate here if you would like to receive a Directory of Automated Services

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
Eastern District of Pennsylvania

Radio Music License Committee, Inc.

Plaintiff

v.

SESAC, Inc., et al.

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) SESAC, Inc.
c/o its registered agent
Corporation Service Company
80 State Street
Albany, New York 12207-2543

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Michael E. Kunz
Clerk of Court

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* SESAC, Inc. c/o Corporation Service Company  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Pennsylvania

Radio Music License Committee, Inc.

Plaintiff

v.

SESAC, Inc., et al.

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) SESAC, LLC
c/o its registered agent
RL&F Service Corp.
920 N King St.
Floor 2
Wilmington, Delaware 19801

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Michael E. Kunz
Clerk of Court

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* SESAC, LLC. c/o RL&F Service Corp.  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Pennsylvania

Radio Music License Committee, Inc.

Plaintiff

v.

SESAC, Inc., et al.

Defendant

)  
)  
)  
)  
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)  
)  
)  
)  
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) SESAC Holdings, Inc.  
152 W. 57th Street  
57th Floor  
New York, New York 10019-3301

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Michael E. Kunz  
Clerk of Court

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* SESAC Holdings, Inc.  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

<p>RADIO MUSIC LICENSE COMMITTEE, INC.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>SESAC, INC., SESAC, LLC, and SESAC HOLDINGS, INC.,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil Action No. ____</p> <p style="text-align: center;"><b>COMPLAINT</b></p>
--	--

**SUMMARY OF CLAIMS**

1. Defendants SESAC, Inc., SESAC, LLC, and SESAC Holdings, Inc. (collectively “SESAC”) cast themselves as a performing rights organization that grants public-performance-right licenses to consumers on behalf of the music composers, authors, and publishers who are its affiliates. In reality, however, SESAC is a cartel that has illegally monopolized an essential repertory of copyrighted music, that has quashed all competition with and among its 23,000 copyright-holding affiliates, and that uses its monopoly to coerce the U.S. radio industry and other consumers into paying SESAC supracompetitive prices. Plaintiff Radio Music License Committee (“RMLC”) brings this action on behalf of its members, comprising thousands of U.S. radio stations, to stop SESAC’s illegal activity.

2. To achieve its unlawful objective, SESAC ensures that it is, as a practical matter, the exclusive purveyor of licenses for a critical mass of copyrighted musical works. By creating an artificial bottleneck to such copyrighted material, SESAC can and does charge monopoly

prices, unconstrained by the antitrust consent decrees that have bound the two other U.S. performing rights organizations, ASCAP and BMI, for more than seventy years.

3. SESAC creates a bottleneck to essential copyrighted musical works by: (1) strategically hand-picking its affiliates so that it has exclusive licensing authority over musical works that U.S. radio stations cannot reasonably avoid broadcasting; (2) threatening U.S. radio stations with hefty copyright infringement fines for broadcasting works in the SESAC repertory without a proper license; (3) obscuring the musical works within its repertory, making it impossible for broadcasters to determine with confidence whether a particular musical work falls within SESAC's repertory or not; (4) refusing to sell non-blanket licenses to radio stations; and (5) eliminating price competition between and among it and its affiliates. Because U.S. radio stations cannot know for certain whether particular musical works are in SESAC's repertory and therefore cannot avoid using SESAC's works without committing copyright infringement, and because SESAC has ensured that radio stations have no practical or economically viable alternative to obtaining a blanket license from SESAC, SESAC derives immense monopoly power from the bundle of copyrighted music in its repertory.

4. SESAC's creation of a bottleneck to public-performance-right licenses for the works in its repertory contributes no efficiency benefits of any kind. Instead, SESAC extracts monopoly rents for copyrighted music that would otherwise be available at competitive rates.

5. SESAC can share its monopoly profits with its cartel member affiliates, who thus lack an incentive to abandon SESAC in favor of another performing rights organization. ASCAP and BMI are subject to consent decrees that prevent them from charging supracompetitive prices. As a result, SESAC can afford to pay its affiliates a greater average royalty than either ASCAP or BMI.

6. Unless this Court grants RMLC the injunction it seeks for the benefit of RMLC's members, SESAC will continue to fix prices and to exercise monopoly power in contravention of U.S. antitrust laws and at the expense of RMLC's members and other consumers.

**JURISDICTION, VENUE, AND STANDING**

7. RMLC brings this action on behalf of its members pursuant to Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2, and Section 16 of the Clayton Act, 15 U.S.C. § 26, to enjoin SESAC's anticompetitive conduct and other violations of the law, and to recover the costs of this suit and reasonable attorneys' fees.

8. This Court has subject-matter jurisdiction over the asserted claims under 28 U.S.C. § 1331 and 15 U.S.C. § 26.

9. This Court has personal jurisdiction over the parties because SESAC has (i) conducted business throughout the United States, including in this district; (ii) substantial contacts with this district; and (iii) engaged in a campaign of price fixing and monopolization that has affected a nationwide market for the sale of copyrighted musical works in SESAC's repertory, which market includes this district.

10. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and 15 U.S.C. § 22 because, during the relevant period, SESAC transacted business and/or was found in this district, and/or because a substantial part of the events or omissions giving rise to this claim occurred in this district. SESAC has forced RMLC members that reside in this district (and elsewhere) to enter into unlawful and anticompetitive public-performance-right licenses and has forced those RMLC members to pay supracompetitive rates for those licenses. These RMLC members include, but are not limited to, (i) Entercom Communications Corp.; (ii) WWDB-AM Beasley Broadcast Group; (iii) WXTU-FM Beasley Broadcast Group; (iv) WRDW-FM Beasley

Broadcast Group; (v) WBEB-FM Jerry Lee Broadcasting; (vi) WBEN-FM Greater Media, Inc.; (vii) WMGK-FM Greater Media, Inc.; (viii) WPEN-AM Greater Media, Inc.; (ix) WPEN-FM Greater Media, Inc.; (x) WMMR-FM Greater Media, Inc.; (xi) WRNB-FM Radio One, Inc.; (xii) WPPZ-FM Radio One, Inc.; and (xiii) WPHI-FM Radio One, Inc., all of which reside in Bala Cynwyd, Pennsylvania. RMLC has authority to negotiate with SESAC on behalf of its member radio stations, including those stations that reside in this district, but SESAC has rebuffed every effort by RMLC to engage in such negotiations as part of its anticompetitive scheme.

#### **THE PARTIES**

11. Plaintiff RMLC is a 501(c)(6) non-profit corporation organized and existing under the laws of Tennessee, with a principal place of business at 1616 Westgate Circle, Brentwood, Tennessee, 37027. RMLC's mission is to negotiate public-performance-right license fees with performing rights organizations for the benefit of its members and the commercial radio industry (some 10,000 radio stations).

12. Defendant SESAC, Inc. is a for-profit corporation organized and existing under the laws of the state of New York and registered as a foreign corporation with the state of Tennessee, with a principal address of 55 Music Square East, Nashville, Tennessee 37203. SESAC, Inc.'s registered agent is Corporation Service Company, 80 State Street, Albany, New York 12207.

13. Defendant SESAC, LLC is a for-profit, limited-liability company, organized and existing under the laws of the state of Delaware and registered as a foreign corporation with the states of Tennessee and New York. According to its website, SESAC maintains its headquarters at 55 Music Square East, Nashville, Tennessee 37203. SESAC, LLC's registered agent is RL&F Service Corp., 920 North King Street, Floor 2, Wilmington, Delaware 19801.

14. Defendant SESAC Holdings, Inc. is a corporation organized and existing under the laws of New York with a principal place of business at 152 West 57th Street, 57th Floor, New York, New York 10019.

### **BACKGROUND**

#### **Performing Rights Organizations and the Licensing of Copyrighted Music**

15. The owners of copyrights over musical works enjoy certain exclusive rights, including the right: (1) publicly to perform their musical works, (2) to reproduce their works, and (3) to distribute copies or phonorecords of their works to the public. Consumers who wish to use copyrighted musical works for any of these purposes, absent fair use, must obtain the relevant copyright holder's permission. Should they fail to secure a license, U.S. law provides for statutory damages of up to \$150,000 *per infringed work* for each act of infringement.

16. Radio stations use a vast array of musical works. They play feature music for the purpose of entertaining their listeners; they use sound bites as background material and as bridges between programming segments; they air third-party advertisements that may or may not contain feature music; they introduce programs with musical themes; and they sometimes make use of ambient, or background, music.

17. To broadcast music without infringing intellectual-property rights, radio stations must obtain licenses. Copyright holders generally have the right to directly license their works to radio stations. Copyright holders can also bestow licensing authority upon a common agent, which can negotiate with and grant permissions to consumers on their behalf. Performing rights organizations ("PROs") serve this function in the music industry, acting as intermediaries between consumers and copyright holders and offering "one-stop-shop" licenses for the public

performance of works. The three PROs for the U.S. music industry are BMI, ASCAP, and SESAC.

18. Performing rights organizations can offer a range of different licenses. The basic “blanket license” provides a licensee with the right to use any piece of music in the PRO’s repertory without having to account for actual usage. If a PRO charges a set periodic fee for such a license, “carve-out rights” (otherwise known as “adjustable-fee blanket licenses” or “AFBLs”) would entitle licensees to discounts if they secure separate permissions directly from the copyright owners to musical works subsumed within the blanket license. Finally, a “per-program license” permits a licensee to use all songs in a PRO’s repertory, but only for the purpose of specific radio programming that is generally associated with an “all-talk” format. Fees for per-program licenses derive only from revenues associated with the relevant program, which fact allows radio stations to reduce their licensing costs by reducing the number of programs that use music from a particular PRO’s repertory.

19. In circumstances where more than one person was involved in the composition or production of a song, multiple individuals can hold a copyright to the same work. A license is required from only one of these copyright holders in order publicly to perform the work. SESAC, BMI, and ASCAP enter into license agreements with individuals who are composers, authors, and/or publishers of various songs. As a result, songs may reside in the repertories of multiple PROs. When this happens, the PROs “share” the licensing control of the copyright, and a blanket license from any of the shared owners is sufficient to avoid infringement.

20. ASCAP, founded in 1914, licenses the musical works of 435,000 songwriters, composers, and publishers, and has more than 8.5 million musical works in its repertory. BMI, founded in 1939, licenses the works of more than 500,000 songwriters, composers, and

publishers, and has more than 7.5 million musical works in its repertory. Both ASCAP and BMI are non-profit organizations.

21. SESAC was founded in 1930 as the Society of European Stage Authors and Composers. SESAC initially focused on publishers of European and Gospel music. In the 1970s, SESAC began contracting with composers. Today, SESAC has a musical repertory that includes Top40, Pop, Hip-Hop, Rock, Country, Spanish, Blues, Jazz, Big Band, Folk, Contemporary Christian, Gospel, and other musical compositions.

22. SESAC affiliates with a smaller number of composers and publishers than does either BMI or ASCAP. This strategy is entirely intentional and deliberate. SESAC is a self-described “selective organization.” SESAC has deliberately and intentionally limited the nature and number of its affiliates to those who give SESAC maximum negotiating power with licensees, while requiring the minimum necessary affiliate royalty expense; thus, ensuring the maximum stream of profits into SESAC coffers. SESAC ensures that it has exclusive rights to a critical mass of “must have” works so that entities like RMLC’s members cannot avoid taking a SESAC license, but SESAC carefully restricts its choices to those affiliates who will generate the highest profits for the company. SESAC frequently lures these carefully selected “must have” composers and publishers from ASCAP and BMI with promises of higher royalty payments that SESAC can make because of the monopoly power that the bundle of “must have” affiliates gives it.

23. Since current management acquired it in 1992, SESAC has consistently grown its revenue. From March 31, 2003 to March 31, 2012, SESAC’s affiliates have grown in number from approximately 8,000 to 23,000. In that same period of time, SESAC’s adjusted revenue has increased from \$49 million to \$144 million. As of March 31, 2012, SESAC had approximately

50,000 licensing agreements in place, collecting royalties from roughly 102,000 licensed locations. As of the same date, radio stations account for slightly more than a quarter of SESAC's revenue. In the last ten years, SESAC has retained more than 99 percent of its affiliates.

**RMLC Seeks to Negotiate License Fees with PROs on Behalf of its Radio-Station Members**

24. Plaintiff RMLC is an association that represents the interests of the commercial radio industry with respect to obtaining public-performance-right licenses to copyrighted music. To this end, RMLC currently negotiates license fees with two U.S. performing right organizations -- ASCAP and BMI -- whose licenses fall under federal court scrutiny pursuant to existing consent decrees; thus, allowing for a definitive, time-tested, rate-setting process. RMLC seeks to obtain fair and reasonable license fees on behalf of radio stations, negotiates for per-program and blanket-license carve outs that allow stations to achieve further fee discounting, and aims to achieve the broadest possible licenses covering new-media applications, including HD multicasting and streaming. Approximately 10,000 terrestrial radio stations in the United States are currently licensed in accordance with RMLC-negotiated industry licenses with ASCAP and BMI. RMLC has sought to negotiate license fees with SESAC on behalf of RMLC's members, but SESAC has refused to enter into any such negotiations and instead forces each of RMLC's members to deal individually with SESAC.

**Because Performing Rights Organizations Endanger Competition, Antitrust Consent Decrees Have Regulated ASCAP's and BMI's Conduct for More than Seventy Years**

25. For more than seventy years, it has been well established that performing rights organizations are inherently anticompetitive. Composers, authors, and publishers of music are actual or potential horizontal competitors in licensing rights to their music. In aggregating competing rightsholders' licensing decisions, PROs necessarily restrict price competition

between horizontal competitors. Safeguards in the form of antitrust law or regulatory oversight are crucial to prevent PROs from abusing the monopoly power that can result from their acquiring licensing rights over competitors' copyrighted works.

26. In 1941, the U.S. Department of Justice brought a high-profile antitrust lawsuit against ASCAP to challenge its blanket-licensing and related anticompetitive practices. The Justice Department also sued BMI in the same year, similarly alleging antitrust violations on account of the PRO's blanket licensing. Both ASCAP and BMI promptly signed consent decrees. BMI entered into a new consent decree with the government in 1966. Both ASCAP's and BMI's consent decrees with the Justice Department endure to this day.

27. The Justice Department has modified those decrees several times since, most recently in 2001 for ASCAP and in 1994 for BMI. As a result of those still-binding consent decrees, ASCAP and BMI: (i) must accept all qualified music composers and producers as affiliates; (ii) must not enter into exclusive contracts with their affiliates; (iii) must not insist that consumers take a blanket license; (iv) must offer consumers a genuine economic choice between a per-program license and a blanket license; (v) must offer consumers who apply in writing for licenses access to their repertories without exposure to copyright infringement, even in the absence of agreement on the license fees; and (vi) must accept the district court's determination of a reasonable fee in the event that they cannot agree upon a fee within 60 days.

28. In 1969, Columbia Broadcasting System, Inc. ("CBS") sued BMI and ASCAP, alleging that, in issuing blanket licenses, those PROs violated Sections 1 and 2 of the Sherman Act. Emphasizing that ASCAP and BMI were subject to antitrust consent decrees and that consumers were free to obtain individual direct licenses, the Supreme Court held in 1979 that ASCAP and BMI's blanket licenses were not *per se* illegal.

29. SESAC has a completely different business model than BMI and ASCAP. Unlike BMI and ASCAP, SESAC is a for-profit entity and is not subject to any consent decree. Furthermore, unlike the songs within BMI's and ASCAP's repertoires, as to which consumers have a "real choice" in obtaining direct licenses from copyright holders, SESAC's blanket license is the only practicable way to access songs in SESAC's repertory. In light of SESAC's refusal to permit carve-out rights, consumers of SESAC's must-have blanket license have no economic incentive to obtain direct licenses and SESAC's affiliates have no incentive to provide direct licenses at anything less than supracompetitive rates. Finally, at the time that DOJ sought and obtained the BMI and ASCAP decrees in the 1940s, SESAC did not control any meaningful bundle of copyrighted works and therefore did not exercise the type of monopoly power that it wields from the bundle that it has assembled today.

**SESAC Has Willfully Acquired a Monopoly**

30. SESAC has launched a sustained, anticompetitive campaign to create a bottleneck to essential copyrighted musical works. Unconstrained by any regulatory decree, SESAC has built an indispensable repertory by strategically constructing its affiliate base, has eliminated price competition among its 23,000 affiliates -- thus forming a cartel -- and has willfully obtained a monopoly. As the sole purveyor of rights to essential copyrighted works, SESAC extracts monopoly prices from radio stations and from other consumers. SESAC's construction of an artificial bottleneck creates no off-setting benefits to consumers or to larger society.

31. SESAC has achieved a monopoly through a carefully orchestrated strategy.

32. First, SESAC makes it impractical, and in many cases impossible, for radio stations to avoid playing at least some music in SESAC's repertory. It accomplishes this goal in a number of ways:

a. SESAC handpicks its affiliates to ensure that its repertory encompasses both a broad spectrum of prominent music as well as critical mass of exclusive (*i.e.*, non-shared) works, thus ensuring that it has licensing authority over music that radio stations and other consumers, as a practical matter, cannot avoid playing.

b. SESAC simultaneously (1) threatens radio stations and other consumers with huge copyright infringement fines for performing works in the SESAC repertory without a license and (2) obfuscates the works to which it has licensing authority. SESAC states that its website is the sole source of information about the works in its repertory, warns that “unlicensed music user[s] [may face] damages ranging up to \$150,000 for each song performed without proper authorization,” and yet simultaneously and prominently qualifies its repertory-database search with the language: “SESAC, Inc. makes no representations and/or warranties with respect to the accuracy or completeness of the information.”

c. It is neither practical nor feasible for a radio station to use SESAC’s repertory-search feature on its website to determine whether any of the works that the station may need to perform over a certain period of time require a SESAC license. SESAC’s repertory-search feature on its website only permits a user to search for one work at a time and requires the user to know the precise name of the song, writer, publisher, or artist for a given work. Entering the name of a single writer or publisher, for example, can return numerous results and require further review of multiple levels of data and/or numerous additional confirmatory searches to find a specific work or to attempt to determine that it is not listed.

Moreover, SESAC's website states that the database is "updated regularly and may change *on a daily basis*." (Emphasis added). Thus, a work that was not listed today could be listed tomorrow, and a radio station can never have confidence that it will not be subject to a claim of copyright infringement.

d. SESAC's repertory-search service does not permit consumers to search for certain types of compositions, such as advertising jingles (*e.g.*, the five-note McDonald's advertising jingle) and therefore makes it impossible for radio stations to avoid SESAC works even if they eliminated all feature uses of SESAC music.

e. Radio stations cannot realistically avoid playing some music within SESAC's repertory because they do not control the non-feature music played in the programs and commercials that they air. SESAC leverages jingles and other non-feature, locked-in content to coerce RMLC's members (many of which rely on advertising revenue to survive) to pay for a blanket license.

f. As a result of SESAC's carefully orchestrated structure, radio stations have no choice but to obtain a license from SESAC. SESAC fully admits as much on its own website: "Licenses with ASCAP and BMI DO NOT grant . . . authorization to use the copyrighted music of SESAC represented songwriters, composers and publishers," as a result, "most businesses obtain licenses with all three to obtain proper copyright clearance[.]"

33. Second, to avoid regulatory constraints of the kind that prevent ASCAP and BMI from using their positions as intermediaries to extract monopoly rents, SESAC deliberately maintains a membership that is much smaller than those of ASCAP and BMI. On its website,

SESAC admits that it, “by design, is the smallest of the three U.S. performing rights organizations” and that it “is a selective organization, taking pride in having a repertory based on quality, rather than quantity.” By contracting with copyright holders of sufficiently prominent musical works as to be indispensable to consumers, but by limiting the number of its affiliates to create the false impression that SESAC is a small player in the music industry, SESAC has achieved a monopoly that has thus far been free of a consent decree.

34. Third, to ensure that it is the monopoly seller of licenses to its affiliates’ copyrighted music, SESAC enters into *de facto* exclusive contracts with its members. SESAC accomplishes this exclusivity by preventing direct licensing between consumers and its members. Specifically, SESAC refuses to offer anything other than blanket licenses to radio stations, and refuses to offer either per-program or carve-out licenses. Forced to purchase blanket licenses, radio stations have no incentive to enter into direct licensing agreements that would require them to double pay.

35. Fourth, SESAC has steadfastly refused to negotiate with RMLC (even on a non-exclusive basis) regarding license fees, terms, or conditions for RMLC’s members. SESAC insists instead on requiring each of RMLC’s approximately 6,500 members to deal with SESAC individually, on a take-it-or-leave-it basis, creating serious inefficiencies. SESAC refuses to offer per-program licenses to RMLC’s members and/or permit those members to carve-out costs associated with obtaining direct licenses from the cost of blanket licenses.

**SESAC Is Not Comparable to ASCAP or BMI**

36. ASCAP and BMI are performing rights organizations that offer blanket, per-program, and carve-out licenses. ASCAP and BMI do not violate the antitrust laws because they are subject to stringent consent decrees that ensure, among other things, that the PROs: (1) enter

into non-exclusive arrangements with their members; (2) provide a genuine economic choice to consumers beyond a blanket license; (3) do not charge supracompetitive prices; and (4) maintain an open-door policy for prospective members. SESAC is a *per se* unlawful cartel, and not at all comparable to ASCAP or BMI.

37. First, unlike ASCAP and BMI, SESAC is not subject to a consent decree or to any other regulatory constraint. SESAC thus freely enters into *de facto* exclusive contracts with its members, deprives consumers of choice by making blanket licenses the only viable option, and charges monopoly prices without being subject to judicially imposed reasonable royalties. Antitrust consent decrees prohibit ASCAP and BMI from doing any of these things.

38. Second, SESAC neither creates nor adds to inter-platform competition between performing rights organizations. By withdrawing its members from the pool of copyright holders from whom consumers can obtain direct licenses, SESAC eliminates, and does not promote, competition. ASCAP and BMI cannot compete to obtain licensing authority on behalf of SESAC affiliates because SESAC can distribute part of its monopoly profits to its affiliates, which neither ASCAP nor BMI can comprehensively match on account of the consent decrees to which they are subject. SESAC admits that less than one percent of its affiliates have ever left for another PRO.

39. Third, SESAC creates monopoly distortions by forcing consumers to pay supracompetitive prices. SESAC neither expands nor improves the universe of musical compositions and performances.

#### **SESAC Has Maintained its Monopoly Through Exclusionary Practices**

40. SESAC has willfully acquired and maintained monopoly power in the market for licensing the copyrighted musical works in its repertory. It has not done so on the basis of

growth or development as a consequence of a superior product, business acumen, or historic accident.

41. SESAC has unlawfully acquired and maintained monopoly power by refusing to deal at any price with radio stations and other consumers that wish to purchase anything other than a fixed-fee blanket license. SESAC refuses to allow carve-out rights or to offer per-program licenses, which refusal makes it uneconomical for consumers to acquire licenses from copyright holders or other PROs. Its refusal to deal creates a monopoly bottleneck, through which SESAC charges monopoly prices.

42. SESAC has unlawfully acquired and maintained monopoly power by entering into *de facto* exclusive contracts, and thus acquiring sole licensing rights to indispensable musical works. By restricting competition between the copyright holders of such works, SESAC can and does charge monopoly prices, thus enabling SESAC to pay its affiliates greater average royalties than the consent-decree-limited ASCAP and BMI can offer.

43. SESAC has also acquired a monopoly in licensing the musical works in its repertory for HD radio multicasts by radio stations. Unlike ASCAP and BMI, which are subject to stringent consent decrees, SESAC refuses even to incorporate HD multicasting or streaming of the analog or HD signal to a station's website within its blanket-license offering. Instead, SESAC chooses to extract separate and additional monopoly rents from radio stations for such rights.

### **SESAC'S MARKET POWER**

#### **Relevant Product Market**

44. The relevant product market is licenses to the copyrighted musical compositions and performances in SESAC's repertory. SESAC has created a monopoly in this market by

bundling a unique set of copyrighted musical works, for which no adequate substitutes exist. By maintaining exclusive licensing authority over that bundle, SESAC creates and exploits bottleneck access to licenses covering those collectively essential musical works.

45. Licenses sold by ASCAP and BMI are not reasonably interchangeable with those that SESAC sells, and so SESAC's repertory occupies its own market. The only potential competitors to SESAC are SESAC's own affiliates. By virtue of being members of the SESAC cartel and as a result of SESAC's exclusionary practices, however, those copyright holders will not or cannot compete with SESAC. If SESAC were to raise price by five to ten percent above marginal cost (which it has done repeatedly, though by far more than ten percent), consumers of SESAC licenses, including RMLC members, could not (and in fact do not) look to ASCAP's and BMI's licenses as substitutes. This is because SESAC, by refusing to grant carve-out rights and per-program licenses, has exclusive rights to musical works that terrestrial radio stations cannot, as a practical matter, avoid playing. The musical works lying in SESAC's repertory are therefore indispensable. Because ASCAP and BMI do not offer licenses to those essential copyrights, they do not constrain SESAC's pricing power over those intellectual-property rights.

46. Over the last several years, SESAC has profitably and sustainably maintained exorbitant prices that are far greater than those charged by ASCAP and BMI, and has done so without suffering a loss of sales. Over the same time frame, SESAC has imposed a series of outrageous price increases, which radio stations have had little choice but to pay. As SESAC makes clear on its website: "[t]hose who perform copyrighted music represented by SESAC without the required permission may be determined by the courts to be willful infringers. This status subjects the unlicensed music user to damages ranging up to \$150,000 for each song performed without proper authorization." Indeed, SESAC has successfully sued radio stations,

including RMLC member stations, for copyright infringement for failing to obtain a license to SESAC's repertory. The fact that SESAC has been able consistently and profitably to charge monopoly prices demonstrates that demand-side substitution does not limit SESAC's monopoly power.

47. Supply-side substitution—entry into the market by potential competitors—does not constrain SESAC's monopoly power because SESAC has the *de facto* exclusive ability to license the essential musical works in its repertory. As SESAC shares part of its monopoly profits with its affiliates, no other PRO can successfully lure significant numbers of SESAC members away from SESAC. SESAC admits that more than 99% of its affiliates never leave, and that “[w]e are extremely competitive with our royalty rates[.]” Moreover, even if an entrant could induce some SESAC affiliates to defect at the end of their contracts, the SESAC cartel would remain in full effect because SESAC could replace lost affiliates with new members, and thus continue to acquire exclusive licensing rights over indispensable works. The fact that SESAC has profitably maintained monopoly prices without losing market share to ASCAP, BMI, or any third-party competitor establishes that entry barriers foreclose competition. Entry into the market of SESAC-repertory works is therefore impossible, and cannot limit SESAC's ability to charge monopoly prices.

#### **Relevant Geographic Market**

48. The relevant geographic market is the United States. SESAC does not limit its sales to any one part of the country, but sells licenses to RMLC members and to other consumers all over the United States.

#### **SESAC's Monopoly Power**

49. **100-percent market share:** As SESAC possesses 100 percent of the relevant market, SESAC has monopoly power. SESAC has continuously exercised that power, profitably

selling at supracompetitive prices without suffering a loss of demand or a diversion of sales toward ASCAP, BMI, or a third-party competitor. As set forth above, barriers to entry are not just high, they are virtually insurmountable.

50. **No Regulation or Consent Decree Constrains SESAC's Pricing:** In obtaining exclusive rights to a critical mass of copyrighted musical works that are collectively indispensable, by refusing to deal with consumers other than on a blanket-license-only basis, and by imposing *de facto* exclusive-dealing requirements on its affiliates, SESAC has acquired and maintains a monopoly over the music in its repertory. Unlike ASCAP and BMI, SESAC is subject to no regulatory oversight that constrains its pricing power. As a result, SESAC can and does exercise unfettered monopoly power.

51. **Entry Barriers Protect SESAC's Monopoly:** Entry barriers in the form of SESAC's exclusive contracts and SESAC's ability to share part of its monopoly profits with its cartel affiliates enable it profitably to charge supracompetitive prices without being constrained by the threat of entry.

#### **SESAC'S UNLAWFUL AND ANTICOMPETITIVE ACTIVITIES**

52. SESAC has engaged in a variety of illegal and anticompetitive practices, including price fixing and exclusionary conduct aimed at securing and maintaining monopoly power.

#### **SESAC Has Fixed Prices to the Musical Compositions in its Repertory**

53. But for SESAC's exclusionary conduct, SESAC's affiliates would have the ability through direct licenses to offer RMLC's members access to the same copyrighted works that SESAC offers through a blanket license. SESAC and its affiliates are therefore horizontal competitors within the meaning of the antitrust laws. Were they to compete with one another,

the price of public-performance-right licenses would fall and the quantity of such licenses sold would increase.

54. SESAC and its affiliates have agreed to allow SESAC to aggregate and sell rights to its affiliates' copyrighted music exclusively through blanket licenses, thus eliminating price competition among and between SESAC and its members. By refusing to allow carve-out rights or per-program licenses, SESAC and its affiliates have agreed to make it uneconomical for consumers to negotiate direct licenses from the affiliates. This practice eliminates any price competition among SESAC's affiliates, as well as between SESAC and its affiliates.

55. Save to eliminate competition and obtain monopoly power, it is against SESAC's affiliates' self-interest to force RMLC's members to enter into blanket licenses with SESAC as the only practical option to obtain access to the affiliates' copyrighted works. The affiliates' self-interest should be to maintain maximum flexibility to negotiate the best possible license fee for their work, including the ability to negotiate direct licenses with individual RMLC members.

56. SESAC is therefore a naked cartel, and the blanket-license fee that it charges is simply price fixing between horizontal competitors. SESAC's cartel pricing does not generate any off-setting benefits; nor does regulation or competitive pressures constrain SESAC's power over price.

#### **SESAC Has Entered Into Exclusive-Dealing Contracts**

57. SESAC enters into *de facto* exclusive contracts with its affiliates, thus foreclosing any direct licensing between consumers and its copyright-holder affiliates. Although SESAC purports to authorize its affiliates directly to license their copyrighted music, that authorization is in fact illusory.

58. Because SESAC refuses to offer any viable alternative to its blanket license, no radio station has an incentive to acquire individual licenses directly from copyright holders. Absent a carve-out right, any direct license that a consumer acquired would have no effect on SESAC's blanket-license fee, but would entail an additional royalty burden on the consumer. When radio stations purchase blanket licenses from SESAC, therefore, they necessarily lack any incentive to acquire direct licenses from SESAC affiliates. As alleged in Paragraph 32, it is not possible for radio stations to obtain licenses directly from SESAC affiliates and to forego dealing with SESAC. By acquiring licensing rights over handpicked, indispensable musical works, and by foreclosing any direct licensing between its affiliates and consumers, or any prospect for a carve-out discount, SESAC achieves *de facto* exclusive licensing rights.

59. SESAC requires its affiliates that directly license to "notify SESAC in writing within 10 days of the license being granted and also provide a copy of the license. Royalties that are otherwise payable will not be paid to performances that are direct licensed." Because SESAC and its affiliates agree that SESAC will not pay its affiliates royalties for performances that are directly licensed, an affiliate has no economic incentive to directly license its works unless it can command a higher royalty rate from the direct license than it would obtain from SESAC. But that is impossible for two reasons. First, SESAC's unlawful monopoly power allows it to command supracompetitive fees from licensees (including RMLC members) and therefore to pay its affiliates royalties far in excess of royalties set by free competition. Second, because SESAC refuses to allow any carve-out rights to its blanket license, a radio station has no economic incentive to agree to a direct license at any rate, much less at a rate that exceeds the exorbitant supracompetitive royalties that SESAC is able to pay its affiliates. SESAC and its

affiliates have agreed on a system that ensures that RMLC's members have no economically viable alternative to the blanket license.

**SESAC Has Refused To Deal**

60. SESAC has refused to deal with RMLC members that wish to purchase music from its repertory other than on a blanket basis. SESAC steadfastly rebuffs any attempt by RMLC to negotiate, let alone to entertain RMLC's requests for blanket-license carve-out rights or per-program licenses. SESAC has also refused to deal with RMLC members that are unwilling to pay the monopoly price that SESAC demands, but that offer to pay competitive prices equal to or even greater than those that ASCAP and BMI offer. These refusals constitute an exclusionary practice and a horizontal agreement between competitors, which refusals foster monopoly and quash competition.

**SESAC HAS A SPECIFIC INTENT TO MONOPOLIZE  
THE RELEVANT MARKET**

61. SESAC has monopolized the market for copyrighted music in its repertory with the specific intent of securing monopoly power and charging supracompetitive prices. In refusing to deal with consumers who seek blanket-license carve-out rights or per-program licenses, in entering into *de facto* exclusive contracts with its affiliates, and in extracting monopoly rents from consumers, SESAC has been motivated by neither efficiency nor any other procompetitive factor. SESAC's principal objective was and remains willfully to acquire and to maintain monopoly power.

62. As alleged in Paragraphs 32 and 33, SESAC strategically hand-picks a relatively small number of affiliates simultaneously to create an essential repertory of musical works and to maintain a sufficiently small profile to avoid regulatory oversight. SESAC undertakes these actions with the specific intent of achieving and maintaining a monopoly.

### **INJURY TO COMPETITION**

63. SESAC's price fixing and monopolization have seriously harmed the competitive process. If left unchecked, SESAC's anticompetitive conduct will cause RMLC's members and other consumers to continue to pay monopoly overcharges for musical compositions that would otherwise be available at competitive prices. Such supracompetitive fees generate unjustified wealth transfers from consumers to cartel members, and inefficiently distort behavior both in the market for SESAC's repertory of copyrighted music and beyond.

#### **Higher Prices**

64. By forming a cartel with its affiliate copyright holders, by creating a bottleneck to the copyrighted musical works in its repertory, and by ensuring that certain of the copyrighted works to which it has exclusive rights are indispensable to consumers, SESAC has eliminated competition and achieved monopoly power. SESAC has consistently exercised that power, extracting monopoly rents from RMLC members and from other consumers. Market prices that increase directly as a result of horizontal restrictions on price competition or because of monopolization constitute a paradigmatic injury to competition.

#### **Restricted Consumer Choice**

65. SESAC's price fixing and monopolization have allowed the company to secure exclusive rights to essential copyrighted musical works. Were it not for SESAC's antitrust violations, RMLC members and other consumers could instead obtain licenses to those works from alternative sources. SESAC's antitrust violations have foreclosed potential competitors from licensing indispensable copyrighted musical works, thus extinguishing consumer choice and injuring the competitive process.

66. SESAC's anticompetitive conduct has also limited consumer choice as to the

form of license to copyrighted musical works. By providing radio stations with a Hobson's choice between a blanket license and no license from SESAC at all, SESAC denies consumers the option of per-program licenses, blanket carve-out rights, per-play licenses, or licenses solely for music appearing in commercial advertising. SESAC's illegal behavior has deprived consumers of the choice that competition would have bestowed upon them.

#### **ANTITRUST INJURY TO RMLC'S MEMBERS**

67. RMLC's members have suffered injury of the type that the antitrust laws were intended to prevent and that flows from that which makes SESAC's acts unlawful.

68. Horizontal price fixing and monopolization that eliminate competition between rivals and that cause consumers to pay supracompetitive prices epitomize the kind of injury that the antitrust laws were intended to prevent. RMLC's members have purchased licenses directly from SESAC and have paid monopoly prices on account of SESAC's anticompetitive conduct, and so their injury flows from that which makes SESAC's behavior unlawful. Absent an injunction, RMLC's members face an unabated imminent threat of continued future injury in the form of having to continue to pay supracompetitive prices.

#### **ASSOCIATIONAL STANDING**

69. RMLC is a trade association whose objective is to achieve fair and reasonable license fees from PROs (including ASCAP, BMI, and SESAC) on behalf of its radio station members. As such, RMLC has standing to bring the present action on behalf of its members.

70. RMLC's members consist of approximately 6,500 U.S. radio stations involved in the business of terrestrial radio broadcasting. Another 3,500 stations have agreed to be "bound" by the terms of the RMLC-negotiated licenses with ASCAP and BMI and, thereby, to pay the RMLC court-mandated fees to assist with operational expenses. RMLC's membership is open to

all U.S. terrestrial radio stations or groups of radio stations “under direct or indirect common control.” RMLC’s member stations pay court-mandated dues to RMLC and have the right to resign their membership.

71. Many, if not all, of RMLC’s members have suffered a concrete and particularized injury in the form of paying artificially high licensing fees for performance rights to the SESAC repertory due to SESAC’s anticompetitive behavior. RMLC members have been forced to pay SESAC’s non-negotiable supracompetitive rate card rates, which, since at least 2009, have increased by a compounded rate of approximately 8% and 20% every year for analog and web-site broadcasting (*e.g.*, streaming), respectively. SESAC separately charges monopoly fees for digital radio broadcasting (*e.g.*, HD multicasting), for which it demands a fee effectively equal to 10% of the applicable analog fee, with annual compounded increases equal to the greater of the consumer price index or 5%.

72. None of the fee increases that RMLC’s members have been forced to pay is tied to growth in the size or popularity of the SESAC repertory.

73. RMLC’s members face an imminent threat of continued harm as they are currently renegotiating license fees with SESAC. If they do not receive any relief, they will have to choose between acceding to SESAC’s anticompetitive demands or risking suit for copyright infringement.

74. Injunctive relief prohibiting SESAC’s anticompetitive conduct and establishing a negotiation process through which the parties could agree upon a fair and reasonable licensing fee would prevent continued injury to RMLC’s members.

75. This suit is germane to RMLC’s purpose. RMLC has been negotiating licenses with PROs on behalf of the radio industry since 1935, when it was still a part of the National

Association of Broadcasters, and negotiated the first industry-wide licensing agreement between ASCAP and radio stations. RMLC's mission statement declares that one of its objectives is "to achieve fair and reasonable license fees with the music licensing organizations . . . on behalf of radio stations." RMLC's bylaws also authorize it to negotiate licenses and "to perform such acts to accomplish its purposes as the Corporation may determine to be appropriate." Additionally, RMLC's corporate charter declares as the first of the "purposes for which the corporation is formed" "[t]o promote the common business interests of commercial radio stations . . . and, in particular, to represent the interests of the commercial radio industry on music licensing matters." Further, all of RMLC's members have signed an authorization form that permits RMLC to "institute . . . in the name of all authorizing stations proceedings to establish reasonable fees and terms for such licenses."

76. RMLC's claims do not require the individual participation of each of its members to obtain the relief that it seeks. RMLC seeks only injunctive relief, not damages. SESAC violated the antitrust laws by employing common licensing practices that affect all RMLC members. RMLC can establish the illegality of these practices through evidence of SESAC's conduct that is common to its members.

#### **COUNT I**

##### **Horizontal Price Fixing in Violation of Section 1 of the Sherman Act**

77. RMLC repeats and realleges each and every allegation of this complaint.

78. SESAC's approximately 23,000 affiliates are copyright holders of musical works.

79. But for SESAC's creation of a bottleneck, SESAC's affiliates would have the ability through direct licenses to offer RMLC's members access to the same copyrighted works that SESAC offers through a blanket license. SESAC and its affiliates are therefore horizontal competitors within the meaning of the antitrust laws.

80. As horizontal competitors, SESAC and its affiliates should compete over price; however, they have instead agreed between and among themselves to combine to eliminate competition and to secure monopoly profits.

81. As set forth above, SESAC and its affiliates have agreed between and among themselves to make any licensing option other than a blanket license both practically and economically irrational for RMLC's members, in order to extract monopoly rents. In addition, SESAC and its affiliates have agreed between and among themselves to make direct licensing by the affiliates economically irrational for the affiliates.

82. Absent conspiratorial intent to secure monopoly profits by eliminating horizontal competition, it is against SESAC's affiliates' self-interest to force RMLC's members to enter into blanket licenses with SESAC, as the only practical option to obtain access to the affiliates' copyrighted works. The affiliates' self-interest should be to maintain maximum flexibility to negotiate the best possible license fee for their work, including the ability to negotiate direct licenses with individual RMLC members.

83. SESAC and its affiliates' agreement to eliminate price competition between and among them, so that SESAC can charge supracompetitive fees for blanket licenses, constitutes price fixing that is *per se* unlawful under the antitrust laws.

84. Even if the rule of reason applied to the agreement between SESAC and its affiliates, that agreement would be illegal under the rule of reason. By combining their copyrighted music in one licensing entity, SESAC and its affiliates acquire and exercise monopoly market power, thus eliminating competition and forcing consumers to pay supracompetitive prices.

85. The procompetitive benefits, if any, of the restraint of trade between SESAC and its members alleged above do not outweigh the anticompetitive effects of that conduct.

86. This unlawful combination, contract, conspiracy, and agreement has injured and continues to threaten injury to RMLC's members in their business or property as set forth above. Among other things, RMLC's members have paid (and are in imminent threat of having to continue to pay) higher license fees for access to copyrighted works in the SESAC repertory than they otherwise would have paid (or would continue to pay) in the absence of SESAC's unlawful conduct.

87. An injunction is necessary to remedy the continuing violation.

**COUNT II**  
**Group Boycott/ Refusal to Deal**  
**in Violation of Section 1 of the Sherman Act**

88. RMLC repeats and realleges each and every allegation of this complaint.

89. SESAC and its affiliates have agreed between and among themselves to refuse to deal with any of RMLC's members that do not wish to enter into a blanket license. By agreeing between and among themselves to make blanket licenses the only licensing means for RMLC's members, and by refusing to permit carve-out rights or a viable per-program license, SESAC and its affiliates have engaged in an unlawful group boycott.

90. Because SESAC and its affiliates are horizontal competitors, their refusal to deal with RMLC's members on terms other than on a blanket-license basis is *per se* unlawful under Section 1 of the Sherman Act.

91. Even if SESAC and its affiliates were not horizontal competitors, their collective refusal to deal/group boycott would still be unlawful under the rule of reason. SESAC has market power in the market for licenses to the copyrighted musical compositions and

performances in SESAC's repertory. The refusal to deal/group boycott has had a substantial and unreasonable anticompetitive effect in this market, including the fact that it eliminates price competition, thus forcing consumers to pay monopoly prices.

92. The procompetitive benefits, if any, of the refusal to deal/group boycott alleged above do not outweigh the anticompetitive effects of that conduct.

93. SESAC's refusal to deal/group boycott has injured and continues to threaten injury to RMLC's members in their business or property as set forth above. Among other things, RMLC's members have paid (and are in imminent threat of having to continue to pay) higher license fees for access to copyrighted works in the SESAC repertory than they otherwise would have paid (and would continue to pay) in the absence of SESAC's unlawful conduct.

94. An injunction is necessary to remedy the continuing violation.

### **COUNT III**

#### **Monopolization in Violation of Section 2 of the Sherman Act**

95. RMLC repeats and realleges each and every allegation of this complaint.

96. SESAC has willfully acquired and maintained monopoly power in the market for licensing the copyrighted musical works in its repertory. SESAC has done so through a series of exclusionary practices that are capable of foreclosing, and that have in fact foreclosed, equally or more efficient competitors.

97. By refusing to deal with radio stations other than by providing a blanket license with no per-program or carve-out alternatives, SESAC forecloses licensing competition with other PROs and with its constituent affiliates. Because of SESAC's unlawful agreements with its affiliates, and because SESAC refuses to make the full content of its repertory available, RMLC's members have no practical or economically viable alternative to SESAC's blanket

license. This refusal to deal has enabled SESAC to acquire and further to entrench its monopoly in the licensing of music within its repertory.

98. SESAC has entered into *de facto* exclusive contracts with its affiliates that make it economically irrational for them to grant direct licenses to RMLC's members. These exclusive contracts exclude competition in the licensing of the copyrighted works owned by SESAC's affiliates and enhance SESAC's monopoly power.

99. SESAC has abused and continues to abuse its monopoly power in order to maintain and enhance its market dominance by unreasonably restraining trade, thus artificially inflating the license fees it charges RMLC's members.

100. Through its predatory campaign, SESAC has violated Section 2 of the Sherman Act by willfully monopolizing the market for the copyrighted works within its repertory.

101. SESAC's conduct has injured and continues to threaten injury to RMLC's members in their business or property as set forth above. Among other things, RMLC's members have paid (and are in imminent threat of having to continue to pay) higher royalty license fees for access to copyrighted works in the SESAC repertory than they otherwise would have paid (and would continue to pay) in the absence of SESAC's unlawful conduct.

102. An injunction is necessary to remedy the continuing violation.

#### **RELIEF SOUGHT**

WHEREFORE RMLC respectfully requests the following relief:

- A. That SESAC's unlawful conduct be declared, adjudicated, and decreed a violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2;
- B. That RMLC be awarded mandatory injunctive relief in the form of: (i) requiring SESAC to submit to a judicial rate-making procedure comparable to what the

consent decrees regulating ASCAP's and BMI's behavior impose; (ii) enjoining SESAC from entering into *de facto* exclusive contracts with copyright holders; and (iii) requiring SESAC to make available economically viable alternatives to blanket licenses, such as per-program licenses, blanket carve-out fees, and commercial-only licenses;

- C. That RMLC be awarded expenses and costs of suit, including reasonable attorneys' fees, to the extent provided by law; and
- D. That RMLC be awarded such additional relief as the Court may deem proper.

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Peter J. Mooney  
WHITE & WILLIAMS LLP  
1650 Market Street  
One Liberty Place, Suite 1800  
Philadelphia, PA 19103-7395  
Telephone: (215) 864-7164  
Facsimile: (215) 789-7664  
Email: [mooneyp@whiteandwilliams.com](mailto:mooneyp@whiteandwilliams.com)

Margaret M. Zwisler (*pro hac vice* to be filed)  
DC245951  
Jennifer L. Giordano (*pro hac vice* to be filed)  
DC496746  
LATHAM & WATKINS LLP  
555 Eleventh Street, NW, Suite 1000  
Washington, DC 20004  
Telephone: (202) 637-1092  
Facsimile: (202) 637-2201  
Email: [Margaret.Zwisler@lw.com](mailto:Margaret.Zwisler@lw.com)  
Email: [Jennifer.Giordano@lw.com](mailto:Jennifer.Giordano@lw.com)

Alfred C. Pfeiffer, Jr. (*pro hac vice* to be filed)  
CA120965  
LATHAM & WATKINS LLP  
505 Montgomery Street, Suite 2000  
San Francisco, CA 94111-6538  
Telephone: (415) 391-0600  
Facsimile: (415) 395-8095  
Email: [Al.Pfeiffer@lw.com](mailto:Al.Pfeiffer@lw.com)