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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TERI WOODS PUBLISHING, LLC,

Plaintiff,

v.

AMAZON.COM, INC., AUDIBLE, INC.,
BLACKSTONE AUDIO, INC., and URBAN
AUDIO BOOKS, LLC,

Defendants.

Civil Action No.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Teri Woods Publishing, LLC (“TWP”), by and through its attorneys, hereby alleges against defendants Amazon.com, Inc. (“Amazon”), Audible, Inc. (“Audible”), Blackstone Audio, Inc. (“Blackstone”) and Urban Audio Books, LLC (“UAB” and together with the other defendants, “Defendants”), as follows:

INTRODUCTION

1. Plaintiff TWP is the publishing company for renowned author Teri Woods, through which she distributes her literary works. Over the past decade, Woods’ books have attracted millions of readers, have become *New York Times* best sellers, and have even been made into a series of feature films. As a result of her literary success, in 2018, TWP licensed to defendant UAB the right to distribute certain audiobook versions of her works in exchange for

compensation based on the volume of sales generated on a per-unit basis (the “License Agreement”). A true and correct copy of the License Agreement is attached as Exhibit 1.

2. However, UAB breached the License Agreement in multiple ways, including by exceeding the grant of rights it contained, and by failing to pay TWP the royalties to which it was entitled under the contract. On top of that, both UAB itself, and the remaining Defendants with UAB’s apparent (but unauthorized) permission, have been giving away TWP’s works for free to premium subscribers of their audiobook streaming and digital download services in a manner that has cannibalized Woods’ other audiobook revenue streams, all in violation of the License Agreement, and all without properly compensating TWP. Such misconduct by Defendants has both breached the License Agreement and infringed TWP’s copyrights.

3. To demonstrate the magnitude of Defendants’ wrongful conduct, from July 2020 through June 2022, TWP’s works appear to have generated substantial digital streams, potentially numbering in the millions, for which TWP has only received \$8,059.63 in royalties. Under the terms of the License Agreement, TWP should have received millions of dollars in license revenue, upon information and belief.

4. The crux of the dispute is that all Defendants, including UAB, run audiobook subscription services whereby, for a monthly membership fee, they grant members unlimited access to TWP’s works. However, despite charging monthly fees—\$14.95 for Audible (which can be linked to a user’s Amazon account); \$12.99 for Blackstone and UAB—they have not shared those fees or otherwise properly compensated TWP for streaming its works. Indeed, Amazon advertises TWP’s literary catalog as costing “\$0.00” and/or being “free” for Audible members, yet audiobooks authored by Woods are listed on Amazon for purchase between \$15

and \$25. The License Agreement did not grant rights for TWP's works to be exploited in this manner.

5. What the License Agreement did require was that UAB supply TWP twice each year with a "statement of sales and royalties" listing each sale of any of the licensed TWP works, so that TWP can ensure that is receiving the proper remuneration from UAB's exploitation of its license rights. However, TWP has not received compliant statements; rather, it has received opaque information that does not comport with the License Agreement and woefully undercounts TWP's royalty amounts.

6. UAB's statements are intentionally opaque: UAB, either directly or indirectly, has licensed to the other Defendants the right to stream TWP's works in a manner TWP never authorized, without even compensating TWP as required under the License Agreement. Due to the lack of information provided on the royalty statements, TWP is unable to determine reliably the number of times its works have been distributed by Defendants. To make matters worse, it appears that TWP only receives compensation for certain "qualified" streams, meaning that even when TWP's works are distributed through Defendants' services, TWP does not necessarily receive *any* compensation.

7. Regardless of the arrangements that UAB has entered into with the other Defendants, UAB is prohibited by contract and by law from exceeding the scope of the rights granted, and at a bare minimum must pay TWP royalties as the License Agreement requires. However, by providing the TWP catalog of works to the Defendants to stream to their members, without compensating TWP on a per-work basis (as the License Agreement requires), UAB has deprived TWP of millions of dollars in revenue, upon information and belief.

8. This loss of revenue concerns not just under-reported royalties to TWP on “digital streams,” but lost revenues on other types of audiobook distributions that have not occurred because of what Defendants have done. For example, when the License Agreement was signed in 2018, the TWP works were not available as so-called “digital streams,” and TWP received royalties based on each sale or rental of one of its audiobooks. In mid-2020, however, the TWP works became available as “digital streams,” and that quickly became the predominant distribution model, cannibalizing all other sources of revenue. Specifically, the royalty report for the first half of 2021 lists a total of 11,058,073 sales—of which 11,051,733 were digital streams. Put differently, within twelve months, 99.94% of all TWP audiobook sales became digital streams. At the same time, all of TWP’s other revenue channels dried up—few readers wanted to pay \$15 or more for a single audiobook when the Defendants were essentially giving them away for free to members of their streaming services.

9. As a result of Defendants’ conduct, TWP has, upon information and belief, lost millions of dollars in unpaid royalties and is also entitled to statutory damages under the U.S. Copyright Act, while Defendants have earned substantial profits that should be disgorged to TWP.

PARTIES

10. Plaintiff TWP is a New York limited liability company with its principal office at 19834 Hopkins Road, Lewes, Delaware. TWP regularly conducts business in the State of New York.

11. Defendant Amazon.com has a principal place of business at 410 Terry Avenue North, Seattle, Washington 98109-5210 and maintains multiple business facilities within New York State, including a warehouse and distribution center in Staten Island and a distribution

center in Queens. Amazon maintains offices at 410 Tenth Avenue, 450 West 33rd Street, and 7 West 34th Street, all in New York, New York.

12. Defendant Audible is a Delaware corporation with its principal place of business located in Newark, New Jersey. Audible is a subsidiary of Amazon.com, Inc. Audible's headquarters is located at One Washington Park Newark, New Jersey 07102. Audible advertises and sells audiobooks and related products and services on the websites accessible at <www.audible.com> and <www.amazon.com>, among other places. It is registered with the New York Secretary of State and is doing business in the State of New York and in this District, including distributing audiobooks in the District directly and via Amazon.com.

13. Defendant Blackstone is an Oregon corporation with its principal place of business at 31 Mistletoe Road, Ashland, Oregon 97520. Blackstone advertises and sells audiobooks directly to consumers through its website accessible at <www.blackstoneaudio.com>, and it also distributes audiobooks to other websites such as Audible. It is registered with the New York Secretary of State and is doing business in the State of New York and in this District, including distributing audiobooks in the District both directly and via Audible and Amazon.com.

14. Defendant UAB is a New York limited liability company with its principal place of business listed as 144 North 7th Street #255, Brooklyn, New York 11249. The License Agreement states that UAB "submit[s] to the jurisdiction of the Courts of the State of New York, and acknowledge[s] that [its] activities constitute a requisite minimum contact to establish and justify the jurisdiction of the Courts of the State of New York."

JURISDICTION AND VENUE

15. This action arises under the U.S. Copyright Act of 1976, 17 U.S.C. §§ 101, *et seq.* This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338, as this case involves

claims of copyright infringement arising under federal law. This Court has supplemental jurisdiction over TWP's contract claims under 28 U.S.C. § 1367(a) because these claims are so related to TWP's federal copyright claims that they form part of the same case or controversy under Article III of the United States Constitution.

16. Venue is proper pursuant to 28 U.S.C. §§ 1391 and 1400 because the events giving rise to the allegations in this complaint occurred in this District.

17. Section XI of the License Agreement states that "This Agreement has been negotiated and entered into in New York, and shall be construed and enforced in accordance with the laws of the State of New York. For valuable consideration and as a material provision of this Agreement, both parties agree that the sole and exclusive jurisdiction for this arbitration and litigation of any claim arising from this Agreement shall be determined in the Courts of, and according to the laws of, the State of New York. Both parties hereby submit to the jurisdiction of the Courts of the State of New York, and acknowledge that their activities constitute a requisite minimum contact to establish and justify the jurisdiction of the Courts of the State of New York."

18. Upon information and belief, each of the Defendants conducts significant business in the State of New York, maintains offices located in New York, and has distributed without authorization from TWP audiobook versions of TWP's works to customers in New York and this District and thereby infringed TWP's copyrights.

FACTUAL BACKGROUND

A. Teri Woods' Literary Career and the Formation of TWP

19. Woods completed her first novel, *True to the Game*, while working as a legal secretary for a law firm and juggling motherhood in Philadelphia, Pennsylvania. Woods submitted her story over a period of six years to more than 20 different publishers, all of which

rejected her submissions. Without any major publisher willing to give her a chance, in 1998, Woods printed copies of the book herself and began selling her book to booksellers in and around the Philadelphia area and, eventually, across the United States.

20. Woods' success can be traced directly to her tenacity and hard work, as it was not easy to achieve her goals. At times, she slept in her car and on the couches of her friends while trying to sell her books from the trunk of that same car. Her efforts were rewarded: after just a few years, *True to the Game* became an unquestionable success. It was such a success that, in 2018, *True to the Game* became a movie. *True to the Game* the movie was produced by Manny Halley of Imani Entertainment Group and starred Vivica A. Fox, Columbus Short, Erica Peeples, and Nelson Ellis.

21. As for *True to the Game* the book, it was such a hit that Woods wrote two sequels, *True to the Game II* and *True to the Game III*, each of which made *The New York Times* Best Sellers List. *True to the Game II* and *True to the Game III* were also made into movies.

22. In 2002, Woods formed TWP, a self-publishing house to publish her own work and works of others, principally in the urban fiction genre—a demographic largely ignored by major publishers. TWP is the exclusive licensee of all books created, authored or co-authored by Woods and holds all of Woods' rights to such works, including the right to enforce Woods' copyrights. As the owner of TWP, Woods has authored, co-authored and published 20 urban fiction novels. These titles have included national best sellers. The *True to the Game* series has sold millions of copies, as has the *Dutch* series, with Woods' book *Dutch III, International Gangster* making the *New York Times* Best Sellers List in May of 2011.

23. Woods' literary success garnered her national media attention, including in publications such as *Newsweek*, *XXL*, *Savoy*, *The Source* and *Vibe* magazines. Her participation

in a *Newsweek* roundtable discussion featuring African American notables who included Star Jones, Beyonce Knowles-Carter, and ABC News correspondent Deborah Roberts, created a national buzz in major media circles.

24. Currently, Woods, through TWP, is working on a new children's book line on which she is collaborating with her two sons, Lucas Woods and Brandon Woods, titled *Lucas and Brandon's Magical Playroom*. In 2016, Woods developed the Love, Values and Morals Program designed for elementary school students to learn about values and morals. She began reading to children in New York City Public Schools, and her company became a vendor (FAMIS) with the Department of Education in New York City.

B. The License Agreement and the Limited Grant of Rights It Contains

25. On or about December 19, 2018, TWP and UAB entered into the License Agreement. Under the License Agreement, TWP granted to UAB the “**exclusive** unabridged audio publishing rights, to manufacture, market, sell and distribute copies throughout the World, and in all markets, copies of unabridged readings of the following literary work(s) and title(s) [as] audiobooks” (emphasis in original). The License Agreement lists the 20 copyrighted literary works owned or exclusively licensed by TWP and subject to the License Agreement (the “TWP Works”). *See* Exh. 1, § I. Each of the TWP Works, of which TWP is the sole owner or exclusive licensee, has been registered with the U.S. Copyright Office, and the registration numbers and dates of issuance for each registration covering the TWP Works are set forth in Exhibit 2.

26. In consideration for the license rights granted to UAB by TWP, UAB agreed to pay to TWP royalties on a per-unit basis. The amount of the royalty depends on the type of sale

made: 10% of UAB’s “net receipts”¹ from “catalog, wholesale and other retail sales and rentals of the audio recordings of said literary work”; 25% of UAB’s “net receipts” from “all internet downloads of said literary work”; and 25% of UAB’s “net receipts” from “Playaway format sales in respect of which Playaway (A) produces the particular Playaway unit concerned (with Licensee furnishing Playaway with the audio to produce such unit); (B) sells such unit through Playaway’s channels; and (C) pays a royalty to Licensee in respect of Playaway’s sales of such unit.” Exh. 1, § II(1)(a-c). Nothing in the License Agreement contemplates payment of royalties based on audiobook streaming membership fees, nor does it contemplate royalties calculated on anything other than a per-unit basis, whatever those units may be. Consistent with New York law, the License Agreement imposes an implied obligation on UAB to exercise reasonably diligent efforts to maximize revenue for TWP on the distribution of the TWP Works and not to engage in conduct that has the effect of damaging sales of the TWP Works, given the exclusive nature of the rights granted to UAB.

27. The License Agreement provides for TWP to receive advances of royalties for each TWP Work. Exh. 1, § I. The amount of each advance depends on the audiobook. For example, TWP received an advance of \$5,000 on the audiobook *True to the Game 1*, and \$2,000 on *Deadly Reigns*.

28. The License Agreement also makes clear that while UAB can make use in a limited way of excerpts taken from the licensed TWP Works, which are deemed among other “Promotional Materials,” provided that any such excerpted Promotional Materials are “not to

¹ The License Agreement provides that “Net receipts shall be defined as the actual cash proceeds received by Licensee, after deducting a twenty percent (20%) reserve, returns, discounts and allowances, and sales taxes, shipping and handling charges which may be included in the sales or rental prices, but without deductions of any other kind.” Exh. 1, § II(2).

exceed 7,500 words.” Exh. 1, § II(1)(a-c). In addition, the License Agreement is clear that UAB may use Promotional Materials like book excerpts “*solely* in connection with the promotion and advertisement of the recorded work,” (emphasis added), Exh. 1, § V, not to make them available for streaming on a private premium subscription platform at TWP’s expense.

29. Finally, Section II(2) of the License Agreement limits UAB’s right to supply free copies of the TWP Works, on which no royalties are payable, for “review, advertising, sample or like purposes.”

C. UAB Breaches the License Agreement

30. At the inception of the License Agreement, UAB did not distribute any TWP Works as “digital streams”; instead, the royalty report from the second half of 2019 reflects that the TWP Works were distributed solely through traditional audiobook distribution channels such as MP3 CD, Library CD, Retail CD, Digital Library and Digital Retail. Each of these revenue streams paid an *actual* per-unit rate, not a nominal one. For instance, according to an audit of UAB requested by TWP, the price of the TWP Works ranged up to \$100, and TWP was paid between 10% and 25% of every sale, depending on the medium of distribution.

31. By the second half of 2020, approximately eighteen months after the License Agreement was executed, TWP’s royalties plummeted, even though UAB’s royalty statements showed that sales of the TWP Works had substantially *increased*. The drastic drop in royalties was apparently due to Defendants’ distribution of the TWP Works by so-called “digital stream.”

32. For example, although a royalty audit requested by TWP listed the price of a digital stream as between \$16.95 to \$22.95, UAB’s royalty statements show that UAB only received an average of \$0.001 per stream across all titles. Under the License Agreement, TWP was entitled to a royalty of 25% of the Net Receipts of each sale; however, TWP was paid only

an average of \$0.00026 per digital stream across all titles—approximately 1/250th of a penny. Thus, while the June 30, 2021 royalty statement reports over eleven million “digital streams” across all titles, it listed only \$2,832.72 in compensation owing to TWP.

33. What this means is that while Defendants distributed the TWP Works as “digital streams,” UAB did not remit to TWP the royalties due and owing under the License Agreement.

34. UAB further breached the License Agreement by improperly withholding royalties from TWP. As set forth above, TWP received an advance for each TWP Work licensed under the License Agreement. Once TWP earned in excess of the advanced amount in royalties for a particular Work, UAB was required to remit all royalties for that Work to TWP. But that’s not what UAB did. Instead, UAB withheld royalties on certain TWP Works—even though those Works had earned royalties in excess of their advances—because *other* TWP Works had not yet earned in excess of their advanced royalties. However, the License Agreement does not permit UAB to withhold royalties earned by certain TWP Works to cover the advances of separate TWP Works.

D. UAB Sublicensed the TWP Works to Other Audiobook Streaming Services

35. On information and belief, at some point after entering into the License Agreement, UAB purportedly granted rights to Blackstone to distribute the TWP Works. TWP does not have access to UAB’s agreement with Blackstone. Blackstone lists the TWP Works on its website at <https://www.blackstonelibrary.com/>, <https://www.blackstonewholesale.com/>, and <https://www.downpour.com/>.

36. On information and belief, at some point after UAB granted rights to Blackstone to distribute the TWP Works, Blackstone purported to sublicense those rights to Amazon and Audible to distribute the TWP Works, including as “digital streams.” Webpages on Amazon.com

list “Blackstone Publishing” as the “Publisher” of most of the TWP Works, in addition to UAB, in some cases without crediting TWP. TWP has never been provided access to the terms of these agreements either.

E. Amazon and Audible Distribute the TWP Works for “Free” to Members of Their Subscription Services

37. On information and belief, through Blackstone, Amazon and Audible claim to have acquired audiobook rights to the TWP Works, which they are now distributing.

38. The TWP Works are currently available on Amazon for “\$0.00” along with the words “Free with your Audible trial,” as shown in the true and correct copy of the Amazon.com page for *True to the Game* attached as Exhibit 3. In fact, there is *no* option to purchase the audiobook on Amazon without clicking through to another webpage. And, once there, the option to purchase is disguised with a low-contrast gray button with prices ranging from \$10 to \$30, which is directly below a high-contrast bright yellow button that states “\$0.00 Try Audible Premium Plus Free.”

39. In addition to listing the TWP Works as being “free” to Audible’s members, Audible’s website also states that Amazon Prime subscribers are entitled to claim two free audiobooks upon signing up for an Audible Premium Plus membership, one additional audiobook per month thereafter, and unlimited listening to additional audiobooks in Audible’s Plus Catalog. Audible Premium Plus members can use these audiobook credits to obtain the TWP Works. And, the audiobooks obtained with the audiobook credits are for the subscribers to keep *forever*, regardless of whether they remain Audible members.

40. Although at times styled by UAB, Blackstone, or Amazon and Audible as “digital streams,” their distribution model is actually a purchase rather than a rental or even a traditional “stream,” like those offered by streaming music services. As explained on Audible’s website,

Audible Premium Plus members receive “1 credit a month to redeem for any audiobook on Audible and unlimited access to the Audible Plus catalog for \$14.95/month. . . . Titles added to your Library with a credit are yours to keep.”

https://www.audible.com/ep/memberbenefits#toggle_accordion (last accessed 1/5/23).

However, TWP did not receive the compensation to which it was entitled for the distribution of the TWP Works.

41. On information and belief, Amazon’s and Audible’s decision to distribute the TWP Works for “free” to Audible members was made at least in part because Amazon and Audible saw the opportunity to promote their flagship subscription streaming service using the TWP Works, thereby attracting new paying monthly subscribers, retaining existing ones, and establishing the Audible membership as a must-have service in an increasingly competitive marketplace for streaming audiobook content. However, TWP, and the express terms of the License Agreement that tightly limit the scope of the rights granted, were simply collateral damage.

42. Making matters even worse for TWP, upon information and belief, the “Credit” system employed by Amazon’s and Audible’s subscription service and described above obfuscates the “net receipts” generated by the distribution and sale of the TWP Works for Amazon and Audible, and thereby circumvents the fair royalties contractually owed to TWP. Indeed, had the Defendants collected their own list prices for the sale of TWP Works, UAB would have owed TWP substantially more than what TWP was actually paid. Likewise, on the royalty audit requested by TWP, UAB lists the price for “digital streams” as being between \$16.95 to \$22.95. If accurate, this would have resulted in a payment to TWP of as much as \$60,734,827.73, through June 2021. Instead, TWP received only \$4,403.27.

F. UAB's Royalty Reports Provide Fractional Distributions

43. The previous section details how Amazon and Audible advertised the TWP Works to Audible subscribers (*i.e.*, "\$0.00" or "free") while simultaneously collecting monthly membership fees of between \$7.95 to \$14.95. However, Amazon and Audible had additional methods to avoid paying TWP for distribution of its audiobooks. In particular, Amazon and Audible only report audiobook sales as "digital streams" for which they have evidently not been paying full royalties as contemplated under the License Agreement.

44. According to UAB, in a letter from its counsel dated October 8, 2021, a "digital stream" and the associated royalty operate as follows:

streaming royalties are based on a complicated formula utilized by Audible, the distributor for streaming media, using total minutes consumed as Qualified Listens. A Qualified Listen occurs when a user listens to more than five minutes of a title. Audible accounts to Company based on total minutes consumed which is under "Units Sold".

UAB's or Audible's/Amazon's so-called "formula" is a direct violation of the License Agreement because TWP does not receive the royalty to which it is contractually-entitled on a per-unit basis, instead receiving only a fractional royalty on what Audible deems a "Qualified Listen." Nothing in the License Agreement authorized UAB to allow Blackstone to allow Audible and Amazon to exploit the TWP Works through "digital streams" on which royalties would be paid based only on "Qualified Listens."

45. Audible and Amazon also deprive TWP of the royalties to which it is entitled by excluding listens to TWP Works lasting fewer than five minutes. This exclusion allows a listener to stream entire audiobooks without generating a single reported "Qualified Listen," which generates no royalties at all. Once again, the License Agreement did not grant UAB the right to allow Audible and Amazon, through Blackstone, to exploit the TWP Works in this manner.

Indeed, the License Agreement specifically limited the grant of UAB's rights to "copies of *unabridged* readings of the [TWP Works]." Exh. 1, § I (emphasis added).

G. UAB and Blackstone Streaming Services Have Also Distributed the TWP Works for Free

46. Both UAB and Blackstone have also each operated their own audiobook subscription service for monthly subscribers, through which the TWP Works were distributed until, upon information and belief, March 2022.

47. On information and belief, UAB's and Blackstone's subscription services are substantially similar to Amazon's/Audible's subscription service.

48. On UAB's website, UAB prominently advertises a membership service where "Members get 1 Credit per month for only \$12.99 per month." UAB's website states that members can "Save up 70% off retail" and "Over 97% of digital downloads are 1 credit." UAB's offer is viewable at <https://www.urbanaudiobooks.com/membership> (last accessed 1/11/23).

49. Blackstone's audiobook streaming service is called "Downpour." Via Downpour, Blackstone offers members "their First month FREE and 1 Credit/month for \$12.99 thereafter." The same website also states that members "Save up 70% off retail" and "Over 97% of digital downloads are 1 credit." Blackstone's offer is viewable at <https://www.downpour.com/freetrial> (last accessed 1/5/23).

50. For both UAB's and Blackstone's subscription services, each "Credit" can be redeemed for a digital download an eligible audiobook. The TWP Works are redeemable with these Credits.

51. Upon information and belief, until March 2022, consumers searching for the TWP Works via both UAB's and Blackstone's services were encouraged to sign up for the monthly

subscription services at the rate of \$12.99 in lieu of paying the typically higher purchase price for access to the TWP Works. On information and belief, Defendants UAB and Blackstone each knowingly encouraged consumers to use their respective subscription services because each knew it would not have to pay reasonable royalties to TWP for TWP Works accessed by their subscribers, and could instead keep more of the revenues for themselves.

52. By making the TWP Works available for credits under its subscription plan, UAB breached the License Agreement by failing to pay the contractually-agreed royalties based on its distribution of TWP Works. Instead, during the time the TWP Works were offered via “digital stream,” TWP received fractions of pennies for each “digital stream.”

53. Similarly, by making the TWP Works available under their subscription plans, Blackstone and UAB, like Amazon and Audible, directly infringed TWP’s copyrights by distributing the TWP Works outside of the grant of the rights given to UAB by TWP.

H. TWP Notifies the Defendants of Their Improper Use of the TWP Works

54. TWP has always been diligent about protecting its rights and, to that end, notified Defendants of their improper conduct after learning of its existence.

55. On January 19, 2022, TWP, by and through its attorneys, emailed Audible’s attorney concerning Audible’s infringement of the TWP Works. The email stated in relevant part: “It has come to [Woods’] attention that her works being distributed on Audible violates the terms of the agreement between [TWP and UAB]. We believe Audible’s sale, use, and distribution of [TWP’s] audiobooks exceed the rights granted under her license with [UAB], and as such Audible may be infringing [TWP’s] copyrights by exploiting her works.”

56. On January 24, 2022, Audible’s Senior Corporate Counsel Allison H. MacDonald responded, “[a]ll rights holders who license content to Audible for distribution represent and

warrant that they have the full right and authority to do so, for the full scope of rights granted. I am sorry to hear that your client is in dispute with their publisher, and I hope that they are able to come to a quick resolution. Audible does not intervene in third party disputes. If you have further questions, you may contact Anne Fonteneau at the audio publisher Blackstone Audio.”

57. On January 28, 2022, UAB’s attorney sent TWP a cease-and-desist letter accusing TWP of having “intentionally conducted unauthorized communications with its distributor in an effort to damage UAB’s distribution relationship(s).” The letter further stated that “in order to resolve this matter short of litigation, my client demands that you comply immediately with the following conditions: (1) CEASE and DESIST any and all communication with any distributor or any third party regarding the Agreement; (2) agree not to resume any communication in the future with any distributor or third party regarding the Agreement and refrain from any derogatory and defamatory statements and communication regarding UAB and the Agreement; and (3) sign and return the attached Confirmation of Compliance to my attention within five (5) days.” Woods and TWP did not sign the proffered “Confirmation of Compliance.”

58. As the cease-and-desist letter demonstrates, UAB had no interest in addressing the merits of the dispute; instead it sought to silence TWP and prevent it from uncovering its unlawful actions.

I. TWP Attempts to Exercise its Rights to Audit UAB’s Records

59. Prior to the initiation of this lawsuit, TWP attempted to exercise its audit rights under Section III of the License Agreement, which states: “[UAB] shall maintain at its place of business complete records which detail all sales, rentals, transactions, receipts, and expenses. [UAB] shall maintain such records for a period of not less than three years. [TWP] or its duly authorized representative shall have the right at reasonable business hours and at [TWP’s]

expense and upon at least five days' notice to [UAB], to examine such records insofar as they pertain to this Agreement.” Exh. 1, § 3.

60. After receiving royalty statements that list amounts irreconcilable with the License Agreement, TWP sought to audit UAB's books and records in order to better understand how the royalties under the License Agreement were being generated and calculated. The attempted audit specifically included five titles for which TWP had not received *any* royalties: *Tell Me Your Name*, *The Adventures of Ghetto Sam*, *Circle of Sins*, *Rectangle of Sins* and *Double Dose*. Although the last two audiobooks were listed as “BEST SELLERS” on Audible, UAB reported no royalties generated at all. The audit uncovered other inconsistencies and errors that UAB was similarly unable to explain or reconcile.

61. The attempted audit revealed the crux of the problem with how UAB exploited and sublicensed the rights it purported to receive under the License Agreement: UAB was unable to provide information or to explain these discrepancies, as all the underlying sales data was in possession of the downstream parties (*i.e.*, the other Defendants), and TWP had no express contractual ability to audit those Defendants directly.

62. Nonetheless, the audit determined that TWP was due more than was reported by UAB, based on omissions and other basic errors in the royalty reports. Despite these findings, TWP has not been made whole, nor has UAB taken any steps to remedy its deficient reporting methods. In sum, TWP has been put in an impossible position: TWP is aware that it is being undercompensated under the License Agreement, but Defendants have prevented TWP from determining the amount and extent of their wrongdoing.

J. TWP Terminates the License Agreement

63. On January 17, 2023, TWP terminated the License Agreement due to UAB's material breaches thereof, by sending a letter to UAB and copying the other Defendants. *See* Exhibit 4. As of the date of this filing, no Defendant has responded to TWP's notice.

64. As of the date of this complaint, each of the Defendants continues to distribute the TWP Works, which are still advertised on the platforms maintained by Defendants Amazon and Audible as being "free" to their members.

CLAIMS FOR RELIEF

COUNT I

**Breach of Contract
(against Defendant UAB)**

65. TWP repeats and realleges each and every allegation above as if fully set forth herein.

66. The License Agreement was a valid and enforceable contract prior to its termination by TWP.

67. TWP performed under the License Agreement by providing the TWP Works to UAB for the creation and distribution of audiobooks.

68. UAB breached the License Agreement by:

- (i) Exceeding the scope of the rights granted thereunder by distributing itself, and authorizing the other Defendants to distribute, the TWP Works in the form of "digital streams" where TWP did not receive the contractually specified per-unit royalties;
- (ii) Exceeding the scope of the rights granted thereunder by distributing itself, and authorizing the other Defendants to distribute, the TWP Works in a form where TWP would receive no royalties at all, whether because the "digital streams" were

made available to certain readers for free, or because such “digital streams” did not amount to “Qualified Listens,” or otherwise;

- (iii) Failing to pay itself, or by failing to secure payment from the other Defendants of, royalties due under the License Agreement; and
- (iv) Withholding royalties earned on certain TWP Works to cover advances on other TWP Works.

69. UAB’s breaches caused damage to TWP, in the form of lost royalties due under the License Agreement.

70. As a consequence of UAB’s breaches, TWP is entitled to recover compensatory and consequential damages, including lost profits, in an amount to be awarded at trial but believed to be in excess of \$2 million, together with interest, costs and such other relief as the Court may deem just and proper.

71. As a further consequence of UAB’s breaches, TWP is entitled to recover its attorneys’ fees under Section XI of the License Agreement.

COUNT II
Breach of the Implied Covenant of Good Faith and Fair Dealing
(against Defendant UAB)

72. TWP repeats and realleges each and every allegation above as if fully set forth herein.

73. The License Agreement was a valid and enforceable contract prior to its termination by TWP.

74. TWP performed under the License Agreement by providing the TWP Works to UAB for the creation and distribution of audiobooks.

75. UAB breached the implied covenant of good faith and fair dealing inherent in the License Agreement by failing to exploit the exclusive rights granted to it so as to maximize

TWP's royalties thereunder. Specifically, by authorizing without permission from TWP the distribution of the TWP Works through "digital streams," and by itself distributing the TWP Works through "digital streams," UAB cannibalized all other distribution of the TWP Works in audiobook form, thereby costing TWP, upon information and belief, millions of dollars in revenue it would have received from the sale distribution of the TWP Works in such other audiobook forms.

76. As a consequence of UAB's breaches, TWP is entitled to recover compensatory and consequential damages, including lost profits, in an amount to be awarded at trial but believed to be in excess of \$2 million, separate and apart from the damages sought in Count I herein, together with interest, costs and such other relief as the Court may deem just and proper.

77. As a further consequence of UAB's breaches, TWP is entitled to recover its attorneys' fees under Section XI of the License Agreement.

COUNT III
Direct Copyright Infringement (17 U.S.C. § 101 et seq.)
(against all Defendants)

78. TWP repeats and realleges each and every allegation above as if fully set forth therein.

79. The TWP Works are original, creative and copyrightable subject matter under the laws of the United States.

80. As set forth in Exhibit 2, all of the TWP Works are the subject of valid and subsisting registrations issued by the U.S. Copyright Office.

81. TWP has complied in all respects with 17 U.S.C. §§ 101, *et seq.*, and it has secured the exclusive rights and privileges in and to the copyrights in its written works and content.

82. TWP owns or is the exclusive licensee of the TWP Works embodied in the audiobooks created by UAB pursuant to the limited rights granted under the License Agreement.

83. By exceeding the scope of the rights granted by TWP through the actions alleged herein, Defendants have infringed, are currently infringing, and will continue to infringe TWP's copyrights in and to the TWP Works by, among other things, distributing and publicly displaying the TWP Works in a manner not authorized by TWP.

84. Upon information and belief, the foregoing acts of infringement have been willful and intentional, with wanton disregard and indifference to the rights of TWP.

85. As a result of Defendants' infringement of TWP's copyrights in the TWP Works, and the exclusive rights embodied therein, TWP is entitled to the recovery of its actual damages together with an accounting of Defendants' profits, or an award of statutory damages, pursuant to 17 U.S.C. § 504. TWP is also entitled to an award of its reasonable attorneys' fees, costs and disbursements in this action, pursuant to 17 U.S.C. § 505.

86. Defendants' conduct is causing and, unless enjoined by this Court, will continue to cause, TWP irreparable injury that cannot be fully compensated or measured through an award of monetary damages. TWP has no adequate remedy at law and is entitled to injunctive relief pursuant to 17 U.S.C. §§ 502 and 503 prohibiting Defendants from further infringing TWP's copyrights in the TWP Works.

COUNT IV
Secondary Copyright Infringement (17 U.S.C. § 101 et seq.)
(against UAB and Blackstone)

87. TWP repeats and realleges each and every allegation above as if fully set forth herein.

88. Upon information and belief, UAB and Blackstone knew of the acts of infringement described herein perpetrated by Audible and Amazon, because UAB and Blackstone knew of the limited grant of rights set forth in the License Agreement.

89. Upon information and belief, UAB and Blackstone materially contributed to the acts of infringement described herein perpetrated by Audible and Amazon by making audiobook versions of the TWP Works available for distribution and sale by Audible and Amazon in the form of “digital streams” that TWP never authorized.

90. Upon information and belief, UAB and Blackstone, as “publishers” of the audiobook versions of the TWP Works, had the right and ability to supervise the acts of infringement described herein perpetrated by Audible and Amazon, as well as a direct financial interest in such acts of infringement.

91. By aiding and assisting the acts of infringement described herein perpetrated by Audible and Amazon, UAB and Blackstone are secondarily liable, whether contributorily or vicariously, for such acts of infringement perpetrated by Audible and Amazon.

92. Upon information and belief, the foregoing acts of secondary infringement have been willful and intentional, with wanton disregard and indifference to the rights of TWP.

93. As a result of UAB’s and Blackstone’s secondary infringement of TWP’s copyrights in the TWP Works, and the exclusive rights embodied therein, TWP is entitled to the recovery of its actual damages together with an accounting of profits, or an award of statutory damages, pursuant to 17 U.S.C. § 504. TWP is also entitled to an award of its reasonable attorneys’ fees, costs and disbursements in this action, pursuant to 17 U.S.C. § 505.

94. UAB’s and Blackstone’s conduct is causing and, unless enjoined by this Court, will continue to cause, TWP irreparable injury that cannot be fully compensated or measured

through an award of monetary damages. TWP has no adequate remedy at law and is entitled to injunctive relief pursuant to 17 U.S.C. §§ 502 and 503 prohibiting Defendants from further infringing TWP's copyrights.

PRAYER FOR RELIEF

WHEREFORE, TWP respectfully requests entry of a judgment granting relief against Defendants as follows:

1. Awarding TWP actual damages for each infringement of its copyrights in such amount as may be found, as well as an accounting of, and imposing a constructive trust with respect to, Defendants' profits attributable to their infringements of the TWP Works, under 17 U.S.C. § 504, in an amount of no less than \$2 million;
2. Awarding TWP statutory damages under 17 U.S.C. § 504, in an amount of no less than \$150,000 per TWP Work;
3. Permanently enjoining Defendants, their officers, subsidiaries, parents, divisions, agents, servants, employees and attorneys, and those persons in active concert or participation with them, or any of them, from continuing to infringe on the copyrights owned or exclusively licensed by TWP in the TWP Works;
4. Awarding TWP prejudgment interest according to law;
5. Awarding TWP attorneys' fees, costs and disbursements in this action, pursuant to 17 U.S.C. § 505 and Section XI of the License Agreement;
6. Granting TWP such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMAND

TWP hereby demands a trial by jury pursuant to Fed. R. Civ. P. 38 on all claims and defenses so triable.

Dated: New York, New York
January 24, 2023

DORSEY & WHITNEY LLP

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