

Court File No.: CV 0800360651 00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN

THE ESTATE OF CHESNEY HENRY "CHET" BAKER JUNIOR BY ITS PERSONAL REPRESENTATIVE CAROL BAKER, and CHET BAKER ENTERPRISES LLC

Plaintiffs

- and -

SONY BMG MUSIC (CANADA) INC., EMI MUSIC CANADA INC., UNIVERSAL MUSIC CANADA INC., WARNER MUSIC CANADA CO., and their Parent, Subsidiary and Affiliated Companies, CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY LTD. and SOCIETY FOR REPRODUCTION RIGHTS OF AUTHORS, COMPOSERS AND PUBLISHERS (SODRAC) INC.

Defendants

PROCEEDING UNDER THE CLASS PROCEEDINGS ACT, 1992, S.O. 1992, c.6

AMENDED
FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

AMENDED THIS 30th September 2008 PURSUANT TO RULE/LA RÈGLE 26.02 (1) MODIFIÉ CE 30th septembre 2008 CONFORMÉMENT À LA RÈGLE/LA RÈGLE 26.02 (1) THE ORDER OF L'ORDONNANCE DU DATED / FAIT LE 30th septembre 2008 REGISTRAR SUPERIOR COURT OF JUSTICE GREFFIER COUR SUPÉRIEURE DE JUSTICE

AMENDED THIS 06 Oct. 08 PURSUANT TO MODIFIÉ CE 06 octobre 2008 CONFORMÉMENT À LA RÈGLE/LA RÈGLE 26.02 (1) THE ORDER OF L'ORDONNANCE DU DATED / FAIT LE 06 octobre 2008 REGISTRAR SUPERIOR COURT OF JUSTICE GREFFIER COUR SUPÉRIEURE DE JUSTICE

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local legal aid office.

Date: 14 August 2008

Issued by: " J. Richards "

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TO: SONY BMG MUSIC (CANADA) INC.
190 Liberty Street, Suite 100
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AND TO: EMI MUSIC CANADA INC.
3109 American Drive
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AND TO: UNIVERSAL MUSIC CANADA INC.
2450 Victoria Park Ave, Suite 1
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AND TO: WARNER MUSIC CANADA CO.
3381 Steeles Avenue East
Main Floor, Suite 100
Toronto, Ontario
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AND TO: CANADIAN MUSICAL REPRODUCTION RIGHTS AGENCY LTD.
56 Wellesley Street West, Suite 320
Toronto, Ontario
M5S 2S3

AND TO: SOCIETY FOR REPRODUCTION RIGHTS OF AUTHORS,
COMPOSERS AND PUBLISHERS (SODRAC) INC.
759 Victoria Square, Suite 420
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THE RELIEF CLAIMED

1. The Plaintiffs claim on behalf of class members:
 - (a) an Order certifying this matter as a class proceeding and appointing the Plaintiffs as the Representative Plaintiffs on behalf of the class;
 - (b) an Order appointing: (i) Sony BMG Music (Canada) Inc., (ii) EMI Music Canada Inc, (iii) Universal Music Canada Inc., and (iv) Warner Music Canada Co., (the "Defendant Record Companies") as Representative Defendants on behalf of each of their respective parent, subsidiary and affiliated corporations which have reproduced the musical works of the class members without a license to do so;
 - (c) a Declaration that the Defendant Record Companies have knowingly and deliberately infringed class members' copyright in musical works by systematically:
 - (i) making and authorizing the making of sound recordings of the musical works of the Plaintiffs and the class members, without securing a license to do so; and
 - (ii) ~~and~~ selling or renting out, distributing so as to prejudicially affect class members, by way of trade, distributing, exposing or offering for sale or rental or possessing for those purposes, copies of sound recordings of the musical works of class members which the Defendants Record Companies knew or should have known infringed the copyright of the Plaintiffs and the class members;

- (d) a Declaration that the Defendant Record Companies have been unjustly enriched by their failure or refusal to compensate the class members for the exploitation of their musical works;
- (e) an Order requiring the Defendant Record Companies to account to the class members by paying for and submitting to an independent audit of their books and records, including the contents of the "Pending Lists", in respect of:
 - (i) the musical works reproduced by them without licence and any gains made as a result of such reproductions and;
 - (ii) the mechanical royalties unpaid and any interest earned thereon.
- (f) Damages and disgorgement of profits on an aggregate basis under section 24 of the *Class Proceedings Act, 1992*, S.O. 1992, c.6, or otherwise, for infringement of copyright pursuant to sections 35(1) and 38.1 of the *Copyright Act*, R.S., 1985, c. C-42;
- (g) Alternatively, damages and disgorgement for unjust enrichment on an aggregate basis under section 24 of the *Class Proceedings Act, 1992*, or otherwise for mechanical royalties not paid to the class members, including and any amounts earned by the Defendant Record Companies on the amounts unpaid;
- (h) an Order requiring the Defendant Record Companies to pay punitive and exemplary damages for their reckless, high-handed and arrogant conduct aggravated by their clandestine disregard for the copyright interests of the

class members in contrast to their strict compliance enforcement policy and unremitting approach to consumers in the protection of their corporate copyright interests;

- (i) an Order requiring the Defendant Record Companies to pay an equitable rate in respect of pre-judgment and post-judgment interest on all amounts owing to class members;
- (j) an Order compelling the creation of a litigation trust to hold and distribute the monetary relief awarded pursuant to a plan of administration and distribution under sections 25 and 26 of the *Class Proceedings Act, 1992*;
- (k) an Order compelling the creation of a conspicuous notice program to class members pursuant to section 19 of the *Class Proceedings Act, 1992* in order to facilitate the plan of distribution claimed herein;
- (l) a Declaration permitting the inclusion of any member of The Canadian Mechanical Rights Reproductions Agency ("CMRRA") and Society for Reproduction Rights of Authors, Composers and Publishers ("SODRAC") in the class, to the extent that such members have copyright interests in works exploited by the Defendant Record Companies without a license or payment of the applicable mechanical royalty;
- (m) costs of this action on a substantial indemnity basis including the costs associated with notice to class members and the plan of administration and distribution of relief, plus applicable taxes; and
- (n) such further and other relief as this Honourable Court may deem just.

THE NATURE OF THE ACTION

The Defendant Record Companies Keep Lists of Works Exploited Without Licence or for Which Royalties Have Not Been Paid

2. This class action, brought on behalf of certain copyright owners of musical works, concerns a systematic and internally documented practice by the Defendant Record Companies whereby musical works are exploited without securing a license to do so from their copyright owners or without payment of the applicable mechanical royalty.
3. The Defendant Record Companies record the works exploited by them on lists sometimes known in the Canadian recording industry as "Pending Lists". These lists have accumulated over 300,000 works for which no license has been obtained and no compensation has been paid to the class members. According to the Defendant Record Companies, the lists reflect liabilities for unpaid royalties in excess of \$50,000,000. The liabilities recorded on the Pending Lists do not reflect the value of compensation for infringement of copyright. Rather, they presume that a licence can be obtained from the copyright owner in exchange for payment of the prevailing "industry rate" payable for mechanical reproduction of musical works.
4. All class members are united by their common legal complaint against systematic practices of the Defendant Record Companies, specifically their failure to compensate the class members for the exploitation of musical works itemized on the Pending Lists.
5. The Defendants, CMRRA and SODRAC, operate as intermediaries between copyright owners and the Defendant Record Companies. They are named as

Defendants in this proceeding to receive notice and be bound by any Orders made.

6. The Plaintiffs seek an order permitting the inclusion of members of CMRRA and SODRAC in the class to the extent that such members have a copyright interest in works exploited by the Defendant Record Companies without license or payment of the applicable mechanical royalty.
7. The Defendant Record Companies have frustrated the utility of CMRRA and SODRAC by restricting their access to the Pending Lists, by their unreliable accounting practices, by providing incomplete or inaccurate information in relation to the musical works used, and by generally refusing to compensate class members. As a result, CMRRA and SODRAC are unable to clear the rights referenced on the Pending Lists.

The Class Members Have No Access to the Pending Lists

8. The class members have no reasonable means of:
 - (a) accessing the Pending Lists;
 - (b) determining if their works have been exploited;
 - (c) assessing their claims to adequate compensation for the exploitation of their works.

Copyright Interests

9. Each class member has the exclusive right to make copies or reproductions of their works, including the exclusive right to make any sound recording or other contrivance by means of which the musical work might be mechanically

reproduced or performed. A musical work cannot be reproduced in the form of a ~~record or compact disc~~ sound recording by any ~~party~~ person without permission of the copyright owner and the payment of compensation, known as a "mechanical royalty", to the copyright owner.

10. All class members have a copyright interest in musical works that have been copied, reproduced and sold by the Defendant Record Companies, ~~labels~~ including in the form of records and compact discs, in the course of their business without having obtained a license to do so and/or without payment of a mechanical royalty.

The Obligations of the Defendant Record Companies

11. As a result of the Defendant Record Companies' systematic failure to respect copyright law and the breach of their equitable obligations, they are each legally obligated to:
 - (a) account to the class and submit to an audit in respect of all musical works exploited without licence or payment of mechanical royalties;
 - (b) pay statutory damages of \$20,000 for each infringement of copyright for musical works which have been exploited without a license and disgorge any gains made as a result of such exploitation;
 - (c) alternatively, pay damages to the class members for the unpaid mechanical royalties and disgorge any interest earned thereon;
 - (d) pay an equitable rate of interest to the class members on damages, profits and any other compensation owing; and,

- (e) comply with such further orders as may be made by this Honourable Court.

THE PARTIES

The Plaintiffs and the Class

12. The Plaintiff, the Estate of Henry Chesney "Chet" Baker Junior, by its personal representative Carol Baker (the "Chet Baker Estate") resides in the City of Toronto, in the Province of Ontario. The Chet Baker Estate is an owner of a copyright owner of in musical works composed and arranged by Chet Baker.
13. Chet Baker Enterprises LLC is an Oklahoma corporation with principal operations in the City of Toronto in the Province of Ontario. Chet Baker Enterprises LLC is also an owner of copyright owner of in musical works composed and arranged by Chet Baker.
14. Chet Baker was a prolific jazz musician known internationally as a trumpet player and vocalist. Mr. Baker composed and arranged several musical works between 1950 and 1988, the year of his death. The ~~Chet Baker Estate~~ Plaintiffs own a copyright interest in over 50 such works.
15. The Plaintiffs state that Chet Baker song titles are referenced over 100 times on the Pending Lists maintained by the Defendant Record Companies.
16. The Plaintiffs bring this action and claim the relief set out herein pursuant to the *Copyright Act*, equitable legal principles and the *Class Proceedings Act, 1992*, on behalf of a class defined as follows:

"Any owner of a copyright in a musical work that has been reproduced by the Defendant Record Companies, or any one of them,

- (a) *on a sound recording or other contrivance, including compact discs, by means of which the musical work might be mechanically reproduced or performed;*
- (b) *made and/or distributed in Canada; and*
- (c) *without a licence from the owner of the copyright authorizing the reproduction or the payment of a mechanical royalty.”*

The Defendants

Representative Orders

17. The four Defendant Record Companies are the Canadian ~~divisions~~ operations of multi-national corporations with various affiliates and subsidiaries, all of which have exploited the musical works of the class members.
18. The named Defendant Record Companies have been nominated by their subsidiary and affiliated companies to maintain the Pending Lists described herein in respect of the exploitation of the relevant musical works in or from Canada. As a result, the Plaintiffs seek an Order that the named Defendant Record Companies should be appointed as Representative Defendants on behalf of their parent, subsidiary and affiliated corporations which have exploited the musical works of the class members without a license or compensation.

The EMI Defendants

19. EMI Music Canada Inc. is an Ontario corporation with its head office located in the City of Mississauga, in the Province of Ontario. It is a subsidiary of EMI Music, which is a division of EMI Group plc, a United Kingdom corporation with its head office located in London, England.
20. EMI Group plc is owned by Terra Firma Capital Partners Limited, a United Kingdom private equity firm with its head office located in London, England.

21. EMI Music is one of the world's largest music companies. It operates directly or via licensees in 59 countries. Its revenues for the financial year ended March 31, 2007 were £1,350,200,000.
22. EMI Music is affiliated with over 100 record labels through subsidiary or distribution relationships.
23. The Plaintiffs seek an Order appointing EMI Music Canada Inc. as a Representative Defendant on behalf of all parent, subsidiary, and affiliate corporations on whose behalf it maintains the Pending Lists in Canada.

The Universal Defendants

24. Universal Music Canada Inc. is an Ontario corporation with its head office located in the City of Toronto, in the Province of Ontario. It is a subsidiary of Universal Music Group.
25. Universal Music Group is a California corporation with its head office located in Santa Monica, California. It is a subsidiary of Vivendi SA, a French company with its head office located in Paris, France.
26. Universal Music Group is the largest business group and family of record labels in the music industry, with a 25.5% share of the global market. It operates directly or via licensees, joint ventures and subsidiaries in over 70 countries.
27. Universal Music Group is affiliated with over 300 record labels through subsidiary or distribution relationships.

28. The Plaintiffs seek an Order appointing Universal Music Canada Inc. as a Representative Defendant on behalf of all parent, subsidiary, and affiliate corporations on whose behalf it maintains the Pending Lists in Canada.

The Warner Defendants

29. Warner Music Canada Co. is an Ontario corporation with its head office located in the City of Toronto, in the Province of Ontario. It is a subsidiary of Warner Music Group, a Delaware corporation, with its head office located in New York, New York.
30. In 2007, Warner Music Group reported revenues of \$3,385,000,000.
31. Warner Music Group is affiliated with over 100 record labels through subsidiary or distribution relationships.
32. The Plaintiffs seek an Order appointing Warner Music Canada Co. as a Representative Defendant on behalf of all parent, subsidiary, and affiliate corporations on whose behalf it maintains the Pending Lists in Canada.

The Sony BMG Defendants

33. Sony BMG Music (Canada) Inc. is an Ontario corporation with its head office located in the City of Toronto, in the Province of Ontario. It is a subsidiary of Sony BMG Music Entertainment, which in turn is a joint venture between Sony Corporation and Bertelsmann A.G.
34. Sony Corporation is a multinational conglomerate corporation with its principal place of business located in Minato-ku, Tokyo, Japan. Bertelsman A.G. is a German corporation with its principal place of business located in Gütersloh,

Germany. Sony Corporation and Bertelsmann A.G. each own 50% of Sony BMG Music Entertainment.

35. Sony BMG Music Entertainment affiliated with over 100 record labels through subsidiary or distribution relationships.
36. The Plaintiffs seek an Order appointing Sony BMG Music (Canada) Inc. as a Representative Defendant on behalf of all parent, subsidiary, and affiliate corporations on whose behalf it maintains the Pending Lists in Canada.

The CMRRA and SODRAC Defendants

37. CMRRA is a Canadian corporation, with its head office located in the City of Toronto, in the Province of Ontario.
38. SODRAC is a Canadian corporation, with its head office located in the City of Montreal, in the Province of Québec.
39. CMRRA and SODRAC are music licensing agencies or collective societies which represent certain music copyright owners doing business in Canada.
40. CMRRA and SODRAC issue licenses to users of their members' reproduction rights in copyrighted music. These licenses authorize the reproduction of music in CDs and in films, television programs and other audio-visual productions. Licensees pay royalties pursuant to these licenses to CMRRA and SODRAC, who in turn distribute the proceeds to their ~~publisher clients~~ members.

THE UNLAWFUL ACTS OF THE DEFENDANT RECORD COMPANIES

Infringement of Copyright

41. Section 3(1) of the *Copyright Act* provides owners of copyright ~~owners of~~ in musical works with the sole right, among other things, to produce, reproduce, perform, sell, and make a sound recordings records, of their musical works.
42. Pursuant to section 27(1) of the *Copyright Act*, it is an infringement of copyright to do, without the consent of the owner of the copyright, anything that by the *Copyright Act* only the owner of the copyright has the right to do, such as making and authorizing the making of sound recordings.
43. Pursuant to section 27(2), it is an infringement to sell or rent out, distribute so as to prejudicially affect the owner of the copyright, by way of trade distribute, expose or offer for sale or rental, possess for those purposes and/or import into Canada for those purposes copies of sound recordings of musical works that a person knows or should have known infringes copyright or would infringe copyright if it had been made in Canada by the person who made it.
44. By reproducing the musical works of the class members, and making sound recordings or other contrivances, including CDs, by means of which the class members' musical works might be mechanically reproduced or performed, all without license or payment of a royalty, the Defendant Record Companies have infringed all of the class members' copyrights in their works.
45. Since at least 1988, the exact date being unknown to the Plaintiffs, the Defendant Record Companies have produced, reproduced, manufactured, distributed, imported, exported, marketed and sold hundreds of thousands of

sound recordings of musical works and/or compilations of such sound recordings for distribution in Canada and in foreign markets.

46. Amongst those, the Defendant Record Companies have knowingly and deliberately made or authorized the making of, sold or rented out, distributed, exposed or offered for sale or rental, possessed and/or imported over 300,000 sound recordings of musical works and/or compilations of such sound recordings in Canada and/or for distribution in Canada and in foreign markets without:

- (a) securing a licence to do so; and/or,
- (b) paying the applicable mechanical copyright royalty or other compensation to the copyright owner.

47. Those works for which neither a licence has been obtained nor a royalty paid are memorialized by the Defendant Record Companies on lists known as the Pending Lists.

48. The Pending Lists facilitate the Defendant Record Companies' systematic "exploit now, pay later, if at all" approach. The lists are compiled on the basis that the Defendant Record Companies have purportedly been unable to locate the copyright owner in order to secure a license or pay a royalty. The Defendant Record Companies have made insufficient or no effort to locate and compensate those copyright owners whose works appear on the Pending Lists.

49. The existence of the lists is evidence that the Defendant Record Companies must pay damages and disgorge their profits for infringement of copyright, or alternatively, pay mechanical royalties and/or other compensation to the class

members for the use made of their sound recordings. The Plaintiffs claim that the accounting and audit relief requested herein will be required before it can be determined whether the Pending Lists are complete or accurate or that the stated royalty amounts owing are correct or sufficient to compensate the class members for the exploitation of their musical works.

50. Over time, the monies earmarked by the Defendant Record Companies for the copyright owners on the Pending Lists, have grown to astronomical size, estimated by the Defendant Record Companies at \$50,000,000. The Plaintiffs do not accept the Defendant Record Companies' estimation of the amounts owing to the class members.
51. The Defendant Record Companies have unjustifiably failed or refused to:
 - (a) clear the rights associated with the works on the Pending Lists;
 - (b) clear the rights associated with other works used without a license; and/or,
 - (c) duly compensate the class members for the exploitation of their musical works.
52. The conduct of the Defendant Record Companies is copyright infringement on a grand scale. Once the Defendant Record Companies have made use of a copyrighted work, there is no incentive for them to exercise due diligence to locate the owner of the work to seek consent retroactively, or to pay the royalty that is owed for the exploitation of the work. The Defendant Record Companies have a duty to account to every member of the proposed class.

Unjust Enrichment

53. The Defendant Record Companies collectively have been unjustly enriched to the detriment of the class as a whole to the extent that the class members' musical works have been exploited without licence or the payment of appropriate compensation.
54. There is no juristic reason for the enrichment of the Defendant Record Companies.

The Claims Against the CMRRA and SODRAC Defendants

55. The Plaintiffs seek a declaration that any member of CMRRA and SODRAC whose owns the reproduction right in works that have been exploited by the Defendant Record Companies without a licence or the payment of the applicable mechanical royalty may be included in the class and participate in the within action.

Claims Against The Defendant Record Companies

56. The practice of systematically infringing copyright or permitting the infringement of copyright is conduct intertwined as between the Defendant Record Companies. It is conduct relied upon in common by each of the Defendant Record Companies to use and exploit the musical works owned by the class members without seeking license or making payment of the applicable royalty to the detriment of copyright owners.
57. The Plaintiffs state that the Defendant Record Companies have agreed and conspired together to create a scheme where they can not be effectively called to account for infringement of the class members' copyright.

58. The entire scheme created by the agreement between the Defendant Record Companies was unlawful. It was intended to and did harm the class members by facilitating the reproduction of unlicensed musical works without payment of the compensation owed to them.
59. The conduct of all of the Defendant Record Companies has been concealed from the class members and from the public.

REMEDIES

An Accounting and The Copyright Royalty Audit

60. The Defendant Record Companies have exploited the works of the class members in the course of their business.
61. The Plaintiffs claim an accounting for the works exploited, the compensation withheld and the profits received for the use of the class members' musical works.
62. The Plaintiffs seek a copyright royalty audit of the entirety of the Pending Lists and the books and records of the Defendant Record Companies. It is essential that the rights of the class members and the obligations of the Defendant Record Companies in respect of works which are or ought to be contained on the Pending Lists be accounted for and verified by an independent copyright royalty audit for all class members. The copyright royalty audit claimed is a precursor to the remainder of the relief claimed herein.

63. The Defendant Record Companies must accurately account for:
- (a) each musical work exploited by them without licence or payment of compensation to the copyright owner;
 - (b) the number of reproductions made of each musical work;
 - (c) any amounts obtained by them as a result of the exploitation of the class members' musical works;
 - (d) the applicable mechanical royalty which is unpaid or which should have been paid had a license been obtained;
 - (e) ~~for~~ any benefits obtained by them from the withheld funds.

Conspicuous Publication of the Exploited Works and their Mechanical Copyright Owners

64. The Plaintiffs claim the creation of a conspicuous and comprehensive notice program affording notice to the class members of the exploitation of their works and the compensation owed to them by the Defendant Record Companies pursuant to section 19 of the *Class Proceedings Act, 1992*.

Monetary Remedies and Plan of Distribution

65. As a result of the acts and omissions of the Defendant Record Companies as particularized above, the Plaintiffs and the class members have suffered losses and damages.
66. All amounts payable to the class on account of damages and disgorgement should be calculated on an aggregate basis pursuant to s. 24 of the CPA, or otherwise. Such damages ought to be housed in a litigation trust and distributed

pursuant to a plan of distribution under sections 25 and 26 of the *Class Proceedings Act, 1992*.

67. Alternatively, if so elected, the appropriate mechanical royalties unpaid and any gains made thereon should be calculated on an aggregate basis or otherwise should be housed in a litigation trust and distributed pursuant to the plan of distribution under sections 25 and 26 of the *Class Proceedings Act, 1992*.

Punitive and Exemplary Damages

68. The conduct of the Defendant Record Companies in exploiting the musical works of the class members without securing a license or making payment of the prevailing royalty is so reckless, arrogant and high-handed that an award of punitive and exemplary damages should be awarded to the class members.
69. The conduct of the Defendant Record Companies is aggravated by their strict and unremitting approach to the enforcement of their copyright interests against consumers.

STATUTES RELIED UPON

70. The Plaintiffs rely upon the *Copyright Act*, R.S.C. 1985, c. C-43², the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, and the *Courts of Justice Act*, R.S.O. 1990, c.C.43.

SERVICE OUTSIDE OF ONTARIO

71. This originating process may be served without Court Order outside of Ontario in that the claim is:

- (a) in respect of a tort committed in Ontario (Rule 17.02 (g));

- (b) in respect of damages sustained in Ontario arising from a tort or a breach of contract wherever committed (Rule 17.02 (b)), and;
- (c) against a person carrying on business in Ontario (Rule 17.02 (p)).

PLACE OF TRIAL

72. The Plaintiffs propose that this action be tried in Toronto, Ontario.

Date: August 14, 2008

HARRISON PENZA^{LLP}

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THE ESTATE OF CHESNEY HENRY "CHET" BAKER
JUNIOR BY ITS PERSONAL REPRESENTATIVE
CAROL BAKER, et al.

-and-

SONY BMG MUSIC (CANADA) INC., et al.

Court File No.: CV 0800360651 00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**AMENDED FRESH AS AMENDED
STATEMENT OF CLAIM**

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