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11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF LOS ANGELES**

13 JOSEPH ESCALANTE, CHI-COM,) Case No. SC075679
14 INTERNATIONAL, A CALIFORNIA)
15 CORPORATION,) CROSS-COMPLAINT FOR DAMAGES
16 Plaintiff,) (Breach of Contract)
17) (Fraud)
18) (Breach of Fiduciary Duty)
19 V.)
20)
21 STEVEN OLIVER PFAUTER, JAN)
22 NILS ACKERMANN, STEVEN)
23 RONALD JENSEN, CHALMER LUMERY)
24 AND DOES 1-50,)
25 Defendants.)
26)
27 STEVEN OLIVER PFAUTER, JAN)
28 NILS ACKERMANN, STEVEN)
29 RONALD JENSEN, CHALMER LUMERY)
30 Cross-complainants)
31)
32 V.)
33)
34 JOSEPH ESCALANTE, CHI-COM,)
35 INTERNATIONAL, A CALIFORNIA)
36 CORPORATION, AND ROES 1-50) DEPT: C
37 Cross-defendants) JUDGE: HON. JON L. SEGAL
38)
39) DATE CASE FILED: 1/28/03
40) CMC: 6/27/03
41) TRIAL DATE: NONE

42 **GENERAL ALLEGATIONS**

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45 CROSS-COMPLAINT

46 CROSS-COMPLAINANT *, ALLEGES AS FOLLOWS

- 47 1. Cross-complainant is unaware of the true names, capacities and
48 acts giving rise to the liability of cross-defendants Roes 1-50, and
49 therefore sues said cross-defendants by such fictitious names. CROSS-
50 complainant will amend to insert the true names of said cross-
51 defendants when their names, capacities and acts giving rise to their
52 liability become known. CROSS-complainant is informed and believes
53 and thereon alleges that Roes 1-50 are responsible in some manner for
54 the events and injuries herein alleged.
- 55 2. Cross-complainant is informed and believes and thereon alleges
56 that at all times herein mentioned, each cross-defendant was the agent
57 and employee of each of the remaining cross-defendants, and was acting
58 in the scope of his agency and employment in doing the acts herein
59 alleged.
- 60 3. Cross-complainant STEVE PFAUTER, is an individual and a
61 resident of Los Angeles, California.
- 62 4. Cross-complainant JAN NILS ACKERMANN, is an individual and
63 a resident of Los Angeles, California.
- 64 5. Cross-complainant STEVEN JENSEN, is an individual and a
65 resident of Khei, Hawaii.
- 66 6. Cross-complainant CHALMER LUMERY, is an individual and a
67 resident of San Bernardino, California.
- 68 7. Cross-complainant JOSEPH ESCALANTE, is an attorney and
69 practicing in Los Angeles, California.
- 70 8. Cross-complainant CHI-COM INTERNATIONAL INC., is a
71 California Corporation with a principal place of business in Los
72 Angeles, California.
- 73 9. In or about 1980, ACKERMANN formed a music group which was

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75 CROSS-COMPLAINT

76 known as "THE VANDALS."

77 10. PFAUTER, JENSEN, and ESCALANTE thereafter joined the group
78 as members.

79 11. The group as so constituted operated as a partnership, with
80 each partner being entitled to an equal share of the profits.

81 12. In or about 1983, PFAUTER was replaced by LUMERY as a member
82 of "THE VANDALS."

83 13. The group as so constituted operated as a partnership, with
84 each partner being entitled to an equal share of the profits.

85 14. "THE VANDALS" entered into a recording agreement with
86 Epitaph records in or about 1981.

87 15. "THE VANDALS" released three albums on the Epitaph label
88 between approximately 1981 and 1985, "PEACE THRU VANDALISM,"
89 "WHEN IN ROME, DO AS THE VANDALS," and "SLIPPERY WHEN ILL." The
90 members of the group as then comprised were co-authors of the
91 sound recordings, and were co-authors of many of the musical
92 compositions embodied therein.

93 16. Epitaph records subsequently released its rights in the
94 master recordings of said albums back to the members of the
95 group.

96 17. Defendants ESCALANTE and CHI-COM have since exploited the
97 master recordings to their own advantage, while failing to
98 account to the group members for the proceeds.

99 18. ESCALANTE, by virtue of his position as a co-partner with
100 defendants, owed a fiduciary duty to account to his co-partners.
101 By reason of the fiduciary relationship, any statute of
102 limitations is tolled and does not run as to defendant
103 Escalante.

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105 CROSS-COMPLAINT

106 **FIRST CAUSE OF ACTION**

107 **(BREACH OF CONTRACT AGAINST ESCALANTE)**

108 19. Cross-complainant refers to and incorporates herein by reference
109 paragraphs 1 through 18 of this cross-complaint.

110 20. The parties hereto agreed to enter into an oral partnership
111 known as "THE VANDALS," and further agreed to share equally in
112 the profits of the venture.

113 21. Cross-defendant has breached said agreement by converting
114 the intellectual property of the group to his own benefit, and
115 by failing to account to his co partners for the profits.

116 22. Cross-complainant has been damaged thereby in an amount
117 according to proof.

118 **SECOND CAUSE OF ACTION**

119 **(FRAUD AGAINST ESCALANTE)**

120 23. Cross-complainant refers to and incorporates herein by reference
121 paragraphs 1 through 18 of this cross-complaint.

122 24. ESCALANTE, as a fiduciary, owed an affirmative duty of
123 disclosure to his co partners as to his use of the masters, and
124 as to the funds derived therefrom.

125 25. ESCALANTE omitted to fully disclose his use of the masters,
126 and the amount of profits, and from time to time falsely
127 misrepresented earnings from use of the masters.

128 26. ESCALANTE intended by his omissions and misrepresentations to
129 induce cross-complainant to refrain from investigating and pursuing his
130 interest in royalties arising from any use of the masters.

131 27. Cross-complainant reasonably relied on the aforementioned
132 omissions representations in failing to investigate and pursue the full
133 extent of his interests.

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135 CROSS-COMPLAINT

136 28. Cross-complainant has been damaged thereby in an amount
137 according to proof.

138 **THIRD CAUSE OF ACTION**

139 **(BREACH OF FIDUCIARY DUTY AGAINST ESCALANTE)**

140 29. Cross-complainant refers to and incorporates herein by reference
141 paragraphs 1 through 18 of this cross-complaint.

142 30. ESCALANTE, as a fiduciary, owed an affirmative duty of
143 disclosure to his co partners as to his use of the masters, and
144 as to the funds derived therefrom.

145 31. ESCALANTE breached his fiduciary duty by converting the
146 masters to his own benefit, and by failing to truthfully account
147 to his co-partners for the profits derived from the masters.

148 32. Cross-complainant has been damaged thereby in an amount
149 according to proof.

150 33. The conduct of cross-defendant alleged herein was fraudulent in
151 nature, entitling cross-complainants to exemplary damages in an amount
152 according to proof.

153 **FOURTH CAUSE OF ACTION**

154 **(CIVIL CONSPIRACY AGAINST ESCALANTE AND CHI-COM AND ROES 1-50)**

155 34. Cross-complainant refers to and incorporates herein by reference
156 paragraphs 1 through 33 of this cross-complaint.

157 35. Cross-complainant is informed and believes and thereon alleges
158 that at all times herein mentioned, ESCALANTE and of each of the
159 remaining cross-defendants agreed to appropriate and exploit the
160 masters to the exclusion of cross-complainant, and have diverted the
161 profits therefrom into one or more entities controlled by ESCALANTE,
162 making each such cross defendant co-liable with ESCALANTE on all
163 of the causes of action alleged herein.

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165 CROSS-COMPLAINT

166 **FIFTH CAUSE OF ACTION**

167 **(DECLARATORY RELIEF AGAINST ESCALANTE AND CHI-COM AND ROES 1-**

168 **50)**

169 36. Cross-complainant refers to and incorporates herein by reference
170 paragraphs 1 through 35 of this cross-complaint.

171 37. An actual controversy has arisen between the parties hereto
172 as to the ownership of the master recordings, copyright
173 interests in the sound recordings and compositions referred to
174 herein. The parties are entitled to a judicial declaration of
175 their respective rights.

176 **WHEREFORE**, Cross-complainant prays for judgment as follows:

177 **ON THE FIRST CAUSE OF ACTION (CONTRACT)**

- 178 1. General damages in an amount according to proof;
179 2. Costs of suit herein incurred;
180 3. Prejudgment interest in an amount according to proof; and,
181 4. Such other relief as the court may deem proper.

182 **ON THE SECOND CAUSE OF ACTION (FRAUD)**

- 183 1. General damages in an amount according to proof;
184 2. Punitive Damages in amount according to proof;
185 3. Costs of suit herein incurred;
186 4. Prejudgment interest in an amount according to proof; and,
187 5. Such other relief as the court may deem proper.

188 **ON THE THIRD CAUSE OF ACTION (FIDUCIARY DUTY)**

- 189 1. General damages in an amount according to proof;
190 2. Punitive Damages in amount according to proof;
191 3. Costs of suit herein incurred;
192 4. Prejudgment interest in an amount according to proof; and,
193 5. Such other relief as the court may deem proper.

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195 CROSS-COMPLAINT

196 **ON THE FOURTH CAUSE OF ACTION (CIVIL CONSPIRACY)**

- 197 1. General damages in an amount according to proof;
198 2. Punitive Damages in amount according to proof;
199 3. Costs of suit herein incurred;
200 4. Prejudgment interest in an amount according to proof; and,
201 5. Such other relief as the court may deem proper.

202 **ON THE FIFTH CAUSE OF ACTION (DECLARATORY RELIEF)**

- 203 1. A declaration of the rights of the parties as alleged
204 herein;
205 2. Such other relief as the court may deem proper.

206 Date: May 11, 2003

207 PORTER EMLING
208 By:

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CROSS-COMPLAINT

MICHAEL J. EMLING, Attorney
for CROSS COMPLAINANT