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MARK ALLEN

11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14

15 MARK ALLEN, an individual; and on
behalf of himself and all others similarly
16 situated,

17 Plaintiff,

18 v.

19 AUDIOPHILE MUSIC DIRECT INC.,
d/b/a Music Direct, a Nevada
20 corporation; MOBILE FIDELITY
SOUND LAB, INC., an Illinois
21 corporation; and DOES 1 through 50,
inclusive,
22

23 Defendants.
24
25

Case No. CV 22-8146-GW-MRWx

CLASS ACTION

**FIRST AMENDED COMPLAINT
FOR:**

- 1. FRAUD
- 2. VIOLATION OF THE UNFAIR
COMPETITION LAW, Cal.Bus. &
Prof. Code §§ 17200, et seq.
- 3. VIOLATION OF THE
CONSUMER LEGAL REMEDIES
ACT, Cal.Civ.Code §§ 1750, et seq.

DEMAND FOR JURY TRIAL

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1 Plaintiff Mark Allen (“plaintiff”) for himself and on behalf of all others similarly
2 situated, alleges as follows.

3 **THE NATURE OF THIS ACTION**

4 1. This is an action for fraud and deceptive and misleading practices brought
5 against defendants arising from their production and sale of vinyl records that defendants
6 marketed as “cut” directly from the original analog master tapes for the recordings as part
7 of an all-analog mastering chain, but failed to disclose included a digital step in the
8 mastering process. Indeed, for years defendants concealed from consumers that their
9 vinyl records at issue here were in fact cut from digital recordings that defendants made
10 from analog tapes of the recordings.

11 2. Central to the marketing of defendants’ records was their claim that they cut
12 their records from the original analog master tapes to induce consumers to pay premium
13 prices for the records because the audiophile consumers who purchase such records
14 reasonably believed the records were all-analog - - also known in the audiophile
15 community as “AAA records or AAA transfers.” Such AAA re-issues of popular jazz,
16 rock and other genres of music have commanded premium prices for vinyl recordings
17 during the renaissance period for vinyl records, which began in the early 1990s, when
18 companies such as Classic Records began making vinyl reissues of original popular
19 recordings cut directly from the analog master tapes for such recordings.

20 3. Defendant Mobile Fidelity Sound Lab, Inc. (“MoFi”), originally founded in
21 California and based in Sebastopol, California, jumped on the vinyl renaissance
22 bandwagon by making and selling reissues that it branded “Original Master Recording”
23 (“OMR”) to lead consumers to believe their vinyl records bearing this mark were cut
24 directly from the original analog master tapes for such recordings. Beginning in or around
25 2016, MoFi also started selling a super-premium version of their OMRs known as an
26 “Ultradisc One-Step Pressing” or “UD1S,” which defendants falsely represented were cut
27 directly from the original analog master tapes of the recordings as part of an all-analog
28 mastering chain.

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1 4. MoFi repeatedly represented to consumers in marketing and advertising
2 material on their website, covers and inserts for their records and in a 2017 video
3 interview of their sound engineers in California that their records were produced with an
4 “all analog mastering chain,” without disclosing they were actually cutting their OMRs
5 and UD1Ss from digital files. Plaintiff is informed and believes and thereon alleges that
6 MoFi has been cutting the lacquers used to press most, if not all, of their records from
7 direct stream digital (DSD) files since in or around 2011.

8 5. Plaintiff is informed and believes and thereon alleges that MoFi and
9 Defendant Audiophile Music Direct, Inc. (“Music Direct”) are both owned and controlled
10 by James R. Davis (“Jim Davis” or “Davis”). Music Direct is one of several distributors
11 and retailers of MoFi records.

12 6. MoFi and Music Direct concealed the digital step in the mastering chain for
13 their MoFi records so that they could charge premium pricing for their records as if they
14 were all-analog or AAA transfers. For example, defendants’ OMR titles have been sold
15 by defendants in the range of approximately \$30 to \$75 per title and UD1Ss releases have
16 been sold by defendants for approximately \$100 to \$125 per title.

17 7. All analog vinyl reissues have been the most sought-after records for years.
18 Companies that make vinyl reissues know lacquers mastered directly from the original
19 analog master tapes have greater intrinsic value to consumers than records cut from a
20 digital file.

21 8. The desire for high-quality reissues of popular vinyl recordings produced
22 during the height of the vinyl age of music during the 1950s to the 1970s stems from the
23 fact that it is difficult and often very costly for audiophile consumers and record collectors
24 to locate and purchase an original pressing of an album in a mint or near mint condition at
25 less than an exorbitant price. All of these original pressings were cut from analog master
26 tapes because digital recording technology for music production did not exist or become
27 commonplace until the 1980s. Therefore, an all-analog reissue allows a consumer the
28 promise of obtaining the closest thing to an original pressing of a title, which in some

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1 cases may even sound better than the original pressing due to advances in vinyl record
2 formulations used today that lower the noise floor of the record.

3 9. The desire for all-analog reissues also stems from the fact that a record
4 pressed from a lacquer cut directly from the original master tape of a recording puts the
5 listener closer to hearing the original master tape, which is the ultimate goal of producing
6 any vinyl record; i.e., to put the listener as close as possible to the performer.

7 10. By contrast, records cut from digital or those that have a digital step in the
8 mastering chain are inherently less valuable to consumers than all-analog records.
9 Defendants know this, which is why they represented for years that their records were cut
10 directly from the original master tapes and why they concealed the digital step in their
11 mastering chain from consumers.

12 11. Had defendants disclosed that the lacquers used to press their premium-
13 priced records were cut directly from digital files, and not original analog master tapes,
14 plaintiff and the putative class members would not have purchased the records or would
15 have paid substantially less for the records than they did. Defendants’ failure to disclose
16 this fact caused damage and injury to plaintiff and the class members.

17 12. Plaintiff brings this action individually and on behalf of all other similarly
18 situated purchasers to recover damages and restitution for: (1) fraud; (2) violations of
19 California’s Unfair Competition Law, Cal. Bus. & Profess. Code § 17200, et. seq.; and
20 violations of California’s Consumer Legal Remedies Act, Cal. Civ. Code § 1750, et. seq.

21 **THE PARTIES**

22 13. Plaintiff Mark Allen (“Allen”) is an individual residing in Orange County,
23 California.

24 14. Plaintiff is informed and believes and thereon alleges that defendant MoFi,
25 originally founded in California, is an Illinois corporation whose business operations are
26 conducted in Sebastopol, California, where MoFi’s record production facility and work
27 force have been located for years. MoFi is a manufacturer, wholesale distributor and
28 retailer of vinyl records and Super Audio CDs (SACDs). According to MoFi’s Notice of

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1 Removal [Dkt. #1 at 5], its principal place of business, where “its officers direct, control,
2 and coordinate” its activities, is in Chicago, Illinois.

3 15. At all times relevant hereto, MoFi’s global website <https://mofi.com/>
4 contained the following choice of law and choice of forum provision in its Terms and
5 Conditions for any dispute arising out of relating to the purchase of any MoFi record
6 product: “Your use of this site shall be governed in all respects by the laws of the state of
7 California, U.S.A., without regard to choice of law provisions, and not by the 1980 U.N.
8 Convention on contracts for the international sale of goods. You agree that jurisdiction
9 over and venue in any legal proceeding directly or indirectly arising out of or relating to
10 this site (including but not limited to the purchase of Mobile Fidelity Sound Lab, Inc.
11 products) shall be in the state or federal courts located in Los Angeles County,
12 California.”

13 16. Defendant Music Direct is a Nevada corporation having its principal place
14 of business in Chicago, Illinois. Plaintiff is informed and believes and thereon alleges that
15 the CEO, CFO and President of Music Direct is Jim Davis. Plaintiff is informed and
16 believes and thereon alleges that Jim Davis is also the CEO, CFO and President of MoFi.
17 Plaintiff is further informed and believes and thereon alleges that Jim Davis and Music
18 Direct control the business operations and policies of MoFi. Music Direct is also one of
19 the principal distributors and retailers of MoFi’s records, including its OMR and UD1S
20 lines of records.

21 17. Plaintiff is informed and believes and thereon alleges that Music Direct
22 engages in substantial business in the state of California and derives substantial revenue
23 from sales of MoFi records and other records in California. In fact, Music Direct and
24 Davis derive so much revenue from doing business in California that they and MoFi are
25 funding the construction of a state-of-the-art record-pressing facility in Oxnard, California
26 that will be the new business headquarters of MoFi commencing in early 2023.

27 18. Plaintiff is unaware of the true identities of those Defendants sued herein as
28 DOES 1 through 50, inclusive, and therefore sues these Defendants by these fictitious

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1 names. Each of the fictitiously named Defendants is responsible in some manner for the
2 injuries and damages alleged by Plaintiff. Plaintiff will seek leave of Court to amend this
3 Complaint to show the true names and capacities of the fictitiously named Defendants if
4 and when they are ascertained.

5 19. Each of the Defendants, including the DOE defendants, are the agents,
6 servants, employees, partners, joint venturers, alter egos, aiders and abettors, and/or co-
7 conspirators of one or more of the remaining Defendants, and, in doing the acts alleged
8 herein, were acting within the course and scope of said agency, employment, partnership,
9 joint venture, and/or conspiracy, or otherwise aided and abetted the others in committing
10 the wrongs alleged here.

11 **JURISDICTION AND VENUE**

12 20. Only the citizenship of the named parties in a class action (the representative
13 plaintiff and defendants) is considered for diversity purposes. Accordingly, the Court has
14 subject matter jurisdiction pursuant to 28 U.S.C. section 1332(a) because the matter in
15 controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is
16 between citizens of different states. The Court also has subject matter jurisdiction under
17 Class Action Fairness Act, 28 USC § 1332(d)(2), because this is a class action on behalf
18 of over 100 members seeking in excess of \$5 million in the aggregate.

19 21. Venue is proper in this District pursuant to 28 U.S.C. sections 1390(c) and
20 1441(a) because the U.S. District Court for the Central District of California is the federal
21 judicial district embracing the Los Angeles Superior Court, where plaintiff originally filed
22 this action.

23 **FACTUAL BACKGROUND**

24 **The All-Analog Production Process of Vinyl Records**

25 22. Before the advent of the digital age in the early 1980s, music was consumed
26 in analog media, including vinyl records which were produced via an all-analog mastering
27 process. A sound recording of a performance of a song or compilation of songs was
28 recorded first on analog tape by transferring the sound from the artist’s microphone into

1 an analog sound console or mixing board that creates a “mixed down” original master tape
2 recording of the music. The original master tape would then be played on a machine
3 known as a “lathe” to cut grooves on a fragile lacquer disc. An example of the all-analog
4 process of cutting a lacquer from original analog master tapes on a lathe for the current
5 Blue Note Tone Poet jazz series (a competitor of MoFi who makes AAA vinyl reissues)
6 can be seen in this video: <https://www.youtube.com/shorts/9LZYP4ovs7c>. The fragile
7 lacquer is then electroplated as part of the plating process to create a metal “stamper” that
8 is used to press the finished vinyl record. An example of this process by Analogue
9 Productions (another competitor of MoFi making and selling AAA reissues) is shown in
10 the following video: <https://www.youtube.com/watch?v=33ZLaR4IbAY>. After the
11 lacquer goes through the plating process, it can no longer be used to create additional
12 stampers. Therefore, the nature of an all-analog mastering process requires access again
13 to the analog master tape or a “safety” copy of the master to create another lacquer to
14 plate and press additional records.

15 23. Accordingly, due to the inherent nature of an all-analog mastering chain for
16 making vinyl records, reissues of such albums can only be produced in limited quantities,
17 which are typically numbered by the record manufacturers. This limited availability
18 further increases the demand for such AAA records.

19 24. With the invention of digital sound formats, sound recordings became more
20 affordable and ubiquitous. Vinyl records can also now be created or cut more cheaply
21 from digital files than analog tapes. Therefore, with digital technology, a reissue label
22 need only obtain a digital copy of an analog master tape or have access to the original
23 master tape on a single occasion to make a digital recording of the tape, which could then
24 be used multiple times to create lacquers that can be plated and used to create an unlimited
25 number of stampers and records. For a variety of reasons, reissue vinyl records with such
26 a digital step in the mastering chain are nowhere near as desirable to audiophile
27 consumers and record collectors as all-analog records.
28

1 25. All-analog reissues are far more desirable to audiophile consumers and
2 record collectors than their digitally cut counterparts for several reasons. First, all-analog
3 or AAA records generally have a distinctive, analog warm sound and ambience, which is
4 different from the sound and ambience of records sourced from – even high quality –
5 digital files. Second, audiophile consumers with turntables desire all-analog reissues
6 because they are looking to replicate an original pressing of the record that is no longer
7 available in a mint (sealed) or near-mint (like new) condition at less than an exorbitant
8 price. By way of an example, an original, first pressing of the landmark jazz album,
9 “*Kind of Blue*” by Miles Davis in a mint or near mint condition would likely sell for
10 hundreds if not thousands of dollars if you could even find one. On the other hand, you
11 could currently purchase a new, limited edition, all-analog reissue of *Kind of Blue*
12 produced by Analogue Productions for \$150.

13 [https://store.acousticsounds.com/d/148513/Miles_Davis-Kind_of_Blue-](https://store.acousticsounds.com/d/148513/Miles_Davis-Kind_of_Blue-UHQVinyl_Record)
14 [UHQR_Vinyl_Record](https://store.acousticsounds.com/d/148513/Miles_Davis-Kind_of_Blue-UHQVinyl_Record). But, a new *Kind of Blue* vinyl record that was not represented to
15 have been made with an all-analog process can be purchased for \$18.99.
16 <https://jocorecords.com/products/miles-davis-kind-of-blue-blue-vinyl>. Third, the ultimate
17 goal of any vinyl record is to get you as close as possible to the original master tape of the
18 musician performing live. That experience cannot be adequately replaced with some
19 fungible digital recording of the tape. High resolution digital recordings of classic rock,
20 jazz and other popular genres of music can be streamed for a small monthly subscription
21 fee through streaming services such as Tidal or Qobuz, or purchased as a DSD or other
22 digital downloadable file for a fraction of the premium prices charged by MoFi for its
23 purported AAA records.

24 26. Simply put, all-analog or AAA vinyl reissue records are in high demand by
25 audiophiles and record collectors today. They are produced in limited quantities and
26 popular titles typically sell out, creating a secondary market where they often sell for a
27 multiple of the original purchase price, just like the original pressings that they replicate.
28

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1 **MoFi’s False and Misleading Advertising and Marketing of Its Vinyl Records**

2 27. MoFi was founded in California by Brad Miller in 1977. MoFi, based in
3 Sebastopol, California, is a record label specializing in the production of audiophile
4 reissues of classic rock, jazz and other popular genres of music. MoFi produces reissued
5 vinyl LP records and Super Audio CDs (SACDs). Plaintiff is informed and believes and
6 thereon alleges that at all times relevant hereto, MoFi’s records were mastered in
7 Sebastopol, California and pressed, assembled and packaged at Record Technology
8 Incorporated (RTI) in Camarillo, California. Accordingly, the materials containing the
9 misrepresentations regarding the mastering of MoFi’s records emanated from California.

10 28. Jim Davis of Music Direct purchased MoFi in or around 2001. Plaintiff is
11 informed and believes and thereon alleges that since Jim Davis purchased MoFi, he and
12 Music Direct have invested heavily in MoFi’s operations in California to create and
13 expand MoFi’s vinyl reissue business as it exists today.

14 29. At all times relevant hereto, MoFi and Music Direct have advertised and
15 marketed their MoFi vinyl records as produced using an all-analog mastering chain and
16 until July 2022 never disclosed a digital step in the mastering process. MoFi uses a
17 claimed trademark of “Original Master Recording” on its vinyl records, including its
18 ultra-premium Ultradisc One-Step series of releases, to lead audiophiles and record
19 collector consumers who buy MoFi’s records at premium prices to believe its vinyl record
20 reissues of albums bearing the OMR mark are cut directly from the original analog master
21 tapes for the albums. Indeed, for years, prior to July of 2022, MoFi reassured consumers
22 that if one of their albums had the “Original Master Recording” banner on the cover, it
23 meant the record was cut from the verified analog master tapes.

24 30. MoFi has three distinct lines of records: (1) records labelled “Mobile
25 Fidelity Sound Labs” at top of the album (which MoFi represented were all-analog and
26 cut from analog tapes, but which MoFi could not verify that all songs on the album were
27 from the original master tapes); (2) records labelled “Original Master Recording” at the
28 top of the album (which MoFi represented were all-analog and cut from the original

1 master tapes); and (3) the Ultradisc One-Step (UD1S) series that also has “Original
2 Master Recording” banner at the top of each album (which MoFi also represented were
3 all-analog and cut from the master tapes using MoFi’s proprietary “One-Step” plating
4 process).

5 31. For its OMR line of records, MoFi commonly represented on its website in
6 all caps in the description for each release that it was “MASTERED FROM THE
7 ORIGINAL MASTER TAPES” and strictly limited to a certain stated number of copies.
8 In a more detailed description for each album at issue, MoFi provided the following or a
9 substantially similar description: “Mastered from the original master tapes, pressed at
10 RTI, and strictly limited to 4,000 numbered copies, Mobile Fidelity’s 180g 45RPM vinyl
11 2LP set possesses seemingly limitless dynamics, reference-grade presence, expansive
12 soundstages, and a wealth of previously obscured information.” See, e.g.,
13 [http://web.archive.org/web/20210920221814/https://mofi.com/collections/45rpm/products](http://web.archive.org/web/20210920221814/https://mofi.com/collections/45rpm/products/grateful-dead-blues-for-allah-180g-45rpm-2lp)
14 [/grateful-dead-blues-for-allah-180g-45rpm-2lp](http://web.archive.org/web/20210920221814/https://mofi.com/collections/45rpm/products/grateful-dead-blues-for-allah-180g-45rpm-2lp).

15 32. The phrase “Mastered from the original master tapes” has a specialized
16 meaning in the audiophile and record collector community that means a record pressed
17 from a lacquer cut directly from the original analog master tapes of a recording.

18 33. The backside of the cover for each album in the OMR line of records also
19 states: “Mastered from the Original Master Tapes.” The backside of the cover for the
20 “Mobile Fidelity Sound Lab” series of records typically states: “Mastered by Krieg
21 Wunderlich at Mobile Fidelity Sound Lab Sebastopol, CA on the GAIN 2 ULTRA
22 ANALOG SYSTEM” or a substantially similar statement.

23 34. MoFi also included marketing and promotional material as an insert to its
24 OMR line of records, which further described the GAIN 2 Ultra Analog System and its
25 mastering process for cutting its records. The insert went around each record inside the
26 album cover and contains pictures of other MoFi premium albums, including its ultra-
27 premium UD1S series. At all times relevant hereto, the insert stated as follows:

28 “Audiophiles and serious music collectors the world over have enormous respect for our

1 contributions to the analog disc. The GAIN 2 Ultra Analog System is our latest
 2 innovation. It is proprietary cutting system . . . The GAIN 2 Ultra Analog System is
 3 comprised of a highly modified Studer A-80 tape machine with proprietary electronics
 4 and a highly sophisticated cutting system with custom amplification to drive an Ortofon
 5 cutter head on a beautifully restored Neumann Lathe. . . Our Original Master Recordings
 6 only utilize actual original masters as source material. The master is played back through
 7 our custom electronics to extract the maximum amount of information. Due to the
 8 specialized plating process employed, occasional pops or ticks may be present in initial
 9 playback. But as the disc is played, a high-quality stylus will actually polish the groove
 10 walls and improve the sound. To ensure optimum sound quality, we limit the number of
 11 pressings for each release.”

12 35. At all times relevant hereto, the description on MoFi’s website for each
 13 ultra-premium UD1S release, which was repeated on the websites of Music Direct and
 14 other online retailers of MoFi’s records, also typically stated in all caps: “MASTERED
 15 FROM THE ORIGINAL MASTER TAPES.” See, e.g.,
 16 [http://web.archive.org/web/20210821080210/https://mofi.com/collections/ultradisc-one-](http://web.archive.org/web/20210821080210/https://mofi.com/collections/ultradisc-one-step/products/mfsl45ud1s-001_santana_abraxas_180g_45rpm_2lp_box_set)
 17 [step/products/mfsl45ud1s-001_santana_abraxas_180g_45rpm_2lp_box_set.](http://web.archive.org/web/20210821080210/https://mofi.com/collections/ultradisc-one-step/products/mfsl45ud1s-001_santana_abraxas_180g_45rpm_2lp_box_set)

18 36. The ultra-premium priced UD1S releases also came with an insert in the box
 19 for the album that represented in words and pictures that each release was an all-analog
 20 record cut from the original analog master tapes.

21 37. In particular, the insert included with each UD1S stated as follows:
 22 “Instead of utilizing the industry-standard three-step lacquer process, Mobile Fidelity
 23 Sound Labs’ new ULTRADISC ONE-STEP (UD1S) uses only one step, bypassing two
 24 processes of generational loss. . . . **MFSL engineers begin with the original master**
 25 **tapes and meticulously cut a set of lacquers.** These lacquers are used to create a very
 26 fragile, pristine UD1S stamper called a ‘convert.’ Delicate ‘converts’ are then formed
 27 into the actual record stampers, producing a final product that literally and figuratively
 28 brings you closer to the music. . . . **The exclusive nature of these very limited pressings**

1 **guarantees that every UD1S pressing serves as an immaculate replica of the lacquer**
 2 **sourced directly from the original master tapes.** Every conceivable aspect of vinyl
 3 production is optimized to produce the most perfect record album available today.”
 4 emphasis added). The insert included with each UD1S release also contains a diagram set
 5 forth below clearly depicting an all-analog mastering chain:



12 38. At all times relevant hereto, the all-analog mastering chain diagram in the
 13 insert accompanying each UD1S title was prominently displayed on MoFi’s website. See,
 14 e.g., [http://web.archive.org/web/20210728105623/https://mofi.com/collections/ultradisc-](http://web.archive.org/web/20210728105623/https://mofi.com/collections/ultradisc-one-step)
 15 [one-step](http://web.archive.org/web/20210728105623/https://mofi.com/collections/ultradisc-one-step).

16 39. Plaintiff is informed and believes and thereon alleges that at all times
 17 relevant hereto, the above representations or substantially similar representations that
 18 MoFi’s records were all-analog records cut from original master tapes were also set forth
 19 on MoFi’s website and in the individual album descriptions on the websites of other
 20 online retailers of MoFi records, including Music Direct. See, e.g.,
 21 <http://web.archive.org/web/20211018014348/https://mofi.com/pages/technologies#GAIN>
 22 [2_Analog](http://web.archive.org/web/20211018014348/https://mofi.com/pages/technologies#GAIN).

23 40. In purchasing MoFi releases at premium prices, plaintiff and other
 24 audiophile consumers of MoFi’s records that comprise the putative class reasonably relied
 25 upon and understood the above statements, and the diagrams in the insert to the UD1S
 26 releases, which failed to disclose that the mastering process was not all-analog and were
 27 instead cut from digital files, to be representations that each record they purchased was an
 28 all-analog record cut from the original analog master tapes.

1 41. MoFi's false and misleading advertising and marketing of its records was
2 not limited to false and misleading representations on packaging for its records and
3 descriptions on MoFi's website and the websites of its authorized retailers.

4 42. MoFi also consistently represented in interviews that its mastering process
5 of making its records was all-analog. For example, in an article published by CNET.com
6 on April 29, 2010, MoFi's engineer Rob LoVerde was quoted as saying that "every MoFi
7 LP--which was originally recorded to analog--is cut from an analog master tape," unlike
8 most LPs that "now are cut from digital masters." See Steve Guttenberg, MoFi Remasters,
9 Perfects LP Sound, CNET, Apr. 29, 2010, <https://www.cnet.com/tech/home-entertainment/mofi-remasters-perfects-lp-sound/>.

10 43. On January 8, 2017, to promote MoFi's new Ultradisc One-Step line of
11 pressings, MoFi's sound engineers, Rob LoVerde and Shawn R. Britton, provided an
12 interview recorded on YouTube regarding MoFi's mastering process for its vinyl records
13 in California. In discussing the GAIN 2 ULTRA ANALOG SYSTEM used to cut MoFi's
14 vinyl records, Britton stated as follows at 1:32 of the video: "**Well, some people ask us**
15 **questions like, is it an all analog mastering chain? It is.**"
16 <https://www.youtube.com/watch?v=z-td3Uk5TIQ>.

17 44. At the time of the January 8, 2017 interview, LoVerde and Britton and
18 defendants knew that MoFi's first UD1S release, Santana *Abraxas*, released in 2016 and
19 shown behind LoVerde and Britton in the video, had been cut from a DSD file.
20 <https://www.youtube.com/watch?v=H3LlxO2KK-w&t=5s>. They and defendants also
21 knew that most, if not all, of MoFi's records, including those labeled "Original Master
22 Recording," had been cut from digital since 2012.

23 **Defendants' Fraud is Uncovered**

24 45. On July 14, 2022, Mike Esposito, a record store owner with a popular
25 YouTube channel subscribed to by vinyl record audiophiles, released a video on his
26 channel "The 'In' Groove" stating that "pretty reliable sources" informed him that,
27 contrary to the company's official statements and marketing and promotion of its records,
28

1 “pretty much everything” that MoFi had been producing for vinyl records since 2015
2 involved cutting its lacquers from digital files and not analog master tape. Shortly
3 thereafter, MoFi invited Esposito to California for a tour of its facility in Sebastopol.
4 While there, MoFi staff allowed Esposito to record a video of his interview of MoFi’s
5 long-time principal sound engineers, Britton, LoVerde and Krieg Wunderlich that
6 Esposito released on his YouTube channel on July 20, 2022 (the “July 20 Video”)
7 <https://www.youtube.com/watch?v=shg0780YgAE&t=1359s>.

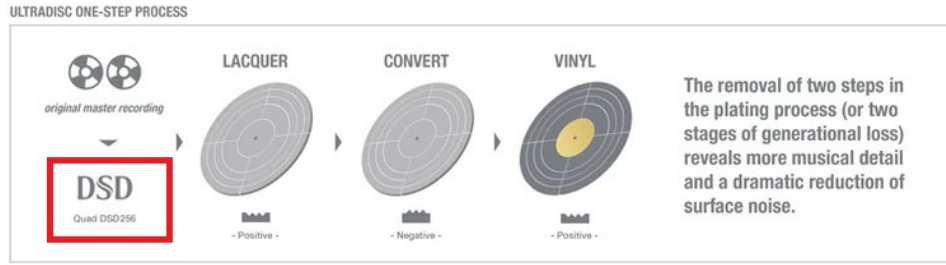
8 46. During the July 20 Video, Britton shockingly admitted that they had been
9 cutting MoFi records from DSD files since 2011, which included MoFi’s UD1S release of
10 Santana *Abraxas*, OMR release of *Abraxas* (which like other OMR releases states on the
11 back cover, “Mastered from the Original Stereo Master Tapes”) and the Miles Davis
12 catalogue released by MoFi. Britton and the other engineers also indicated that all of
13 MoFi’s UD1S releases included this digital step, as well as many other releases, which
14 MoFi had previously represented were all-analog records cut from the original master
15 tapes.

16 47. MoFi’s admission that it had been cutting its records from digital caused
17 consumer outrage. MoFi and Music Direct went into a damage-control mode and began
18 quickly changing the wording on their websites and marketing materials to disclose for
19 the first time the digital step in the mastering chain for their records. For example, MoFi
20 changed the description of the long-since sold-out UD1S release of Santana *Abraxas* to
21 include the following description: “1/4” / 15 IPS analog master to DSD 256 to analog
22 console to lathe.”

23 48. MoFi also changed the diagram in the insert for its new UD1S releases to
24 disclose the digital step in the mastering chain and the cutting of the lacquer for each
25 record from a DSD file:
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49. On or about July 27, 2022, MoFi and Music Direct also issued a public statement, signed by Jim Davis, posted on their social media platforms in which they acknowledged that they had misled consumers regarding the mastering chain for their records:

We at Mobile Fidelity Sound Lab are aware of customer complaints regarding use of digital technology in our mastering chain. We apologize for using vague language, allowing false narratives to propagate, and for taking for granted the goodwill and trust our customers place in the Mobile Fidelity Sound Lab brand.

We recognize our conduct has resulted in both anger and confusion in the marketplace. Moving forward, we are adopting a policy of 100% transparency regarding the provenance of our audio products. We are immediately working on updating our websites, future printed materials, and packaging — as well as providing our sales and customer service representatives with these details. We will also provide clear, specific definitions when it comes to Mobile Fidelity Sound Lab marketing branding such as Original Master Recording (OMR) and UltraDisc One-Step (UD1S). We will backfill source information on previous releases so Mobile Fidelity Sound Lab customers can feel as confident in owning their products as we are in making them.

* * *

Jim Davis

President, Mobile Fidelity Sound Lab

50. MoFi and Music Direct charged plaintiff and other class members a premium for their OMR and UD1S releases based on misrepresentations that these releases were all-analog and the concealment of the digital step in the mastering chain for the records. Had MoFi and Music Direct disclosed that the records were cut from digital, plaintiff and other class members would not have purchased the records or would have paid substantially less for them.

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1 **Plaintiff’s Purchases of Mo-Fi Records Advertised as All-Analog**

2 51. Plaintiff is an audiophile and consumer of vinyl records.

3 52. Plaintiff saw and relied upon defendants’ above-described representations
4 on their websites, printed materials and packaging and inserts for their vinyl records
5 regarding an all-analog mastering chain for defendants’ OMR line of their records,
6 including their ultra-premium UD1S series.

7 53. In reliance on these representations, and based on defendants’ concealment
8 of the digital step in the mastering chain for their records, plaintiff purchased multiple
9 new, purportedly OMR all-analog vinyl records produced by MoFi, including, but not
10 limited to, the following UD1S releases: *Yes Fragile* (2 copies); Bob Dylan *Blood On the*
11 *Tracks*; Marvin Gaye *What’s Going On*; Thelonious Monk *Monk’s Dream*; and Charles
12 Mingus *Mingus Ah Um*.

13 54. Had MoFi and Music Direct disclosed that these records were cut from
14 digital files, plaintiff would not have purchased these records or would have paid
15 substantially less for them.

16 **CLASS ACTION ALLEGATIONS**

17 55. **Class Definition.** Plaintiff brings this action on behalf of himself and a
18 class of similarly-situated persons defined as: All persons nationwide who, before July
19 20, 2022, purchased a MoFi Original Master Recording (OMR) record or UltraDisc One-
20 Step (UD1S) record (collectively, the “Records”), hereinafter the “Class”. The Class
21 excludes persons who purchased used Records. The Class also excludes defendants and
22 their directors, officers, employees, agents, representatives, immediate family members,
23 joint venturers, and all persons and entities controlled by defendants or affiliated with
24 defendants.

25 56. **Numerosity.** The number of persons within the Class is substantial,
26 numbering thousands and thousands of persons. Individual joinder of all members of the
27 Class would be impracticable. The size and relative modest value of the claims as to each
28

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1 individual Class member also renders joinder impractical. Utilization of a class action is
2 the most economically feasible means of adjudicating this matter.

3 57. **Commonality and Predominance.** There are well defined common
4 questions of law and fact that exist as to all members of the Class. These questions
5 predominate over the questions affecting only individual Class members. These common
6 legal and factual questions include, among others:

- 7 a. Whether defendants' labeling, marketing and promotion of their
8 Records was false, misleading and failed to disclose that the Records
9 were not all-analog and were instead cut from digital files;
- 10 b. Whether defendants' conduct was unfair and/or deceptive and
11 amounted to fraud;
- 12 c. Whether plaintiff and the Class members have sustained damages as
13 a result of defendants' fraudulent and misleading conduct; and
- 14 d. The proper measure of their damages.

15 58. **Typicality.** Plaintiff's claims are typical of the claims of the Class.
16 Plaintiff and the other members of the Class were exposed to defendants' false and
17 misleading marketing, promotion and representations about the mastering of the Records
18 and concealment of the digital step in the mastering process; purchased one or more
19 Records in reliance upon the same or substantially the same all-analog misrepresentations
20 or omissions; and suffered loss or damage as a result of that purchase.

21 59. **Adequacy of Representation.** Plaintiff is an adequate Class representative
22 because his interests do not conflict with the interests of the other Class members he seeks
23 to represent. He has retained counsel competent and experienced in conducting consumer
24 fraud class actions. Plaintiff and his counsel will adequately protect the interests of the
25 Class.

26 60. **Superiority.** A class action is superior to other available methods for the
27 fair and efficient adjudication of the controversy and will create a substantial benefit to
28 both the public and the courts in that: the per class-member costs of prosecuting the action

1 individually will vastly exceed the costs for prosecuting the case as a class action; class
 2 certification will obviate the necessity of a multiplicity of claims; it is desirable to
 3 concentrate the litigation of these claims in this forum; and unification of common
 4 questions of fact and law into a single proceeding before this Court will reduce the
 5 likelihood of inconsistent rulings, opinions, and decisions. Moreover, members of the
 6 Class lack an adequate economic incentive to pay attorneys to prosecute their claims
 7 individually and individual claims are not sufficiently sizable to attract the interest of
 8 highly able and dedicated attorneys to prosecute such claims on a contingency basis.

9 61. A class action presents far fewer management difficulties than litigating this
 10 case as hundreds or thousands of individual actions and provides the benefits of single
 11 adjudication, economies of scale, and comprehensive supervision by a single court.

12 62. The Class is ascertainable because it describes a set of common
 13 characteristics sufficient to allow members of that group to identify themselves as having
 14 a right to recover based on the descriptions.

15 63. California Law Applies to the Entire Class. California has significant
 16 contacts and a significant aggregation of contacts to the claims asserted by each member
 17 of the Class, establishing California's interest in this matter such that the application of
 18 California law is not arbitrary or unfair. Plaintiff is informed and believes and thereon
 19 alleges such contacts include: (1) MoFi, founded and based in California, is a California
 20 business; (2) At all relevant times, the Records were manufactured in and originally
 21 shipped from California; (3) At all relevant times, the Record album covers and inserts
 22 containing the false representations and omissions were prepared in, printed in and
 23 shipped from California; (4) At all relevant times, advertising materials containing the
 24 false representations and omissions were prepared in, printed in and shipped from
 25 California; (5) After acquiring MoFi in California, Music Direct and its owner, Jim Davis,
 26 learned of the false representations and omissions about the Records emanating from
 27 California and they allowed and encouraged the continuation of such unlawful conduct;
 28

1 and (6) The initial admission that the Records were not manufactured using an all-analog
2 process was made in California.

3 64. Indeed, in recognition of defendants’ significant contacts with California,
4 the terms and conditions for MoFi’s global website includes a choice of California’s
5 internal laws and a choice of forum requiring litigation in Los Angeles, California.

6 **FIRST CAUSE OF ACTION**

7 **(Fraud)**

8 65. Plaintiff realleges and incorporates by reference the allegations of
9 paragraphs 1 through 64 of this complaint.

10 66. Plaintiff brings this claim individually and on behalf of members of the
11 proposed Class against defendants.

12 67. As alleged above, defendants provided plaintiff and other members of the
13 Class with false or misleading material information about the Records, including without
14 limitation, representing the Records were “all-analog” without disclosing the digital step
15 in the mastering process for the Records. Defendants concealed material information
16 from plaintiff and other members of the Class, including without limitation, failing to
17 disclose the digital step in the mastering chain for the Records and the fact that the
18 Records were cut from digital files.

19 68. Defendants knowingly and intentionally made numerous false and/or
20 misleading representations of material fact with the intent to deceive and/or induce
21 reliance by plaintiff and other members of the Class. Defendants further failed to disclose
22 and concealed facts that they were required to disclose to prevent other statements that
23 they had made from being false and misleading. Plaintiff and other members of the Class
24 reasonably relied on these representations, omissions and concealments, which induced
25 them to purchase the Records.

26 69. Defendants’ fraudulent conduct caused damage to plaintiff and the members
27 of the Class in amounts according to proof at trial.
28

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1 70. Defendants' wrongful acts and omissions were knowingly, willfully,
 2 intentionally, maliciously, oppressively and fraudulently undertaken with the express
 3 purpose and intention of defrauding plaintiff and other members of the Class, all to the
 4 substantial financial benefit of defendants, and each of them, thereby entitling plaintiff
 5 and the Class to an award of punitive damages.

6 71. Defendants are subject to direct liability for this cause of action because
 7 they each performed actions constituting fraud. Defendants are also liable for: (a)
 8 conspiring with one another to defraud plaintiff and the Class; (b) furnishing the means
 9 for the accomplishment of the fraud described above (by producing and selling the
 10 Records made with digital recording technology while knowing the Records would be
 11 advertised as all-analog); (c) aiding and abetting the fraud of one another; and (d) the
 12 fraud of one another under agency, alter ego and/or joint venture principles.

13 **SECOND CAUSE OF ACTION**

14 **(Unfair Competition under Bus. & Prof. Code § 17200, et seq.)**

15 72. Plaintiff realleges and incorporates by reference the allegations of
 16 paragraphs 1 through 71 of this complaint.

17 73. Plaintiff brings this claim individually and on behalf of members of the
 18 proposed Class against defendants.

19 74. California Business and Professions Code § 17200, et seq., (the "Unfair
 20 Competition Law" or "UCL") prohibits unlawful, unfair and fraudulent business practices.

21 75. Defendants' actions violate the UCL's fraudulent prong because the actions
 22 were likely to, and did, deceive plaintiff and the public.

23 76. Defendants' actions violate the UCL's unlawful prong because the actions
 24 constitute fraud.

25 77. Defendants are subject to direct liability for this cause of action because
 26 they each performed actions constituting violations of the UCL. Each defendant is also
 27 liable for: (a) conspiring with one another to violate the UCL; (b) furnishing the means for
 28 the accomplishment of the UCL violations described above (by producing and selling the

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1 Records made with digital recording technology while knowing the Records would be
2 advertised as all-analog); (c) aiding and abetting the UCL violations of one another; and
3 (d) the UCL violations of one another under agency, alter ego, and/or joint venture
4 principles.

5 **THIRD CAUSE OF ACTION**

6 **(Consumers Legal Remedies Act, Civ. Code § 1750, et seq.)**

7 78. Plaintiff realleges and incorporates by reference the allegations of
8 paragraphs 1 through 77 of this complaint.

9 79. Plaintiff brings this claim individually and on behalf of member of the
10 proposed Class against defendants.

11 80. Plaintiff and the members of the proposed Class are “consumers” within the
12 meaning of the Consumers Legal Remedies Act (“CLRA”).

13 81. Defendants are “persons” within the meaning of the CLRA.

14 82. The CLRA makes it unlawful for any person in a transaction intended to
15 result in the sale of goods to any consumer to represent “that goods or services are of a
16 particular standard, quality, or grade, or that goods are of a particular style or model, if
17 they are of another” and to advertise goods “with intent not to sell them as advertised.”

18 83. The sale and advertising of the Records as alleged above are unlawful and
19 violate the CLRA.

20 84. Defendants’ wrongful acts and omissions were knowingly, willfully,
21 intentionally, maliciously, oppressively and fraudulently undertaken with the express
22 purpose and intention of defrauding plaintiff and other members of the Class, all to the
23 substantial financial benefit of defendants, and each of them, thereby entitling plaintiff
24 and the Class to an award of punitive damages.

25 85. Defendants are subject to direct liability for this cause of action because
26 they each performed actions constituting fraud. Defendants are also liable for: (a)
27 conspiring with one another to defraud plaintiff and the Class; (b) furnishing the means
28 for the accomplishment of the fraud described above (by producing and selling the

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1 Records made with digital recording technology while knowing the Records would be
2 advertised as all-analog); (c) aiding and abetting the fraud of one another; and (d) the
3 fraud of one another under agency, alter ego and/or joint venture principles.

4 86. More than thirty (30) days before the filing of this amended complaint
5 adding this cause of action for violation of the CLRA, plaintiff notified defendants of the
6 particular violations of Section 1770 alleged herein and demanded that they correct,
7 repair, replace or otherwise rectify the goods or services alleged to be in violation of
8 Section 1770. Defendants have failed to correct, replace or otherwise rectify their falsely
9 advertised goods, thereby entitling plaintiff and the Class to recover actual, statutory and
10 punitive damages according to proof at trial.

11 87. To the extent the venue provision set forth in California Civil Code Section
12 1780(d) applies in federal court, venue in the County of Los Angeles in this District is
13 proper because (a) defendants are doing business in Los Angeles County and within this
14 District; and (b) based on the forum selection clause on MoFi’s website, which states in
15 relevant part: “You agree that jurisdiction over and venue in any legal proceeding directly
16 or indirectly arising out of or relating to this site (including but not limited to the purchase
17 of Mobile Fidelity Sound Lab, Inc. products) shall be in the state or federal courts located
18 in Los Angeles County, California.” <https://mofi.com/pages/terms-and-conditions>.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, plaintiff, individually and on behalf of the Class, prays for
21 judgment as follows:

22 1. For an order certifying the Class, naming plaintiff as representative of the
23 Class and naming plaintiff’s attorneys as Class Counsel to represent the members of the
24 Class;

25 2. On the First Cause of Action: for compensatory and punitive damages
26 according to proof at trial;

27 ///

28 ///

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3. On the Second Cause of Action: For restitution and disgorgement of all money or property wrongfully obtained by defendants from plaintiff and the members of the Class according to proof at trial;

4. On the Third Cause of Action: Class certification under CA. Civ. Code § 1781, an order enjoining defendants’ acts and practices in violation of the CLRA and for actual, statutory and punitive damages under CA. Civ. Code § 1780.5 according to proof at trial.

5. On all causes of action:

- (a) for an award of prejudgment interest on all amounts awarded;
- (b) for an award of reasonable attorneys’ fees and expenses;
- (c) for costs of suit; and
- (d) for such other and further relief as the Court deems just and proper.

DATED: November 10, 2022

GREENBERG GLUSKER FIELDS
CLAMAN & MACHTINGER LLP

By: /s/ Jonathan B. Sokol
JONATHAN B. SOKOL (SBN 131806)
Attorneys for Plaintiff MARK ALLEN

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all issues triable of right by a jury.

DATED: November 10, 2022

GREENBERG GLUSKER FIELDS
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By: /s/ Jonathan B. Sokol
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