

ORIGINAL  
Assigned to Judge Ruth Ann Huran

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WRETZKY-BROWN

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF LOS ANGELES

18 JAMES YOSHINOBU IHA, an individual;  
19 and D'ARCY WRETZKY-BROWN, an  
individual,  
20  
21 Plaintiffs,  
22  
23 vs.  
24 VIRGIN RECORDS AMERICA, INC., a  
California Corporation, and DOES 1-50,  
inclusive,  
25  
26 Defendants.

CASE NO. BC395038  
COMPLAINT FOR:  
1. BREACH OF CONTRACT;  
2. BREACH OF IMPLIED COVENANT OF  
GOOD FAITH AND FAIR DEALING;  
3. UNJUST ENRICHMENT; AND  
4. ACCOUNTING

27 DEMAND FOR JURY TRIAL

CITY/CASE: LOS ANGELES LEA/5774  
RECEIPT #: 09118702027  
DATE PAID: 07/24/08 12:51:55 PM  
PAYMENT: \$320.00 0310  
RECEIVED:  
CHECK: 320.00  
CASH:  
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FILED  
LOS ANGELES SUPERIOR COURT

JUL 24 2008

JOHN A. CLARKE, CLERK  
BY D.M. SWAIN, DEPUTY

1 Plaintiffs James Yoshinobu Iha ("Iha") and D'Arcy Wretzky-Brown ("Wretzky")  
2 (collectively, "Plaintiffs"), as and for their claims against Defendant Virgin Records America,  
3 Inc. ("Virgin"), allege as follows:

4 **NATURE OF ACTION**

5 1. This is an action to obtain redress for the unauthorized commercial  
6 exploitation of the musical recordings of the internationally renowned rock band The Smashing  
7 Pumpkins, of which Iha and Wretzky were founding members. Specifically, Virgin entered into  
8 agreements with third parties, without Plaintiffs' consent, to provide The Smashing Pumpkins'  
9 recordings for sale as electronic transmissions (e.g. download computer files, ringtones, etc.).  
10 Such unauthorized commercial exploitation by Virgin constitutes a material breach under a  
11 recording agreement entered into between Iha, Wretzky and William Patrick Corgan ("Corgan"),  
12 collectively and professionally known as "The Smashing Pumpkins," and Virgin, dated May 11,  
13 1998 (the "Recording Agreement").

14 **FACTUAL ALLEGATIONS**

15 **A. The Parties**

16 2. Iha is an individual residing in the County of New York, New York.  
17 3. Wretzky is an individual residing in the County of Berrien, Michigan.  
18 4. Plaintiffs are informed and believe, and based thereon allege, that Virgin is  
19 a corporation duly organized and existing under the laws of the State of California, with its  
20 principal place of business in New York, New York. Plaintiffs are further informed and believe,  
21 and based thereon allege, that Virgin is a record label presently owned by the EMI Group.

22 5. The true names and capacities, whether, individual, corporate, associate or  
23 otherwise of Defendants DOES 1-50, inclusive, are unknown to Plaintiffs, who therefore sue  
24 these Defendants by their fictitious names. Plaintiffs are informed and believe, and, based  
25 thereon allege, that each of the Defendants designated herein as a fictitiously-named defendant is  
26 in some manner responsible for the events and happenings herein referred to, either contractually  
27 or otherwise, and caused the damage to Plaintiffs as herein alleged. When Plaintiffs ascertain the  
28 true names and capacities of DOES 1-50, inclusive, they will ask leave of the Court to amend

1 their Complaint by setting forth the same. (Virgin and DOES 1-50 are hereinafter collectively  
2 referred to as "Defendants.")

3 **B. Jurisdiction**

4 6. The parties have consented to this Court's jurisdiction in the Recording  
5 Agreement, which provides that any claim or dispute arising under the Recording Agreement  
6 shall be brought only in the state or federal courts of the State of California.

7 **C. Background**

8 7. The Smashing Pumpkins are a musical recording group formed in 1988  
9 after Corgan and Iha met Wretzky in Chicago, Illinois and began performing together under the  
10 moniker "The Smashing Pumpkins."

11 8. For the next five years, the popularity of The Smashing Pumpkins steadily  
12 grew, with the band achieving mass success with the 1993 release of the album "Siamese  
13 Dream." The album debuted at #10 on the Billboard chart, selling over one million copies in the  
14 first four months of its release.

15 9. In 1994, The Smashing Pumpkins B-sides/rarities compilation "Pisces  
16 Iscariot" was released and reached #4 on the Billboard chart.

17 10. Thereafter, in 1995, the band's double album "Mellon Collie and The  
18 Infinite Sadness," was released and debuted at #1 on the Billboard charts. Four singles were  
19 released in the United States during 1996 and the album earned the band seven Grammy Award  
20 nominations in 1997. By early 1998, the Recording Industry Association of America certified the  
21 album eight times platinum in the United States.

22 **D. The Recording Agreement**

23 11. By the Spring of 1998, The Smashing Pumpkins were at the height of their  
24 acclaim and entered into negotiations with Virgin regarding the band's future relationship with  
25 the record label. As a result of the band's success, the Recording Agreement was to provide the  
26 band with significant control and approval rights over the creation, marketing and sale of their  
27 recordings.

28 12. On or about May 11, 1998, Iha, Wretzky and Corgan, collectively



1 professionally known as The Smashing Pumpkins, each signed the Recording Agreement with  
2 Virgin in their individual capacities.

3 13. The Recording Agreement provided, *inter alia*, that the mutual consent of  
4 all parties was necessary for Virgin to exploit the band's recordings via any new technology  
5 created. In this regard, paragraph 13(b) of the Recording Agreement provides that:

6 Exploitation of any new technology which is hereafter developed,  
7 including the exploitation of newly-created long-form home videos  
8 shall only be with your and our mutual consent.

8 Recording Agreement, ¶13(b).

9 14. Additionally, pursuant to the Recording Agreement, the band had approval  
10 rights over the manner and approach of distribution of the recordings. In this regard, paragraph  
11 13(c) of the Recording Agreement provides in relevant part that:

12 You will have the right to approve all exploitation of Masters other  
13 than in the form(s) and sequence(s) delivered and other than as  
14 top-line sales through normal retail distribution channels.  
15 Accordingly, there shall be no exploitations of any kind of  
16 Masters, except as delivered for exploitation by you hereunder and  
17 under the Prior Agreement, and except as released prior to the  
18 Effective Date, without your specific written consent.

16 Recording Agreement, ¶13(c).

17 **E. Virgin Breaches The Recording Agreement**

18 15. Thereafter, in or around September 1999, Wretzky left the band, and within  
19 the following year the band announced their breakup, performing in a farewell tour culminating at  
20 the end of 2000 – a situation of which Virgin was fully aware. In fact, after The Smashing  
21 Pumpkins disbanded, in 2001 Corgan formed a new band known as “Zwan.” Reprise Records,  
22 not Virgin, released Zwan’s only album in 2003.

23 16. Five years after the group disbanded, in 2005, Virgin sought The Smashing  
24 Pumpkins’ permission via amendment to the Recording Agreement to exploit all of the band’s  
25 recordings via electronic transmissions. However, despite the fact that Virgin was fully aware  
26 that the band had mutually disbanded, Virgin attempted to enter into such amendment to the  
27 Recording Agreement without obtaining the consent or signatures of Iha and Wretzky.

1           17. Corgan's counsel negotiated the proposed amendment to the Recording  
2 Agreement for Corgan which, in addition to the exploitation of electronic transmissions,  
3 permitted Virgin to implement a mid-price sales campaign of the band's albums whereby Virgin  
4 would also promote Corgan's forthcoming debut solo album (to be released on another record  
5 company's label), in connection with the campaign.

6           18. However, the proposed amendment was not executed by all of the parties,  
7 including the Plaintiffs, whose signatures and consent were expressly required under the  
8 Recording Agreement for any amendments or modifications. In this regard, paragraph 22(a) of  
9 the Recording Agreement provides in relevant part that:

10           [N]o modification, amendment, waiver, termination or discharge of  
11 this Contract or of any its terms shall be binding upon either of us  
12 unless confirmed by a document signed by you and by a duly  
authorized officer of ours.

13 Recording Agreement, ¶ 22(a) (emphasis added).

14           19. The first sentence of the Recording Agreement defines "you" as Corgan,  
15 Iha and Wretzky and, in fact, the proposed amendment, similar to the Recording Agreement,  
16 includes three signature lines for each of the three band members.

17           20. Notwithstanding the foregoing, in 2005, Virgin began licensing various  
18 recordings of The Smashing Pumpkins through electronic transmissions, such as via download  
19 transmissions, streaming transmissions, and/or other forms of digital delivery.

20           21. Joseph Grier ("Grier") counsel for Iha and Wretzky, repeatedly advised  
21 Virgin, orally and in writing that the proposed amendment was negotiated and approved solely by  
22 Corgan and his representatives, and that any amendment to the Recording Agreement had to be  
23 executed by all three of the original band members. Grier also requested a direct accounting of  
24 all income derived from electronic transmissions to date and demanded that until the amendment  
25 was properly negotiated and executed by all parties, all monies collected with respect to  
26 electronic transmissions should be held internally by Virgin.

27           22. On or about May 3, 2007, Plaintiffs were informed that Virgin distributed  
28



1 at least one royalty accounting and payment of 100% of the band's digital monies pertaining to  
2 such accounting directly to Corgan. Yet, at no point prior to or upon the release of the digital  
3 monies did Virgin inform Iha and/or Wretzky of said distribution. Thereafter, on or about May  
4 15, 2007 both Iha and Wretzky individually sent letters to the attention of Sati Renjen, Director of  
5 EMI/Virgin Royalties, requesting copies of prior digital income statements and copies of any  
6 checks issued by Virgin directly to Corgan. As a result of Virgin's continued lack of notice to  
7 Plaintiffs, Plaintiffs were unaware of the distribution of Virgin's accountings.

8 23. Despite the above, Virgin continues to neglect any and all requests for a  
9 direct accounting and payment of Plaintiffs' monies claiming a need for Corgan's permission.

10 24. To date, Virgin continues to engage in the exploitation of electronic  
11 transmissions of the band's recordings without Plaintiffs' consent. In permitting the sale of  
12 electronic transmissions without Plaintiffs' consent, Virgin has deprived Plaintiffs of the benefits  
13 and the protections specifically negotiated in the Recording Agreement and due to them under the  
14 Recording Agreement, and/or any subsequent modification or amendment thereto.

15 **FIRST CAUSE OF ACTION**

16 **(Breach of Contract)**

17 25. Plaintiffs incorporate here by reference each and every allegation of  
18 paragraphs 1 through 24, inclusive, as though fully set forth herein.

19 26. Virgin has materially breached the Recording Agreement as of the  
20 commencement of exploitation of electronic transmissions of the band's recordings by, *inter alia*,  
21 proceeding with exploitation of the recordings without receiving Iha and/or Wretzky's consent.

22 27. Plaintiffs have performed all of their obligations pursuant to the terms of  
23 the Recording Agreement.

24 28. As a direct and foreseeable result of Virgin's breach of contract, Plaintiffs  
25 have suffered, general, special and incidental damages in an amount to be proven at trial, but  
26 which Plaintiffs are informed and believe, and based thereon allege, are within the jurisdictional  
27 limits of this Court, plus pre-judgment and post-judgment interest at the legal rate.



1 **FOURTH CAUSE OF ACTION**

2 (Accounting)

3 37. Plaintiff incorporates here by reference each and every allegation of  
4 paragraphs 1 through 24, 26 through 28, 30 through 33 and 35 through 36, inclusive, as though  
5 fully set forth herein.

6 38. The amount of money due from Virgin to Plaintiffs based on the  
7 exploitation of electronic transmissions of the band's recordings is not wholly known to  
8 Plaintiffs, and cannot be ascertained without a full and complete accounting.

9 39. Accordingly, Plaintiffs request that the Court order Virgin to render a full,  
10 complete and current accounting to ascertain the full amount of money, since inception, due and  
11 owing directly to Plaintiffs.

12 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as follows:

13 **AS TO THE FIRST CAUSE OF ACTION:**

14 40. For general, special and incidental damages against Virgin, in an amount to  
15 be proven at trial;

16 **AS TO THE SECOND CAUSE OF ACTION:**

17 41. For general, special and incidental damages against Virgin, in an amount to  
18 be proven at trial;

19 **AS TO THE THIRD CAUSE OF ACTION:**

20 42. For the imposition of a constructive trust over the monies Virgin derived  
21 from the exploitation of electronic transmissions;

22 **AS TO THE FOURTH CAUSE OF ACTION:**

23 43. For an accounting from Virgin of royalties and any other monies due to  
24 Plaintiffs.

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**ON ALL CAUSES OF ACTION:**

- 44. For costs of suit, incurred herein, including contractual attorneys' fees;
- 45. For pre- and post-judgment interest at the maximum legal rate; and
- 46. For such other and further relief as this Court may deem just and proper.

DATED: July 24, 2008

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By 

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