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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF LOS ANGELES

17 **PEOPLE OF THE STATE OF CALIFORNIA,**
18
19 **Plaintiff,**
20 **v.**
21 **SONY BMG MUSIC ENTERTAINMENT,**
a Delaware partnership,
22 **Defendant.**

CASE NO.:

**COMPLAINT FOR
INJUNCTION, CIVIL
PENALTIES AND OTHER
EQUITABLE RELIEF**

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24 Plaintiff THE PEOPLE OF THE STATE OF CALIFORNIA (“Plaintiff”), by and through
25 Bill Lockyer, Attorney General of the State of California, and Steve Cooley, the District
26 Attorney of the County of Los Angeles, is informed and believes and thereupon alleges as
27 follows:

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1 **JURISDICTION AND VENUE**

2 1. Bill Lockyer, Attorney General of the State of California, and Steve Cooley,
3 District Attorney of the County of Los Angeles, bring this suit in the name of the People of the
4 State of California. Plaintiff, by this action and pursuant to Business and Professions Code
5 sections 17203, 17204, 17206, 17500, 17535, and 17536 seeks to enjoin Defendant SONY BMG
6 Music Entertainment, a Delaware partnership (hereinafter sometimes “SONY BMG” or
7 “Defendant”), from engaging in the unlawful business acts and practices alleged herein and
8 seeks to obtain monetary and other equitable relief, for Defendant’s unlawful business acts and
9 practices.

10 2. Defendant SONY BMG at all relevant times has transacted business in the
11 County of Los Angeles and elsewhere in the State of California. The violations of law alleged
12 herein have been and are being carried out within the County of Los Angeles and elsewhere in
13 California.

14 **DEFENDANT**

15 3. Defendant SONY BMG Music Entertainment, a Delaware general partnership
16 with its main office and principal place of business at 550 Madison Avenue, New York, New
17 York, 10022, is a joint venture between Sony Corporation and Bertelsmann AG which, among
18 other things, manufactures, distributes, markets and sells audio compact discs.

19 4. Whenever reference is made in this complaint to any act or transaction of a
20 Defendant, such allegation shall be deemed to mean that said Defendant and its parents,
21 subsidiaries, officers, directors, agents, employees, or representatives did or authorized such acts
22 while engaged in the management, direction, or control of the affairs of the Defendant and while
23 acting within the scope and course of their duties, with actual or ostensible authority to perform
24 the acts so alleged.

25 5. Whenever in this complaint reference is made to any act of any Defendant, such
26 allegation shall be deemed to mean that said Defendant was acting (a) as a principal, (b) under
27 express or implied agency, and/or (c) with actual or ostensible authority to perform the acts so
28 alleged.

1 **DEFINITIONS**

2 6. For purposes of this complaint, the following definitions shall apply:

3 a. “CD” means a compact disc used to store digital audio recordings.

4 b. “Clear and Conspicuous” means a statement that, regardless of the
5 medium in which it is made, is readily understandable and presented in such size, color, contrast,
6 duration, and location, compared to the other information with which it is presented, that it is
7 readily apparent to the person to whom it is disclosed. A statement may not contradict or be
8 inconsistent with any other information with which it is presented. If a statement is necessary to
9 prevent other information from being misleading or deceptive, then the statement must be
10 presented in proximity to that other information, in a manner that is readily noticeable, readable,
11 and understandable, and it must not be obscured in any manner.

12 c. “Computer” means any machine with a central processor and a memory
13 function capable of computing functions and storing or receiving information, including but not
14 limited to desktop devices, laptop or portable devices, personal digital assistants, minicomputers,
15 or other such devices.

16 d. “Consumer” means any person or entity that purchases or uses a CD.

17 e. “Digital Rights Management” (“DRM”) means any software residing on a
18 CD or placed externally on a player or machine that implements the software, which software
19 acts to limit, control, track or otherwise manage Consumers’ use of the intellectual property,
20 copyright or trademark rights of the artist or provider.

21 f. “EULA” means end user licensing agreement.

22 g. “IP Address” means Internet Protocol address.

23 h. “Outer CD Package” means the cover or packaging in which the CD is
24 sold, including plastic case, cardboard insert, if visible to the purchaser at the time of purchase
25 and excluding shrinkwrap and cellophane.

26 i. “Released” means manufacturing, distributing or otherwise placing into
27 the stream of commerce.

28 j. “Unauthorized Software” means software that accesses a Computer

1 system
2 without authorization to execute code, collect data or use system resources without the
3 permission of the owner. This includes, but is not limited to Computer contaminants, Computer
4 viruses, rootkits, worms, Trojan horses, spyware, adware and software designed to deliver
5 advertisements or adware.

6 NATURE OF DEFENDANT'S BUSINESS PRACTICES

7 7. SONY BMG created and carried out a marketing plan, in which it caused the
8 Release and sale of certain CDs in California that contained Digital Rights Management
9 software.

10 8. Between January and November 2005, SONY BMG distributed 79 CD titles that
11 contained one of two Windows-compatible DRM software programs: (1) eXtended Copy
12 Protection ("XCP"), developed for SONY BMG by First4Internet, Ltd., a United Kingdom
13 company ("First4Internet"); or (2) MediaMax Version 5.0, developed for SONY BMG by
14 SunnComm International, Inc., an Arizona company ("SunnComm").

15 9. XCP and Media Max Version 5.0, and initial versions of their associated uninstall
16 programs, rendered users' Computers potentially vulnerable to different security exploits.

17 10. Without adequate disclosure to purchasers and users, the DRM software limited
18 the number of copies of a CD that could be made, limited the copying or transfer of individual
19 tracks from a CD, and created security vulnerabilities to Consumers' Computers. SONY BMG
20 also failed to disclose to Consumers that a proprietary Media Player contained on the CDs will
21 operate on Consumers' Computers to exchange information with SONY BMG, by connecting,
22 in certain circumstances, Consumers' Computers to the Computers of SONY BMG or
23 SunnComm.

24 11. In April 2005, SONY BMG began selling the first of 52 titles that included XCP
25 on its CDs. Approximately 6.6 million SONY BMG CDs were manufactured that contained
26 XCP. Of these, Consumers nationwide purchased approximately three million, with California
27 Consumers purchasing approximately 15% of these. These CDs can be played on Computers
28 with CD-ROM drives. They also can be played, without any impact from the DRM software, on

1 stereos or other non-computer-based devices that have CD playing capabilities.

2 12. XCP DRM software prevents users from making more than three (3) digital
3 copies of a CD and, via interaction with a separate media player program contained on the CD,
4 controls the means by which the music can be played on a Windows-based Computer. In an
5 effort to prevent Consumers from avoiding or disabling these control functions, XCP was
6 designed to hide, or “cloak,” a number of the program’s files and operations. XCP is able to do
7 this by means of a driver. A driver is a specific type of computer software, typically developed
8 to allow interaction between the operating system and hardware devices such as CD-ROMs. The
9 driver used in XCP, called “aries.sys,” causes files that begin with the prefix “\$sys\$” to not be
10 viewable through standard Windows graphical tools such as Windows Explorer or “Add/Remove
11 Programs.”

12 13. XCP DRM software created a potential security vulnerability on Windows-based
13 Computers on which the software is installed. Hackers or other third parties could use the prefix
14 \$sys\$, established by XCP, to hide malicious code, such as viruses, worms, or Trojans, from the
15 Consumer and from security software.

16 14. Consumers attempting to remove the XCP DRM software from their Computers
17 running Windows operating system could not do so using the standard “Add/Remove Program”
18 applet in the Windows Control Panel. Sophisticated users may have been able to locate XCP on
19 their Computers and attempt to remove it manually. However, removing XCP manually could
20 result in the disabling of the CD-ROM drive, which would prevent the Consumer from using any
21 CD on their Computer until additional remedial measures were taken.

22 15. SONY BMG did not provide an XCP uninstaller program on the CDs containing
23 the XCP DRM software. Initially, SONY BMG required Consumers to obtain an XCP
24 uninstaller via email. When seeking such uninstallation program, SONY BMG required
25 Consumers to provide information including the CD title, location of purchase, and their email
26 address. After Consumers provided this information, SONY BMG provided Consumers with a
27 unique link to download the uninstaller.

28 16. The original XCP uninstaller created an additional security vulnerability. Once

1 the uninstaller patch was executed on a Computer, it created the possibility that a Consumer who
2 inadvertently visited a malicious website (i.e., a site designed to force the installation of viruses
3 or other malicious code on the Consumers' Computers) could inadvertently download, install,
4 and run additional programs without the Consumers' knowledge or consent.

5 17. Since December 4, 2005, SONY BMG has voluntarily provided, via its website,
6 a new uninstaller for XCP that can be downloaded from the Internet without charge to the
7 Consumer, without requiring the Consumer to provide any information.

8 18. SONY BMG Released CDs containing MediaMax 5.0 DRM software beginning
9 in May 2005. A total of 27 titles were produced with the MediaMax 5.0 software. More than six
10 million CDs containing MediaMax 5.0 were manufactured for distribution by SONY BMG with
11 California Consumers purchasing approximately 480,000 of these.

12 19. MediaMax software presents Consumers with a EULA at the time that the
13 MediaMax CD is first placed in Computers. However, without any notice to Consumers,
14 MediaMax 5.0 installs 13 MediaMax files consisting of 15.8 megabytes on the Consumers' hard
15 drives prior to the presentation of this EULA.

16 20. MediaMax also installs a driver meant to interfere with copying from protected
17 CDs. Even if Consumers decline the EULA, the downloaded file or files remain on Computers
18 and the drivers remain loaded unless and until Consumers re-boot their Computers. In some
19 situations, the MediaMax driver is activated even if Consumers have not consented to the terms
20 of the EULA.

21 21. Consumers attempting to remove MediaMax 5.0 from Computers could not do so
22 using the standard "Add/Remove Program" applet in the Windows Control Panel.

23 22. SONY BMG did not provide a program to uninstall MediaMax 5.0 on the CDs
24 containing the MediaMax DRM software.

25 23. MediaMax 5.0 also created a potential security vulnerability on Computers that
26 utilize the Windows operating system. MediaMax installed its files into a directory that allowed
27 any subsequent user of the Computer to modify its contents – even if the user was not designated
28 as the Computer's administrator. This could make it easier for malicious users who had local

1 access to obtain enhanced privileges on that Computer, potentially running dangerous programs
2 that they otherwise would not have been able to run.

3 24. SONY BMG provided via the Internet a SunnComm-developed patch to eliminate
4 the potential security vulnerability associated with MediaMax 5.0 and a SunnComm-developed
5 uninstall program. However, the SunnComm uninstaller itself also created a potential
6 vulnerability. Since December 8, 2005, SONY BMG has made available, at no charge, via its
7 website, a SunnComm-developed patch for MediaMax 5.0 and a new SunnComm-developed
8 uninstaller.

9 25. In November 2005, SONY BMG ceased manufacturing CDs containing
10 MediaMax 3.0 and 5.0.

11 26. “Enhanced CD” is an industry term indicating that a CD contains bonus content
12 in addition to music, such as music videos or links to special Internet-based content. All of the
13 53 CD titles that contained XCP DRM software, and six of the 27 titles that contained
14 MediaMax 5.0 DRM software, also contained a particular enhanced CD functionality referred to
15 as a “banner.” The banner function is technologically unrelated to the DRM software. The
16 banner is a small area on the Computer screens that initially will display an image of the artist
17 who is found on the CD. The banner operates without adequate disclosure to Consumers, in that
18 if a Consumer is connected to the Internet when he/she inserts the DRM-protected CD into
19 his/her Computer’s CD drive, the media player program, without notifying the Consumer, will
20 send SONY BMG’s server (or in the case of MediaMax CDs, SunnComm’s server) an IP
21 address that allows SONY BMG to send an updated banner image back to the Consumer’s
22 Computer. While this is generally the IP address of a proxy server belonging to the Consumer’s
23 Internet provider, it can be an IP address associated with the Consumer’s own Computer. The
24 banner functionality also results in sending the server a numerical identifier associated with the
25 title of the SONY BMG CD being played on the Computer’ CD-ROM drive.

26 27. SONY BMG fails to disclose, on the Outer CD Package, that conditions exist to
27 the use of CDs containing XCP or MediaMax DRM software on Consumers’ Computers.
28 Specifically, SONY BMG does not disclose the following on the Outer CD Package:

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a. On CDs with DRM, the fact that DRM software must be installed on Consumers' Computers in order to fully utilize the CD on Windows-based Computers and that the CD does not include any program to uninstall or deactivate the software;

b. The precise nature of the limitations that the DRM software places on the Consumers' ability to make copies of the music;

c. On XCP CDs, the fact that the XCP software hides or "cloaks" files on Consumers' Computers;

d. On MediaMax CDs, the fact that some MediaMax software components automatically install and are not removed even if Consumers fail to accept the EULA; and,

e. On enhanced CDs, the fact that information is transmitted to and from SONY BMG or SunnComm simply as a result of Consumers playing the CD on their Internet-connected Computers.

At most, Consumers discover this information only after buying the CD, opening the Outer CD Package, and trying to play the CD on Windows-based Computers. Significantly, because the CD package has been opened, typically no major music retailer will accept it for return. Consumers are thus confronted with the unfair choice of accepting the installation of unknown software or losing the ability to play the music on the Consumers' Computers.

28. When Consumers insert a DRM-protected CD into their Computers, a small display box appears which initially displays one paragraph of a EULA. The EULA display has no print capability. Consumers are required to click on "accept" in order to access the audio files and other digital content on the CDs. The EULA appears on the Consumers' Computer screens in a small window, capable of displaying only a few lines of text at a time. Consequently, Consumers must scroll through many separate screens of small text in order to fully review the EULA. The EULA itself, however, fails to adequately inform consumers about the DRM software, in that the EULA:

1 a. Does not fully disclose the true nature and effect of the DRM software,
2 when it is described as “a small proprietary software program . . . intended to protect the audio
3 files embodied on the CD, and . . . facilitate your use of the digital content;”

4 b. Fails to disclose the “cloaking” used by XCP or the pre-EULA installation
5 of certain files by MediaMax;

6 c. Does not fully describe the MediaMax installation process, when it is
7 stated that, “[a]s soon as you have agreed to be bound by the terms and conditions of the EULA,
8 this CD will automatically install . . . ;” and,

9 d. Fails to disclose that information related to that CD may be transmitted to
10 and from Consumers’ Computers across the Internet.

11 29. If Consumers reject the EULA, the disc automatically ejects from the Computers
12 and Consumers cannot access its content on their Computers. However, in numerous instances,
13 in the case of MediaMax CDs, DRM software or files associated with SONY BMG’s proprietary
14 media player will be installed and remain on Consumers’ Computers even if Consumers reject
15 the EULA. If Consumers accept the EULA, the installed software becomes active and
16 Consumers gain access to the CD content.

17 **FIRST CAUSE OF ACTION**
18 **AGAINST DEFENDANT FOR**
19 **UNTRUE OR MISLEADING STATEMENTS**
(Violations of Business and Professions Code section 17500)

20 30. Paragraphs 1 through 29 of this complaint are incorporated herein as though set
21 forth in full.

22 31. SONY BMG, with the intent to induce California Consumers to purchase SONY
23 BMG products, in violation of Business and Professions Code section 17500, has made
24 numerous untrue or misleading statements, and has failed to disclose facts necessary to avoid
25 misleading Consumers. Such statements and omissions include, but are not limited to, the
26 following:

27 a. The failure to provide clear and conspicuous disclosures on the Outer CD
28 Package of CDs that contain DRM software that in order to use the CD on Computers running a

1 Windows Operating System, intrusive DRM Unauthorized Software must be installed on the
2 Consumers' Computers;

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4 b. The failure to effectively disclose the nature, consequences and effect of
5 the limiting software at the point of sale;

6 c. The misrepresenting, by failing to adequately disclose the nature and
7 functioning of the DRM software within the EULA;

8 d. The failure to effectively disclose that the placement of DRM software
9 will limit the Consumers' use of music and legal rights; and,

10 e. The failure to disclose the effect of the DRM software to be loaded by
11 such CDs in that SONY BMG failed to disclose that:

12 (1) The DRM XCP and MediaMax software modifies the Windows
13 Operating System in a way not intended by Microsoft, and loading of MediaMax can take place
14 without system administrator approval;

15 (2) The XCP software used a cloaking technique to hide its presence
16 and features from the operating system, virus protection software, anti-spyware software, and the
17 Consumers' Computers;

18 (3) The DRM software remains in operation at all times Computers
19 are on, resulting in consumption of Computers' memory space of from 0.5% to 3%;

20 (4) If the Consumers have open Internet access when an enhanced CD
21 is played, the software, without Consumers' informed consent, will connect to SONY BMG's
22 server, or SunnComm's servers, raising the potential of sharing of personal or other information;

23 (5) The XCP and MediaMax software create vulnerabilities to the
24 security of the Consumers' Computers;

25 (6) The XCP and MediaMax software could not be accessed or safely
26 removed from Computers without extraordinary Computer sophistication or outside software,
27 such as the uninstaller programs later offered by SONY BMG. The original XCP uninstaller
28 created an additional security vulnerability;

1 (7) MediaMax software presents Consumers with a EULA at the time
2 that the MediaMax CD is first placed in Computers, but, without notice, MediaMax 5.0 installs
3 13 MediaMax files consisting of 15.8 megabytes on the Consumers' hard drives prior to the
4 presentation of the EULA; and,

5 (8) MediaMax installs a driver meant to interfere with copying from
6 protected CDs, even if declined in the EULA, and the downloaded files remain loaded until
7 Consumers re-boot their Computers.

8 32. Defendant knew, or should have known, that the statements or omissions set forth
9 herein were untrue or misleading at the time such statements were made.

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11 **SECOND CAUSE OF ACTION**
12 **AGAINST DEFENDANT FOR**
13 **UNLAWFUL, UNFAIR OR DECEPTIVE BUSINESS PRACTICES**
14 (Violations of California Business and Professions Code 17200)

15 33. Paragraphs 1 through 32 of this complaint are incorporated herein as though set
16 forth in full.

17 34. SONY BMG has engaged in unfair competition as defined in Business and
18 Professions Code section 17200, in that Defendant:

19 a. Violated Business and Professions Code section 17500 as set forth in
20 paragraphs 35 - 36 above, which plaintiffs incorporate as though set forth in full;

21 b. Violated Penal Code section 502(c) in that Defendant has caused
22 Unauthorized Software to be installed on Consumers' Computers, which installation was
23 unauthorized within the meaning of sections 502(c)(2) and (8) of the statute;

24 c. Defendant has manufactured, sold, and distributed DRM software, which
25 has a hidden, invasive program that loads without Consumers' informed consent, reduces
26 Consumers' control of their Computers, reduces Computers' functionality, and creates security
27 vulnerabilities that could be exploited by hackers and malicious programs. This DRM software
28 surreptitiously loads Unauthorized Software onto Consumers' Computers when Consumers play
a CD on a Microsoft Windows Operating System, in a way not intended by Microsoft.
Specifically, this DRM software:

1 (1) Obtains information regarding Consumers' use of the CDs by an
2 "inter-connectivity" feature, without authorization and without disclosing such practice to
3 Consumers;

4 (2) Gathers information through its inter-connectivity feature to promote
5 its sales of its artists' CDs, without authorization and without disclosing such practice to
6 Consumers;

7 (3) Hides the nature of XCP and MediaMax software; and,

8 (4) Without authorization or disclosure, places software on CDs that is
9 resistant to uninstall, anti-virus and anti-spyware programs.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for judgment as follows:

12 1. That pursuant to Business and Professions Code section 17203, defendant, its
13 successors, agents, representatives, employees, subsidiaries and all persons who act in concert
14 with Defendant be permanently enjoined and restrained from engaging in unfair competition as
15 defined in Business and Professions Code section 17200, including, but not limited to, the acts
16 and practices alleged in this complaint;

17 2. That pursuant to Business and Professions Code section 17535, defendant, its
18 successors, agents, representatives, employees, parents, subsidiaries and all persons who act in
19 concert with Defendant be permanently enjoined and restrained from making any untrue or
20 misleading statements in violation of Business and Professions Code section 17500, including,
21 but not limited to, the untrue or misleading statements alleged in this complaint;

22 3. Pursuant to Business and Professions Code section 17206, that the Court assess a
23 civil penalty of two thousand five hundred dollars (\$2,500) against Defendant for each violation
24 of Business and Professions Code section 17200, as proved at trial;

25 4. Pursuant to Business and Professions Code section 17536, that the Court assess a
26 civil penalty of two thousand five hundred dollars (\$2,500) against Defendant for each violation
27 of Business and Professions Code section 17500, as proved at trial;

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1 5. That Defendant be ordered to make direct restitution of any money or other
2 property that may have been acquired by their violations of Business and Professions Code
3 sections 17200 and 17500;

4 6. For such further remedies as the court deems necessary to discourage the harm
5 caused by Defendant's acts of unfair competition and untrue or misleading advertising; and,

6 7. That the Plaintiff recovers its costs of suit.

7 Dated: December 19, 2006

8 Respectfully submitted,
9 BILL LOCKYER
10 Attorney General of the State of
11 California
12 ALBERT N. SHELDEN
13 Senior Assistant Attorney General

14 _____
15 LORI J. FORCUCCI
16 Deputy Attorney General

17 Respectfully submitted,
18 STEVE COOLEY
19 District Attorney of the County of
20 Los Angeles
21 THOMAS A. PAPAGEORGE
22 Head Deputy District Attorney

23 _____
24 JONATHAN P. FAIRTLOUGH
25 Deputy District Attorney

26 Attorneys for Plaintiff, People of the
27 State of California

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