

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

In the Matter of the Application of, FROZEN
MOMENTS, LLC,

Petitioner,

For an Order pursuant to Section 3102(c) of the Civil
Practice Law and Rules to compel pre-action disclosure
from:

UMG RECORDINGS, INC, and SPOTIFY USA INC.,

Respondents.

Index No.

VERIFIED PETITION

Petitioner, Frozen Moments, LLC (“Petitioner” or “Frozen Moments”), by and through its undersigned attorneys, respectfully petitions the Court, pursuant to New York Civil Practice Law and Rule (“CPLR”) 3102(c), for an Order granting limited pre-action disclosure from Respondents UMG Recordings, Inc. (“UMG”) and Spotify USA Inc. (“Spotify”) and directing the preservation of relevant evidence in the possession, custody, or control of UMG.

NATURE OF THE DISPUTE

1. In his memo to staff reflecting on highlights of 2021, the CEO of UMG, Lucian Grainge, remarked on it being “harder than ever for artists to break through the noise: *sixty thousand songs are added to Spotify every day.*”¹

2. Spotify is the world’s most popular audio streaming subscription service.² As of the end of the third quarter of 2024, Spotify boasted more than 640 million monthly active users

¹ Jem Aswad, *Read Universal Music Chief Lucian Grainge’s New Year’s Memo to Staff*, Variety (Jan. 12, 2022, 8:15 AM), <https://variety.com/2022/music/news/universal-music-lucian-grainges-new-years-memo-to-staff-1235152364/> [<https://perma.cc/8Q7U-92BD>].

² *About Spotify*, Spotify Newsroom, <https://newsroom.spotify.com/company-info/> [<https://perma.cc/H4XK-G647>] (last visited Nov. 20, 2024).

and 252 million subscribers.³ Spotify pays music companies, like UMG, for the right to license songs so it can play them on its streaming and subscription platforms. In 2023 alone, Spotify paid more than \$9 billion in royalties to music labels and producers.⁴ Hip-hop is one of the most popular genres on Spotify, amounting to nearly a quarter of all streams on Spotify globally in 2023.⁵

3. Spotify and UMG have a long-standing, symbiotic business relationship. As “one of Spotify’s earliest supporters,” UMG entered into a multi-year global license agreement with Spotify in 2020.⁶ UMG and Spotify collaborate on strategic marketing campaigns and products and, in 2024, announced an expansion of their strategic partnership through which Spotify will “amplify music discovery and social interaction and enhance fan experiences across the platform for UMG’s family of artists and songwriters.”⁷ Based on UMG’s financial reporting, Spotify paid UMG around \$2.28 billion in 2023, which amounted to 19 percent of UMG’s total revenues in 2023.⁸

³ Press Release, Spotify Reports Third Quarter 2024 Earnings, Spotify Newsroom (Nov. 12, 2024), <https://newsroom.spotify.com/2024-11-12/spotify-reports-third-quarter-2024-earnings/> [<https://perma.cc/G3KC-TLJD>].

⁴ Glenn Peoples, *Spotify Paid \$9 Billion to Labels & Publishers in 2023*, Billboard (Feb. 8, 2024), <https://www.billboard.com/business/streaming/spotify-2023-royalties-payouts-9-billion-labels-publishers-1235603302/> [<https://perma.cc/7N6V-JVUV>].

⁵ Press Release, Nearly a Quarter of All Streams on Spotify Are Hip-Hop. Spotify’s Global Editors Reflect on the Genre’s Growth, Spotify Newsroom (Aug. 10, 2023), <https://newsroom.spotify.com/2023-08-10/hip-hop-50-murals-new-york-atlanta-miami-los-angeles/> [<https://perma.cc/NZ9B-7B93>].

⁶ Press Release, Spotify and Universal Music Group Announce Global, Multi-Year License Agreement, UMG (July 22, 2020), <https://www.universalmusic.com/spotify-and-universal-music-group-announce-global-multi-year-license-agreement-2/> [<https://perma.cc/75QW-27TK>].

⁷ Press Release, Universal Music Group and Spotify Expand Strategic Partnership, UMG (Mar. 28, 2024), <https://www.universalmusic.com/universal-music-group-and-spotify-expand-strategic-relationship/> [<https://perma.cc/L9PP-JUTJ>].

⁸ Tim Ingham, *On...the delicate power balance between Spotify and Universal Music Group (and why UMG might end up turning the screw on Spotify’s free tier)*, Music Business Worldwide (Aug. 6, 2024), <https://www.musicbusinessworldwide.com/power-balance-between-spotify-universal-music-group/> [<https://perma.cc/H9W9-YPXF>].

4. Streaming is essential to UMG's current bottom line and its future business strategy. In a report related to the third quarter of 2024, UMG noted a nearly 29 percent year-over-year decrease in downloads and other digital revenue because of "the continued format shift towards streaming" across the music industry.⁹ UMG's long-term strategy relies on "[a]ccelerating the growth of, and monetization from, streaming and subscription."¹⁰ In October 2024, UMG unveiled a new slogan—"Streaming 2.0"—which illustrates the importance UMG places on saturating the streaming market.¹¹

5. In 2024, UMG did not rely on chance, or even ordinary business practices, to "break through the noise" on Spotify, and likely other music platforms. It instead launched a campaign to manipulate and saturate the streaming services and airwaves with a song, "Not Like Us," in order to make that song go viral, including by using "bots" and pay-to-play agreements.

6. UMG released "Not Like Us" (or the "Song") on May 4, 2024. Pursuant to various contractual rights, UMG (via its division Interscope Records ("Interscope")) has exclusive control over the licensing of the Song.

7. On information and belief, UMG charged Spotify licensing rates 30 percent lower than its usual licensing rates for "Not Like Us" in exchange for Spotify affirmatively recommending the Song to users who are searching for other unrelated songs and artists. Neither

⁹ Press Release, Universal Music Group N.V. Reports Financial Results For The Third Quarter And Nine Months Ended September 30, 2024, UMG (Oct. 31, 2024), <https://www.universalmusic.com/universal-music-group-n-v-reports-financial-results-for-the-third-quarter-and-nine-months-ended-september-30-2024/> [<https://perma.cc/7XJV-Q853>].

¹⁰ Press Release, Universal Music Group N.V. Reports Financial Results for the Fourth Quarter and Full Year Ended December 31, 2023, UMG (Feb. 28, 2024), <https://www.universalmusic.com/universal-music-group-n-v-reports-financial-results-for-the-fourth-quarter-and-full-year-ended-december-31-2023/> [<https://perma.cc/MF4L-PBRA>].

¹¹ *Id.*; Ashley Carman, *Universal Music's Grand Streaming Vision Requires Cooperation*, Bloomberg (Sept. 19, 2024, 4:23 PM), <https://www.bloomberg.com/news/newsletters/2024-09-19/universal-music-s-grand-streaming-vision-requires-cooperation> [<https://perma.cc/JHJ9-S42N>].

UMG nor Spotify disclosed that Spotify had received compensation of any kind in exchange for recommending the Song. On information and belief, Spotify pays UMG licensing fees through the wires or mails.

8. UMG, directly or through Interscope, also conspired with and paid currently unknown parties to use “bots” to artificially inflate the spread of “Not Like Us” and deceive consumers into believing the Song was more popular than it was in reality. Bots are software programs designed to mimic human behavior to appear to be real social media accounts. One individual unknown to Petitioner revealed publicly on a popular podcast that Mr. Kendrick Lamar Duckworth’s “label” (i.e., Interscope) paid him via third parties to use “bots” to achieve 30,000,000 streams on Spotify in the first days of the release of “Not Like Us” with the goal of “jumpstarting” the Song’s spread and turning it into “a crazy hit” on the platform.¹² The whistleblower described Spotify as the easiest platform “to bot” because it does not, like other streaming platforms, have certain security measures “when it comes to bot protection.”¹³ The whistleblower further revealed that, on May 6, 2024, an individual affiliated with Interscope sent him a payment of \$2,500 via the digital payments platform, Zelle, which is owned by a number of banks, and that he was promised another \$2,500 and a percentage of the Song’s total sales for this initial push.¹⁴

¹² Jambisco Don (@JambiscoDon), *Kendrick Lamar EXPOSED by DJ Akademiks and HACKER Epic for BOT streams*, YouTube (June 18, 2024), <https://www.youtube.com/watch?si=PoazLqeHTyBePEiq&v=rcsW2wteW0c&feature=youtu.be> [<https://perma.cc/8QKB-MX9V>].

¹³ *Id.*

¹⁴ *Id.*

9. On information and belief, UMG hired other unknown third parties to use “bots” to promote “Not Like Us” and also to inflate the streams of the “Not Like Us” music video (the “Video”), which UMG first published on July 4, 2024.

10. UMG appears to have used similar tactics with other streaming services. On information and belief, UMG paid, or approved payments to, Apple Inc. to have its voice-activated digital assistant “Siri” purposely misdirect users to “Not Like Us.”¹⁵ Online sources reported that when users asked Siri to play the album “Certified Loverboy” by recording artist Aubrey Drake Graham d/b/a Drake, Siri instead played “Not Like Us,” which contains the lyric “certified pedophile,” an allegation against Drake.¹⁶

11. UMG engaged in similar pay-to-play schemes to increase the air play of “Not Like Us” on the radio. Petitioner has obtained information from a third party indicating that at least one UMG employee made payments to an independent radio promotor, serving as an intermediary, who had agreed to transfer those payments to certain radio stations and/or radio station employees. These radio stations subsequently played (or caused to be played) “Not Like Us” without disclosing that they had been paid to do so. This practice, known as “payola,” is prohibited by the Communications Act of 1934 (*see* 47 U.S.C. §§ 317, 508), and has been the subject of regulatory scrutiny by a number of Executive agencies.¹⁷ In 2006, UMG agreed to pay \$12 million in a

¹⁵ See Armon Sadler, *Fans Discover Siri Plays Kendrick Lamar’s “Not Like Us” On Spotify When They Ask For Drake’s ‘Certified Lover Boy’*, VIBE (July 11, 2024, 2:14 PM), <https://www.vibe.com/news/entertainment/siri-not-like-us-spotify-certified-lover-boy-1234895147/> [<https://perma.cc/N9Y7-G5BA>].

¹⁶ *Id.*

¹⁷ Payola in the music industry remains a top priority for the federal government. For example, in January 2020, the Federal Communications Commission sent a letter to three music companies, including Universal Music Group, seeking prompt information regarding each company’s practices to prevent payola, any payola violations, and arrangements for promoting music on the radio. Letter from Comm’r of Fed. Comm. Comm’n to Sony Music Ent., Warner Music Grp. & Universal Music Grp. (Jan. 16, 2020), <https://docs.fcc.gov/public/attachments/DOC-361998A1.pdf>.

settlement with the New York Attorney General following an investigation involving accusations that UMG executives had used a broad array of “pay for play” tactics to secure radio airplay for music.¹⁸ In connection with UMG’s settlement, then-New York attorney general Eliot Spitzer explained “Consumers have a right not to be misled about the way in which the music they hear on the radio is selected.”¹⁹ He continued to say that “Pay-for-play makes a mockery of claims that only the ‘best’ or ‘most popular’ music is broadcast.”²⁰ Separately, in 2005, UMG was sued by two radio promotion companies alleging fraudulent pay-to-play practices.²¹

12. While historically payola has been thought of in terms of paying radio stations to play songs, in February 2020, the Federal Trade Commission released guidance stating that “by paying an influencer to pretend that their endorsement or review is untainted by a financial relationship, this is illegal payola.”²² On information and belief, UMG employed a similar scheme by paying social media influencers to promote and endorse the Song and Video. For example, Petitioner understands that UMG paid the popular NFR Podcast—which has nearly 300,000 subscribers on YouTube²³ and over 330,000 followers on X²⁴—to promote “Not Like Us” and its

¹⁸ Jeff Leeds, *Universal Music Settles Big Payola Case*, N.Y. Times (May 12, 2006), <https://www.nytimes.com/2006/05/12/business/12payola.html?smid=url-share> [<https://web.archive.org/web/20240131004539/https://www.nytimes.com/2006/05/12/business/12payola.html>].

¹⁹ *Universal Music Group settles payola case*, NBC News (May 11, 2006, 12:00 PM), <https://www.nbcnews.com/id/wbna12740147> [<https://web.archive.org/web/20220501154735/https://www.nbcnews.com/id/wbna12740147>].

²⁰ *Id.*

²¹ *UMG Sued For Fraud*, Pollstar (Apr. 28, 2005, 2:20 AM), <https://news.pollstar.com/2005/04/28/umg-sued-for-fraud/> [<https://perma.cc/6QH7-T8K2>].

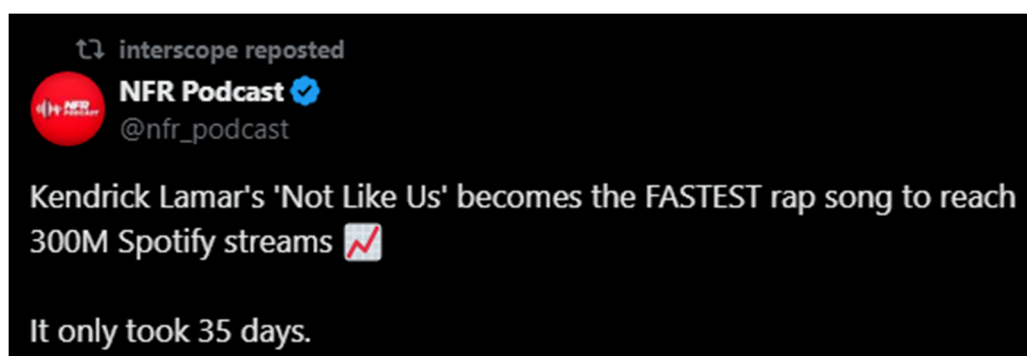
²² Fed. Trade Comm’n, Comm’n File No. P204500, Statement Of Comm’r Rohit Chopra Regarding The Endorsement Guide Review (Feb, 12, 2020), https://www.ftc.gov/system/files/documents/public_statements/1566445/p204500_-_endorsement_guides_reg_review_-_chopra_stmt.pdf [<https://perma.cc/2W58-Y8SK>].

²³ NFR Podcast (@NFRPodcast), YouTube <https://www.youtube.com/c/nfrpodcast> [<https://perma.cc/P6F4-Q7U6>] (last visited Nov. 20, 2024).

²⁴ NFR Podcast (@nfr_podcast), X, https://x.com/nfr_podcast (last visited Nov. 20, 2024).

Video without disclosing the payment. As part of its deal with UMG, the NFR Podcast published podcast episodes,²⁵ tweets,²⁶ and other content publicly about the Song. And in a sea-change for UMG's internal policy, UMG removed the Song's copyright restrictions on YouTube and Twitch, thereby "whitelisting" the Song (for the first time in UMG history), which further incentivized influencers to spread the Song.

13. UMG's scheme to ensure "Not Like Us" "broke through" on Spotify (and elsewhere) worked. "Not Like Us" broke Spotify records, as Interscope posted on its X account:²⁷



²⁵ See NFR Podcast (@nfr_podcast), X (May 4, 2024, 7:59 PM), https://twitter.com/nfr_podcast/status/1786908506731262241 [<https://perma.cc/9Q3V-PHGF>]; NFR Podcast (@nfr_podcast), X (June 12, 2024, 10:53 PM), https://x.com/nfr_podcast/status/1801085351097704834 [<https://perma.cc/3PM3-ECGZ>]; NFR Podcast (@nfr_podcast), X (July 4, 2024, 7:05 PM), https://x.com/nfr_podcast/status/1809000553487143066 [<https://perma.cc/CS9U-782J>].

²⁶ See NFR Podcast (@NFRPodcast), *DRAKE & KENDRICK DROP NUKES*, YouTube (May 6, 2024), <https://www.youtube.com/watch?v=QIVau4fia2U> [<https://perma.cc/M74N-QZLT>]; NFR Podcast, *Our Final Thoughts on Drake v. Kendrick Lamar*, Spotify (May 14, 2024), <https://podcasters.spotify.com/pod/show/nfrpodcast/episodes/Our-Final-Thoughts-on-Drake-vs--Kendrick-Lamar-Battle-e2jl9jo> [<https://perma.cc/6PX4-DWNK>].

²⁷ Interscope (@interscope), X (June 9, 2024, 6:22 PM), <https://x.com/Interscope/status/1800258394382614977> [<https://perma.cc/4W9P-8N5N>]; Interscope (@interscope), X, <https://x.com/Interscope> [<https://perma.cc/3AX3-NRGH>] (last visited Nov. 20, 2024); Papa Keith, *Kendrick Lamar Continues To Break Spotify Records with "Not Like Us,"* 103.5 The Beat (June 10, 2024), <https://1035thebeat.iheart.com/featured/papa-keith/content/2024-06-10-kendrick-lamar-continues-to-break-spotify-records-with-not-like-us/> [<https://web.archive.org/web/20241120194639/https://1035thebeat.iheart.com/featured/papa-keith/content/2024-06-10-kendrick-lamar-continues-to-break-spotify-records-with-not-like-us/>].

14. To date, “Not Like Us” has almost *900 million* streams on Spotify²⁸ and holds the record for the biggest single day streams of a hip-hop song and the most streamed “diss track” in Spotify history.²⁹ “Not Like Us” has spent 27 weeks on Spotify’s City Chart for New York City, which ranks the weekly streaming popularity of songs by users in New York, New York.³⁰

15. Within a week of its initial release, “Not Like Us” broke the record for the most streamed song in a seven-day period, with 96 million streams.³¹ After UMG published the Video, “Not Like Us” returned to the No. 1 spot on the Billboard Hot 100 and, in the same week, the Song was streamed an additional 53.8 million times and played on the radio an additional 40 million times.³² From July 4 to August 8, 2024, the Video ranked first on YouTube’s Weekly Top Music Videos chart.³³ On November 13, 2024, the iHeartRadio Leaderboard reported that “Not Like Us” was the second most popular song on the platform.³⁴ On New York radio, “Not Like Us” remains, as of the date of this filing, a top 40 hit on popular music and hip hop stations, including Z100, Power 105.1, and WQHT (97.1 FM, Hot 97).³⁵ From May 9, 2024 to August 15, 2024, the Song was among the Top 10 of all songs streamed in New York City.³⁶

²⁸ *Spotify Chart History – “Not Like Us,”* Kworb.net, https://kworb.net/spotify/track/6AI3ezQ4o3HUoP6Dhudph3.html#google_vignette (last visited Nov. 20, 2024).

²⁹ Sophie Caraan, *Kendrick Lamar's “Not Like Us” Breaks Drake's Spotify Record*, Hypebeast (May 8, 2024), <https://hypebeast.com/2024/5/kendrick-lamar-not-like-us-breaks-drake-spotify-record> [<https://web.archive.org/web/20241003184921/https://hypebeast.com/2024/5/kendrick-lamar-not-like-us-breaks-drake-spotify-record>]; Prezzy Brown, *Kendrick Lamar's “Not Like Us” Becomes Most Streamed Diss Track On Spotify, Surpassing This Classic*, VIBE (Aug. 12, 2024 11:44 AM), <https://www.vibe.com/music/music-news/kendrick-lamar-not-like-us-most-streamed-diss-track-all-time-1234904668/> [<https://web.archive.org/web/20241008154105/https://www.vibe.com/music/music-news/kendrick-lamar-not-like-us-most-streamed-diss-track-all-time-1234904668/>]; Kendrick Lamar, *Not Like Us*, Spotify (May 4, 2024), <https://open.spotify.com/album/5JjnoGJyOxFSZUZtk2rRwZ> [<https://perma.cc/CBD9-AEP2>].

³⁰ *Charts - New York City*, Spotify (Nov. 14, 2024), <https://charts.spotify.com/charts/view/citytoptrack-newyorkcity-weekly/2024-11-14> (chart only available to Spotify users).

³¹ Cedric Thornton, *Kendrick Lamar's ‘Not Like Us’ Breaks Streaming Record, Passes Cardi B and Taylor Swift*, Black Enterprise (May 16, 2024), <https://www.blackenterprise.com/kendrick-lamar-not-like-us-streaming-record/> [<https://perma.cc/3PU3-WPDD>].

16. UMG touted the record-breaking success. On July 16, 2024, Interscope reposted on X that the Song had become “the best selling rap song of 2024 in the US.”³⁷ On July 24, 2024, UMG posted on its X account about the Song charting as the “most-streamed song” of the week.³⁸ On August 29, 2024, UMG posted on X with a link to a “Summer Hits 2024 playlist” by Spotify and the caption “Song of the Summer? UMG fam lands 4 out of 5 on @Spotify. ‘Birds of a Feather’ - @billieeilish[;] ‘HOT TO GO’ - @ChappellRoan[;] ‘Not Like Us’ - @KendrickLamar[;] ‘Espresso’ - @SabrinaAnnLynn.”³⁹

17. UMG’s schemes to artificially inflate the popularity of “Not Like Us” were motivated, at least in part, by the desire of executives at Interscope to maximize their own profits. UMG executives have an annual incentive program pursuant to which they are rewarded for

³² Gary Trust, *Kendrick Lamar’s ‘Not Like Us’ Returns to No. 1 on Billboard Hot 100*, Billboard (July 15, 2024), <https://www.billboard.com/lists/kendrick-lamar-not-like-us-number-one-second-week-hot-100/> [<https://perma.cc/8S56-42CT>].

³³ *Weekly Top Music Videos*, YouTube Charts, <https://charts.youtube.com/charts/TopVideos/us/weekly/20240822> (Aug. 22, 2024) [<https://perma.cc/ALX7-ZVDS>].

³⁴ *iHeartRadio Leaderboard – Songs With The Most Plays on iHeartRadio Stations*, iHeart Radio (Nov. 13, 2024), <https://www.iheart.com/playlist/iheartradio-leaderboard-312064750-2AL8dU5D7GquY5KGTcNwUm/> [<https://perma.cc/6UUX-M59D>].

³⁵ As of Nov. 16, 2024, the Song has spent at least 17 weeks on the city’s top radio stations’ Top 40 charts. See *TOP 40 - November 16, 2024*, z100 NY (Nov. 16, 2024) <https://z100.iheart.com/charts/top-40-238/november-16-2024/> [<https://perma.cc/2QAU-QE5L>]; *TOP 40 - November 16, 2024*, Power 105.1 (Nov. 16, 2024), <https://power1051.iheart.com/charts/top-40-238/november-16-2024/> [<https://perma.cc/6Y4W-Y3L2>]; Hot97 (@hot97), Instagram (May 4, 2024), <https://www.instagram.com/hot97/reel/C6kPFnpr8s5/?hl=en> (posting the full Recording on Hot97’s Instagram page). WQHT (97.1 FM, Hot 97) is owned and operated by MediaCo Holding Inc., which is headquartered in New York, New York.

³⁶ See *Charts - New York City*, Spotify (May 9, 2024), <https://charts.spotify.com/charts/view/citytoptrack-newyorkcity-weekly/2024-05-09>; *Charts - New York City*, Spotify (August 15, 2024), <https://charts.spotify.com/charts/view/citytoptrack-newyorkcity-weekly/2024-08-15> (charts only available for Spotify users).

³⁷ Interscope (@interscope), X (July 16, 2024, 12:32 PM), <https://x.com/Interscope/status/1813282022753988707> [<https://perma.cc/BB25-S2T9>].

³⁸ Universal Music Group (@umg), X (July 24, 2024, 1:13 PM), <https://perma.cc/MY9M-QVD9>.

³⁹ Universal Music Group (@umg), X (Aug. 29, 2024, 1:46 PM), <https://x.com/UMG/status/1829214002687381505> [<https://perma.cc/PJ99-44TD>].

meeting and surpassing sales and profits projections, among other metrics. The incentives are largely based on the specific UMG division, rather than the performance of UMG more generally. For example, the annual incentive or bonus of Interscope's CEO, John Janick, is based 90 percent on the financial success of Interscope and only 10 percent on the financial success of UMG generally. Thus, on information and belief, Mr. Janick and other executives at Interscope have been incentivized to maximize the financial success of Interscope through the promotion of "Not Like Us" and its revitalizing impact on the artist's prior recording catalog, including his first five studio albums, which are owned by Interscope.

18. Petitioner has received information that UMG has been taking steps in an apparent effort to conceal its schemes, including, but not limited to, by terminating employees associated with or perceived as having loyalty to Drake. Indeed, UMG has demonstrated that it has no interest in taking responsibility for its misconduct. Over the past several months, Drake has repeatedly sought to engage UMG in discussions to resolve the ongoing harm he has suffered as a result of UMG's actions. UMG refused to engage in negotiations, and insisted that UMG is not responsible for its own actions. Instead, UMG has pointed the finger at Mr. Duckworth, insisted that Drake should initiate legal action against Mr. Duckworth rather than UMG, and even threatened to bring its own legal claims against Mr. Duckworth if Drake were to pursue claims against UMG.

19. Streaming and licensing is a zero-sum game. Every time a song "breaks through," it means another artist does not. UMG's choice to saturate the music market with "Not Like Us" comes at the expense of its other artists, like Drake. As Drake is Petitioner's sole owner, and Petitioner owns the copyright to Drake's entire catalogue, Petitioner suffered economic harm as a result of UMG's scheme.

THE PARTIES

20. Petitioner Frozen Moments, LLC, is a limited liability company registered in the State of Florida. Frozen Moments is an entity wholly owned by Drake through which Drake furnishes his recording services as a vocalist and musician and is the copyright holder of Drake's sound recordings, including music videos. As such, Petitioner competes with Interscope.

21. Respondent UMG is a wholly owned subsidiary of Universal Music Group N.V., a publicly-owned limited liability company incorporated under the laws of the Netherlands. UMG is a Delaware corporation, registered to do business in the State of New York. UMG has offices at 1755 Broadway, New York, New York, 10019 and 250 West 57th Street, New York, New York 10107. UMG has divisions including, but not limited to, Interscope, which represents Mr. Kendrick Lamar Duckworth, and Republic Records, which represents Drake. Interscope's publicity team operates out of the 1755 Broadway office.

22. Respondent Spotify USA Inc. is a Delaware corporation with headquarters in New York City at 4 World Trade Center, 150 Greenwich Street, New York, New York, 10017. Spotify is a digital music, podcast, and video service.

JURISDICTION AND VENUE

23. This Court has personal jurisdiction over UMG pursuant to CPLR 302. UMG regularly transacts business within the State, including by doing business and entering into contracts with New York-based Spotify, licensing and promoting music to streaming and radio broadcasting services within the State, and supplying its music management and publicity services in the State. The events at issue, including UMG's licensing contract with Spotify and payments to New York-based radio stations to inflate the popularity of the Song, occurred within the State.

24. UMG also owns, uses, or possesses real property at its 1755 Broadway office, where it hosts offices for its catalog division and publishing arm, Universal Music Publishing

Group. UMG employs numerous individuals within the State, as its marketing, partnerships, media and properties, and publicity professionals groups operate out of its New York offices.

25. This Court has personal jurisdiction over Spotify pursuant to CPLR 302. Spotify regularly transacts business within the State, including by doing business and entering into contracts with paying and non-paying subscribers based in New York and promoting its streaming services within the State. The events at issue, including Spotify's licensing contract with UMG, occurred within the State. Spotify uses its 4 World Trade Center, 150 Greenwich Street office as its corporate headquarters in the United States and employs numerous individuals within the State.

26. Venue is proper pursuant to CPLR 503(c) because a foreign corporation authorized to transact business in the State shall be deemed a resident of the county in which its principal office is located. Additionally, pursuant to CPLR 503(a), a substantial part of the events or omissions giving rise to the claims occurred in the County of New York.

PETITIONER REQUIRES PRE-ACTION DISCOVERY AND PRESERVATION

27. Frozen Moments has commenced this special proceeding pursuant to CPLR 3102(c) to seek pre-action discovery to allow Petitioner to (1) identify appropriate defendants and frame a complaint for a claim under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), and (2) identify appropriate defendants and frame a complaint for a claim under Section 349 of the New York General Business Law (the "NY Deceptive Business Act") and Section 350 and 350-a of the New York General Business Law (the "NY False Advertising Act").

28. **Civil RICO**: Petitioner has a viable cause of action for civil RICO, with predicate acts of wire fraud, mail fraud, and/or bribery for UMG's payments to unknown third parties in the form of reduced licensing fees to Spotify. However, Petitioner requires additional information in order to frame his complaint and satisfy the heightened Rule 9(b) pleading standard applicable to

complaints sounding in fraud. Specifically, Petitioner requires information about the method by which the third parties were paid in order to determine which underlying predicate act(s) to plead and requires information about which benefits were conferred upon UMG in exchange for the payments. Additionally, Petitioner lacks sufficient information to identify the third parties who acted in conspiracy with UMG.

29. **Deceptive Business Practices and False Advertising:** Petitioner has information that agents of UMG paid at least one third party to use bots to stream the Song on Spotify, and on information and belief, this practice extended to multiple third parties to artificially stream the Song and Video. UMG also gave financial benefits to Spotify and other unknown third parties to promote and play the Song and Video without disclosing those payments. UMG then touted the success of the Song and Video knowing the “success” was artificially inflated by its own manipulation. These practices harm consumers. They also violate the NY Deceptive Business Act and the NY False Advertising Act. Without the requested pre-litigation discovery, Petitioner lacks sufficient information to identify the known, but anonymous, third-party streamer and to identify any additional streamers whom UMG paid. Petitioner also lacks sufficient facts to frame the complaint regarding what was exchanged for UMG’s payments.

30. Petitioner seeks the following limited pre-action disclosure from UMG (the “UMG Requested Information”): (1) documents and communications sufficient to show the identities of all third parties that UMG, its agents, or anyone working on behalf of UMG/Interscope paid (without public disclosure) to promote, publish, or recommend the Song, its accompanying cover image (the “Image”), or Video, including but not limited to, radio stations, influencers, music platforms, and music publications, as well as the dates, methods, and amounts of those payments; (2) documents and communications sufficient to show the identities of all third parties that UMG,

its agents, or anyone working on behalf of UMG/Interscope paid to use bots or any other similar technology to stream the Song or Video, as well as the dates, methods, and amounts of those payments; and (3) documents and communications sufficient to show what the third parties agreed to provide and did provide in exchange for these payments.

31. Petitioner seeks the following limited pre-action disclosure from Spotify (the “Spotify Requested Information”): (1) documents and communications sufficient to show the dates, methods, and amounts of financial benefit, whether in the form of direct payment or reduced licensing fees, provided to Spotify by UMG/Interscope, its agents, or anyone working on its behalf in exchange for the promotion, publication, or recommendation of the Song on Spotify and (2) documents and communications sufficient to show what Spotify agreed to provide and did provide in exchange for any such benefits.

32. Petitioner has further commenced this special proceeding pursuant to CPLR 3102(c) to seek an order requiring UMG, including Interscope and all other divisions, as well as UMG’s directors, officers, and relevant employees, to preserve all documents and communications regarding the Song, Image, and Video during the pendency of any litigation that Petitioner commences against Respondent and/or any unknown third parties for the underlying causes of action discussed herein.⁴⁰ Petitioner expects that much of the relevant evidence will be in the form of messages on social media platforms, payment applications, and text messages (including, but not limited to, iMessage and WhatsApp), which may not be preserved in the usual course. Petitioner is aware that Senior executives at UMG regularly communicate for business through messaging platforms and applications.

⁴⁰ UMG has been sanctioned on at least one occasion for discovery violations. *See ABKCO Music & Recs., Inc. v. Coda Publ'g, Ltd.*, No. 19 Civ. 11892 (KPF), 2022 WL 4536820 (S.D.N.Y. Sept. 28, 2022).

33. Exhibit A to the Verified Petition is a proposed subpoena *duces tecum* to UMG commanding UMG to produce the UMG Requested Information.

34. Exhibit B to the Verified Petition is a proposed subpoena *duces tecum* to Spotify commanding Spotify to produce the Spotify Requested Information.

35. Exhibit C to the Verified Petition is a Proposed Order, authorizing, pursuant to CPLR 3102(c), the issuance of subpoenas *duces tecum* in the form of the subpoenas attached as Exhibits A and B.

36. No previous application has been made for the relief requested herein.

WHEREFORE, Petitioner respectfully requests that the Court enter an order:

a. Pursuant to CPLR § 3102(c) compelling Respondent UMG to provide to Petitioner within 14 days of service on UMG by overnight mail a copy of an Order with Notice of Entry, documents and communications responsive to the requests in Exhibit A;

b. Pursuant to CPLR § 3102(c) compelling Respondent Spotify to provide to Petitioner within 14 days of service on Spotify by overnight mail a copy of an Order with Notice of Entry, documents and communications responsive to the requests in Exhibit B;

c. Pursuant to CPLR § 3102(c) compelling Respondent UMG to preserve all documents and communications regarding the Song, Image, and Video during the pendency of any litigation that Petitioner commences against Respondent and/or any unknown third parties for the underlying causes of action discussed herein.

d. Granting such other and further relief as the Court may deem just and proper.

November 25, 2024

Respectfully Submitted,

By: /s/ Michael J. Gottlieb

Michael J. Gottlieb
Meryl C. Governski
WILLKIE FARR & GALLAGHER LLP
1875 K Street NW
Washington, DC 20006
Tel: (202) 303-1000
mgottlieb@willkie.com
mgovernski@willkie.com

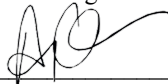
M. Annie Houghton-Larsen
WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, NY 10019
Tel: (212) 728-8000
mhoughton-larsen@willkie.com

VERIFICATION

Aubrey Drake Graham affirms the following to be true under the penalties of perjury, pursuant to Civil Practice Law and Rules (CPLR) 2106:

1. I am the corporate officer of the Petitioner Frozen Moments, LLC in this proceeding, and thus have personal knowledge of the facts herein.
2. I have read the foregoing petition and its factual contents are true to my personal knowledge, except as to those matters alleged therein to be upon information and belief, and as to those matters, I believe them to be true.

I affirm this 25th day of November, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.



Aubrey Drake Graham