

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself) DONNITA HATHAWAY, an individual and MICROHITS, INC., a California corporation
DEFENDANTS EULAULAI HATHAWAY, an individual, KENYA HATHAWAY, an individual, LALAH HATHAWAY, an individual; and UNIVERSAL MUSIC GROUP, INC.
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Robert S. Besser 1221 Second Street, Suite 300 Santa Monica, CA 90401 Tel: (310) 394-6611
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)
III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)
Table with columns for Plaintiff and Defendant citizenship and incorporation status.

IV. ORIGIN (Place an X in one box only.)
V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)
CLASS ACTION under F.R.C.P. 23: Yes No
MONEY DEMANDED IN COMPLAINT: \$ 500,000

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
Declaratory relief as to ownership of renewal rights under the Copyright Act 17 U.S.C. Sec. 101 et. seq. and fraud

VII. NATURE OF SUIT (Place an X in one box only.)
Grid of categories: OTHER STATUTES, CONTRACT, REAL PROPERTY, TORTS, PERSONAL INJURY, TORTS, PERSONAL PROPERTY, BANKRUPTCY, CIVIL RIGHTS, PRISONER PETITIONS, TORRETTURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS.

CV09-1123

FOR OFFICE USE ONLY: Case Number:
AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Microhits, Inc., Los Angeles	Donnita Hathaway, Georgia

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Universal Music Group, Kenya Hathaway, Lalah Hathaway, Los Angeles	Eulaulah Hathaway, Illinois

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Declaratory Relief and Accounting, Los Angeles	Fraud, Illinois

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): DTB D Date 2/13/09

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

1 ROBERT S. BESSER (SBN 46541)
 2 LAW OFFICES OF ROBERT S. BESSER
 3 1221 Second Street Suite 300
 4 Santa Monica, California 90401
 5 TEL: (310) 394-6611
 6 FAX: (310) 394-6613

7 Attorneys for Plaintiffs
 8 DONNITA HATHAWAY and
 9 MICROHITS, INC.

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 CENTRAL DISTRICT CALIF.
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10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

12 DONNITA HATHAWAY,
 13 an individual and MICROHITS, INC.,
 14 a California corporation,

15 Plaintiffs,

16 vs.

17 EULAULAH HATHAWAY,
 18 an individual;
 19 KENYA HATHAWAY, an
 20 individual; LALAH HATHAWAY,
 21 an individual; UNIVERSAL MUSIC
 22 GROUP, a worldwide
 23 company, form unknown; and
 24 DOES 1 through 50, inclusive,

25 Defendants.

Case No. CV09-1123 RC

COMPLAINT FOR
 DECLARATORY RELIEF
 UNDER THE COPYRIGHT ACT,
 ACCOUNTING and FRAUD

DEMAND FOR JURY TRIAL

I/s
 20

©

Given
 Copyright
 Form

26 Plaintiffs DONNITA HATHAWAY and MICROHITS, INC., for their
 27 complaint against Defendants, hereby allege as follows:

28 **PARTIES AND JURISDICTION**

1. Plaintiff DONNITA HATHAWAY ("DONNITA") was born on
 October 12, 1976, is the daughter of the late singer and song-writer Donny
 Hathaway ("Donny") and is an individual resident of Atlanta, Georgia.

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2. Plaintiff MICROHITS, INC. ("MICROHITS") is a corporation formed and operating under the laws of the State of California with its principal place of business located in the County of Los Angeles, State of California. MICROHITS is DONNITA's exclusive worldwide music publishing administrator and as administrator, controls Donnita's interests in the copyrights involved in this action.

3. Defendant EULAULAH HATHAWAY ("EULAULAH") is the widow of Donny Hathaway and, on information and belief, is an individual resident of the State of Illinois.

4. Defendants KENYA HATHAWAY and LALAH HATHAWAY ("KENYA" and "LALAH") are the daughters of Donny Hathaway and EULAHLAH HATHAWAY and are individual residents of the State of California.

5. Defendant UNIVERSAL MUSIC GROUP ("UMG") is the successor-in-interest to BMG Music Publishing ("BMG") with respect to the copyrights and renewal rights at issue in this action. UMG is a corporation or other business entity with its headquarters located in the County of Los Angeles, State of California.

6. The names, residences and capacities of the Defendants named as DOES 1 through 50 are unknown to Plaintiffs at this time. Plaintiffs are informed and believe, and thereon allege, that each of the fictitiously named Defendants is in some way liable, jointly and severally, to Plaintiffs for the damages alleged herein, either together with, or independently of, each other Defendant. At such time as such fictitiously named Defendants are identified, Plaintiffs will amend this Complaint to state each of their true names, capacities and residences.

7. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331, 1338 and 1367. This action arises under Title 17, Section 304

1 of the United States Copyright Act.

2 8. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)(3)
3 because at least one Defendant is doing business in this District.

4 **FIRST CLAIM FOR RELIEF**

5 **(Declaratory Relief Against All Defendants)**

6 9. Plaintiffs repeat and incorporate by reference the allegations
7 contained in Paragraphs 1 through 8 above as though fully set forth.

8 10. Donny Hathaway was a Grammy Award winning singer, songwriter,
9 instrumentalist and record producer in the 1970's. During his career, he created a
10 body of musical work which includes approximately 200 copyrights in musical
11 compositions which he wrote, co-wrote, produced, arranged or in which he
12 otherwise held a copyright interest (the "Catalog"). Attached hereto as Exhibit A
13 is a listing of most of the individual copyrights which are included in the Catalog.
14 Plaintiffs reserve the right to amend or supplement this Complaint at such time as
15 a complete list of the copyrighted songs is ascertained.

16 11. Beginning in or about 1998, under the provisions of 17 U.S.C. §304,
17 Donny Hathaway's "widow and children" were vested with ownership, as a matter
18 of law, of the renewal rights in the copyrights (the "Renewal Copyrights") each
19 time a copyright ended its initial term during the lives of Donny's widow and
20 children.

21 12. All of Donny's children and his widow are still living.

22 13. DONNITA is Donny Hathaway's daughter and therefore she was
23 vested with an ownership interest in the Renewal Copyrights in the same manner
24 and at the same time as EULAULAH, LALAH and KENYA. DONNITA owns a
25 Twenty-Five Percent (25%) share of the Renewal Copyrights because Donny had
26 one widow and three children, and each is entitled to a proportionate share.

27 14. At all material times herein, EULAULAH affirmatively concealed
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1 from the world that DONNITA was entitled to any part of her father's estate, his
2 copyrights or his renewal rights. DONNITA did not discover any of
3 EULAULAH's fraud and concealment until January 2007 when LALAH filed a
4 Petition for Revised Order of Heirship in Illinois Probate Court which relied upon
5 EULAULAH's Affidavit dated January 19, 2007, wherein she falsely stated under
6 oath that Donny "had two and only two children." EULAULAH also falsely stated
7 not only that DONNITA is not Donny's daughter and falsely implied that
8 DONNITA changed her name to Hathaway for suspicious reasons. Attached
9 hereto as Exhibit B is a true and correct copy of the EULAULAH's Affidavit filed
10 January 19, 2007.

11 15. On October 23, 1986, prior to filing Exhibit B, EULAULAH had
12 filed another Affidavit of Heirship stating that DONNITA was not Donny's
13 daughter. EULAULAH never informed DONNITA that she had filed the 1986
14 Affidavit. DONNITA first became aware of the 1986 Affidavit when LALAH
15 used it as support for her Petition in January, 2007.

16 16. In or about 1998, EULAULAH began to register claims to the
17 Renewal Copyrights in her own name and continued to do so as the underlying
18 copyrights came up for renewal. DONNITA's name was never included in the
19 registrations filed by EULAULAH.

20 17. Because DONNITA was legally entitled to a share, and because
21 EULAULAH concealed that fact from the world, EULAULAH is deemed to have
22 filed the claims to the Renewal Copyrights as a constructive trustee for
23 DONNITA.

24 18. In or about 2000, EULAULAH, again affirmatively concealing the
25 fact from DONNITA, entered into three (3) separate agreements with BMG
26 concerning the Renewal Copyrights (the "BMG Agreements"). In the first, BMG
27 purchased a one-half interest in the Renewal Copyrights (the "Transferred Share")
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1 for a little over \$350,000.00 (Three Hundred Fifty Thousand Dollars). The next
2 agreement grants BMG the right to administer the income generated from the one-
3 half interest not purchased (the "Retained Share"). The third contract gives BMG
4 the right to administer the songwriter's share of the publishing income generated
5 by the Transferred Share and obligates BMG to account for the income (less
6 various costs incurred and/or advances paid by BMG) and pay it directly to
7 EULAULAH, KENYA and LALAH.

8 19. On information and belief, EULAULAH falsely represented to BMG
9 that she and her daughters were the only owners of the Renewal Copyrights under
10 the provisions of 17 U.S.C. 304 and that no other heirs to the copyrights exist.

11 20. Hosea Brown ("Hosea"), DONNITA's paternal grandfather, died
12 intestate in April, 2004. On August 26, 2005, Hosea's sister, Major Belle James,
13 filed an Affidavit of Heirship in Illinois Probate Court identifying DONNITA as
14 one of Donny's three daughters and one of Hosea's three granddaughters. The
15 Administrator filed an Affidavit of Heirship on the same day, stating that based on
16 the affiant's investigation, Hosea's only heirs were his son Donny's three
17 daughters, LALAH, KENYA and DONNITA. Attached hereto as Exhibits C and
18 D, respectively, are true and correct copies of the Major Belle James Affidavit and
19 the Administrator's Affidavit.

20 21. The probate court thereupon entered an Order Declaring Heirship
21 which confirmed DONNITA's status as Donny's heir. Attached hereto as Exhibit
22 E is a true and correct copy of the Order.

23 22. Defendants have never expressly repudiated DONNITA's claim of
24 co-ownership. As late as November 20, 2008, Defendants acknowledged that
25 DONNITA is Donny's daughter and that she owns a share of the Renewal Rights.
26 Defendants disputed only the size of the share and asserted that DONNITA was
27 bound by the terms of the BMG Agreements and that therefore MICROHITS had
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1 no right to administer her share. Attached hereto as Exhibit F is a true and correct
2 copy of the letter from Defendants' counsel to Plaintiffs' counsel explaining
3 Defendants' position.

4 23. Defendants now contend that DONNITA's co-ownership claims are
5 barred by the three year statute of limitations. Significantly however, Defendants
6 still have not expressly repudiated the validity of the claims. Attached hereto as
7 Exhibit E is a true and correct copy of a letter dated February 5, 2009 from
8 Defendants' counsel.

9 24. Plaintiffs contend that DONNITA owns a Twenty-Five Percent (25%)
10 interest in the Renewal Copyrights, that her share is not subject to the BMG
11 Agreements, that Defendants have never expressly repudiated DONNITA's claims
12 to ownership, and that MICROHITS is entitled to administer her 25% interest.
13 Plaintiffs are entitled to a judicial declaration so stating.

14 25. There is an actual and substantial dispute between Plaintiffs and
15 Defendants arising under federal law which can only be resolved by judicial
16 interpretation of the provisions of the United States Copyright Act, 17 U.S.C.
17 §101, *et seq.* The
18 controversy concerns the inheritance of copyrights and renewal copyrights which
19 is governed exclusively by 17 U.S.C. §304.

20 **SECOND CLAIM FOR RELIEF**

21 **(For Imposition of Constructive Trust and Accounting)**

22 26. Plaintiffs repeat and incorporate by reference the allegations
23 contained in Paragraphs 1 through 8 and 10 through 25 above as though fully set
24 forth.

25 27. At all material times herein, EULAULAH is deemed to have acted as
26 constructive trustee with regard to DONNITA's share of the Renewal Rights.
27 Therefore, Plaintiffs are entitled to the imposition of a constructive trust upon
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1 DONNITA's share of the ownership in, and the income from, the commercial
2 exploitation of the Renewal Copyrights.

3 28. None of the Defendants has ever provided Plaintiffs with any
4 accounting or other memorandum reflecting the money generated by the
5 exploitation of the Renewal Copyrights. Plaintiffs have no way of obtaining such
6 information except from Defendants.

7 29. Plaintiffs are entitled to a full accounting of all gross income received
8 by each of the Defendants from the commercial exploitation of the Renewal
9 Copyrights since they vested in Donny's successors.

10 30. Plaintiffs are also entitled to a listing of every licensing or other
11 agreement into which Defendants may have entered with regard to the Renewal
12 Copyrights.

13 31. Plaintiffs are entitled to an order requiring Defendants to pay to
14 Plaintiffs DONNITA's share of all gross income received.

15 **THIRD CLAIM FOR RELIEF**

16 **(Fraud Against EULAULAH HATHAWAY)**

17 32. Plaintiffs repeat and incorporate by reference the allegations
18 contained in Paragraphs 1 through 8, 10 through 25, and 27 through 31 above as
19 though fully set forth.

20 33. Because DONNITA is the non-marital child of EULAULAH's
21 husband, EULAULAH has harbored malice toward DONNITA since she was
22 born. Motivated by that malice, among other things, EULAULAH intentionally
23 kept her daughters from knowing about their half sister for many years and
24 intentionally concealed from DONNITA the fact that she is entitled to a share of
25 her father's estate, including his copyrights and Renewal Copyrights.

26 34. Among other things, EULAULAH fraudulently denied DONNITA's
27 paternity in probate courts in Illinois both in 1986 and again in 2007.

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1 EULAULAH made these and other representations despite the fact that she knew
2 them to be false and despite the fact that she knew keeping the information secret
3 would harm DONNITA while EULAULAH and her daughters would benefit.

4 35. DONNITA first discovered that EULAULAH had entered into the
5 BMG Agreements and had been concealing material information for many years
6 on January 9, 2009 upon her counsel's receipt of a letter from EULAULAH's
7 counsel. Attached hereto as Exhibit G is a true and correct copy of the letter from
8 the Greenberg Traurig law firm.

9 36. Based on EULAULAH's conduct, Plaintiffs are entitled to
10 compensatory damages in an amount according to proof in excess of \$500,000
11 (Five Hundred Thousand Dollars).

12 37. Plaintiff are also entitled to pre-judgment interest at a rate according
13 to proof.

14 38. EULAULAH at all times acted with malice, oppression and fraud.
15 Plaintiffs are therefore entitled to punitive damages in an amount sufficient to
16 deter future similar conduct.

17 WHEREFORE, Plaintiffs pray for relief as follows:

18 1. For a judgment declaring that Plaintiff DONNITA HATHAWAY
19 owns a Twenty-Five Percent (25%) interest in the Renewal Copyrights, that her
20 interest is not subject to the BMG Agreements, that she is entitled to be paid her
21 share of the
22 income generated by the Renewal Copyrights and that MICROHITS has the
23 exclusive right to administer her share.

24 2. That upon application therefor, Plaintiffs be granted such further
25 relief based on the said declaratory judgment as may be necessary or proper;

26 3. For the imposition of a constructive trust on the ownership share in
27 the Renewal Copyrights belonging to DONNITA HATHAWAY;

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