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New York Southern District Court

Case No. 1:15-cv-10063

Chase et al v. Warner Bros. Entertainment, Inc. et al

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Ellen Newlin Chase and Margaret Chase Perry,
Plaintiffs,

Civil Action No. _____

v.

Warner Bros. Entertainment, Inc.; Warner Bros.
Consumer Products, Inc.; Warner-Olive Music LLC;
Warner Bros. Home Entertainment, Inc.; Chuck
Lorre Productions, Inc.; CBS Corporation;
CBS Consumer Products, Inc.; Turner
Broadcasting System, Inc.; Fox Broadcasting
Company; Fox Television Stations, Inc.; Ripple
Junction Design Co.; and Willis Music Company,

COMPLAINT

**Trial by Jury
Demanded**

Defendants.

_____ x

Plaintiffs Ellen Newlin Chase and Margaret Chase Perry, by their counsel, as and for their Complaint against Defendants, allege as follows:

NATURE OF THE ACTION

1. This is a copyright infringement action against television producers and their broadcasting, licensing, and merchandising partners who willfully infringed Plaintiffs' copyrighted song lyrics by repeatedly using the lyrics in their entirety on *The Big Bang Theory*, one of the world's most popular television sitcoms. The lyrics – beginning with the words “Soft kitty, warm kitty” (the “Soft Kitty Lyrics”) – were created as a poem by Edith Newlin, the Plaintiffs' mother. Defendants have used the Soft Kitty Lyrics without authorization in their entirety as an emblematic feature of *The Big Bang Theory*, contributing materially to the program's enormous success, and in

promotion and advertising for the show. Defendants have also used the Soft Kitty Lyrics in their entirety on a wide range of merchandise items, from t-shirts to air fresheners, as part of one of the largest global licensing and merchandising programs ever mounted for a live-action television series.

2. The Soft Kitty Lyrics were created in the 1930's by Edith Newlin, the author of several published books for children, two of which have had substantial sales and are still being published by Scholastic. The Soft Kitty Lyrics were published by Defendant Willis Music Company in 1937, with Edith Newlin's permission, in the book *Songs for the Nursery School*. That book clearly identifies Edith Newlin as the author and copyright owner of the Soft Kitty Lyrics. On page 27 of the book, where the Soft Kitty Lyrics appear accompanied by public domain music, the lyrics are credited to "Edith Newlin." On the book's Acknowledgements page, which appears immediately after the book's title and copyright page, Laura Pendleton MacCartney, the book's compiler and fellow contributor, writes as follows:

ACKNOWLEDGEMENTS

The author is grateful to the following who have so kindly given permission to use the respective copyrights in the preparation of this book:

. . . To Edith Newlin for the words to . . . "Warm Kitty."

3. In 1937 the collective work *Songs for the Nursery School* was timely registered in the Copyright Office by Defendant Willis Music in its own name. Willis Music timely renewed the registration in 1964, naming Laura Pendleton MacCartney as the copyright claimant. Under the Copyright Act of 1909, which was applicable at the time, this registration and renewal served also to register and renew Edith Newlin's

copyright in the Soft Kitty Lyrics at issue in this action. That copyright is now owned exclusively by the Plaintiffs, the daughters and heirs of Edith Newlin, who died in 2004.

4. Despite *Songs for the Nursery School's* identification of Edith Newlin as the author and copyright owner of the Soft Kitty Lyrics, Defendants never contacted or made any attempt to contact Edith Newlin or her successors to seek permission to use the Soft Kitty Lyrics, and Plaintiffs have never granted any permission to Defendants to do so. Instead, in about 2007, on information and belief, Defendant Warner Bros. Entertainment, Inc., one of the producers of *The Big Bang Theory*, wanting to use the Soft Kitty Lyrics on the program, worked out a deal with Defendant Willis Music that purported to grant Warner Bros. Entertainment the right to use the Soft Kitty Lyrics on the sitcom. Defendant Willis Music's President, Kevin Cranley, states on his company's website as follows: "Warner Brothers and I worked together to secure the rights for the show and they have been using the song ever since." However, neither Willis Music nor Warner Bros. Entertainment could lawfully "secure the rights" to use the Soft Kitty Lyrics without Plaintiffs' authorization

5. Defendants' infringements of Plaintiffs' copyright were, on information and belief, willful. The Defendants have extensive experience in the licensing of music and lyrics, and yet they purposefully or recklessly ignored the written statements in *Songs for the Nursery School* that Edith Newlin was the creator and owner of the copyright in the lyrics.

6. Defendants not only willfully infringed Plaintiffs' copyright, but they failed to credit Edith Newlin as the author of the Soft Kitty Lyrics. Instead, they placed a credit line on some merchandise items that made it appear as if one of the Defendants

themselves created the Soft Kitty Lyrics. The credit states that the Soft Kitty Lyrics were “Written by Bill Prady.” Bill Prady is a principal of Defendant Chuck Lorre Productions, one of the producers of *The Big Bang Theory*.

7. In this action the Plaintiffs are pursuing the remedies for willful copyright infringement provided in the Copyright Act.

JURISDICTION AND VENUE

8. The Court has jurisdiction of this action under the Copyright Act, 17 U.S.C. § 101 *et seq.* and under Sections 1331 and 1338(a) of Title 28 of the United States Code, 28 U.S.C. §§ 1331 and 1338(a).

9. Venue is proper in this district pursuant to Section 1400(a) of the United States Code, 28 U.S.C. § 1400(a).

The Parties

10. Plaintiffs Ellen Newlin Chase and Margaret Chase Perry are citizens of the State of New Hampshire. They are the owners of the copyright in the Soft Kitty Lyrics.

11. Defendant Warner Bros. Entertainment, Inc. (“Warner Entertainment”) is, on information and belief, a California corporation, its principal place of business is located in Burbank, CA, and it has an office at 1325 Eighth Avenue #1, New York, NY 10019. Warner Entertainment is one of the producers of *The Big Bang Theory*, which has made repeated use of the Soft Kitty Lyrics. Warner Entertainment also licenses merchandise items that incorporate the Soft Kitty Lyrics.

12. Defendant Warner Bros. Consumer Products, Inc. (“Warner Consumer Products”) is, on information and belief, a Delaware corporation, with its principal place of business at 4000 Warner Blvd., Burbank, CA 91522, and it does or transacts business

in the State of New York. Warner Consumer Products, a Warner Bros. Entertainment Company, is one of the world's leading licensing and retail merchandising organizations. On information and belief, it has built and managed the international licensing and merchandising program for *The Big Bang Theory*, including the licensing of merchandise items that incorporate the Soft Kitty Lyrics.

13. Defendant Warner Olive Music LLC ("Warner Olive") is, on information and belief, a Delaware company, with its principal place of business at 10585 Santa Monica Blvd., Los Angeles, CA 90025, and it does or transacts business in the State of New York. Warner Olive, a Warner Bros. Entertainment Company, is, on information and belief, in the business of music publishing and licensing and has licensed music and lyrics performed on *The Big Bang Theory*, including the Soft Kitty Lyrics. Warner Olive also licenses merchandise items that incorporate the Soft Kitty Lyrics.

14. Defendant Warner Bros. Home Entertainment, Inc. ("Warner Home Entertainment") is, on information and belief, a Delaware company, with its principal place of business located at 4000 Warner Blvd., Burbank, CA 91522, and it does or transacts business in the State of New York. Warner Home Entertainment, a Warner Bros. Entertainment Company is, on information and belief, a distributor of home video titles and has distributed in the United States and other countries DVDs of *The Big Bang Theory* that incorporate the Soft Kitty Lyrics.

15. Defendant Chuck Lorre Productions, Inc. ("Chuck Lorre Productions") is, on information and belief, a California corporation, with its principal place of business at 4000 Warner Blvd, Burbank, CA, 91522 and it does or transacts business in the State of

New York and/or has an agent in New York, N.Y. Chuck Lorre Productions is one of the producers of *The Big Bang Theory*, which has made repeated use of the Soft Kitty Lyrics.

16. Defendant CBS Corporation (“CBS”) is, on information and belief, a Delaware corporation, with its principal place of business located at 51 W. 52nd Street, New York, N.Y. 10019. CBS broadcasts *The Big Bang Theory*, including the Soft Kitty Lyrics, over the CBS television network. On information and belief, CBS also licenses and sells merchandise items that incorporate the Soft Kitty Lyrics, including on its CBS.com “Big Bang Theory” store.

17. Defendant CBS Consumer Products, Inc., (“CBS Consumer Products”) is, on information and belief, a Delaware corporation, with its principal place of business located at 1675 Broadway, 17th Floor, New York, NY, 10019. CBS Consumer Products is a subsidiary of Defendant CBS and, on information and belief, manages the worldwide licensing and merchandising of CBS. It licenses and sells merchandise items that incorporate the Soft Kitty Lyrics.

18. Defendant Turner Broadcasting System, Inc. (“Turner Broadcasting”), is, on information and belief, a Georgia corporation, with its principal place of business located at One CNN Center, Atlanta, GA 30303, and it does or transacts business in the State of New York. Turner Broadcasting holds off-network syndication rights for cable television in *The Big Bang Theory*, and has broadcast or licensed the broadcast of *The Big Bang Theory*, including the Soft Kitty Lyrics. On information and belief, Turner Broadcasting also licenses and sells merchandise items that incorporate the Soft Kitty Lyrics, including on its TBS.com “Big Bang Theory” store.

19. Defendant Fox Broadcasting Company (“Fox Broadcasting”) is, on information and belief, a Delaware corporation, with its principal place of business located at 10201 West Pico Blvd., Los Angeles, CA 90064, and has an office in New York at 1211 Avenue of the Americas, New York, NY 10036. Fox Broadcasting is, on information and belief, a commercial broadcast television network, and it broadcasts reruns of *The Big Bang Theory*, including the Soft Kitty Lyrics, through its subsidiary Defendant Fox Television Stations, Inc.

20. Defendant Fox Television Stations, Inc. (“Fox Television”) is, on information and belief, a Delaware corporation, with its principal place of business located at 1211 Avenue of the Americas, New York, NY 10036. Fox Television is a group of television stations, owned-and-operated by Defendant Fox Broadcasting Company that, on information and belief, holds off-network television rights to *The Big Bang Theory*, and has broadcast or licensed the broadcast of *The Big Bang Theory*, including the Soft Kitty Lyrics.

21. Defendant Ripple Junction Design Co. (“Ripple Junction”) is, on information and belief, an Ohio corporation, with its principal place of business located at 8183 Center Park Drive, West Chester, OH, and it does and/or transacts business in the State of New York. Ripple Junction is, on information and belief, a designer, developer, distributor and seller of licensed merchandise, and it has designed and/or developed, and sells and distributes merchandise items that incorporate the Soft Kitty Lyrics.

22. Defendant Willis Music Company (“Willis Music”) is, on information and belief, a Kentucky corporation, with its principal place of business located at 7380 Industrial Rd., Florence, KY 41042, and it does or transacts business in the State of New

York. Willis Music is an international music publisher that, on information and belief, purported to authorize Defendant Warner Entertainment to use the Soft Kitty Lyrics on *The Big Bang Theory*.

The Facts

Edith Newlin – Teacher and Author

23. Plaintiffs' mother, Edith Newlin (later Edith Newlin Chase), was born in 1905 on a farm in Indiana. After teaching and studying in New York and Connecticut, she moved to the small town of Alstead, New Hampshire, where she worked as a nursery school teacher for approximately 35 years, and where both of the Plaintiffs still live.

24. Edith Newlin wrote original poetry and stories for children throughout her life, and her poems and stories were published in books, anthologies, collections, and journals.

25. Edith Newlin's publications include the following, among others:

(1) Poems and stories for children published in more than two dozen anthologies, including *Songs for the Nursery School*, published by Willis Music in 1937; *Another Here and Now Storybook*, by Lucy Sprague Mitchell and co-authors, published by Dutton in 1937; *Very Young Verses*, published by Houghton Mifflin in 1945; *Time for Poetry*, published by Scott, Foresman and Company in 1951; and *The Arbuthnot Collection of Children's Literature*, published by Scott, Foresman and Company in 1961.

(2) Three children's picture books, each based on a single poem and published by Scholastic:

i. *The New Baby Calf*, published by Scholastic-TAB Publications Ltd. in 1984. This book has been continually in print to the present and has also been published in Spanish, French, German, Norwegian, Korean and Arabic translations. *The New Baby Calf* has sold approximately 190,000 copies to date.

ii. *Waters*, published by North Winds Press, a division of Scholastic Canada Ltd., in 1993. This book has been continually in print to the present and has also been published in French and Korean translations. *Waters* has sold approximately 78,000 copies to date.

iii. *Secret Dawn*, published by North Winds Press, a division of Scholastic Canada Ltd., in 1996.

Edith Newlin's Creation of the Poem "Warm Kitty" and its Publication in 1937

26. In about 1933, Edith Newlin created an original children's poem titled "Warm Kitty":

Warm kitty, soft kitty,
Little ball of fur,
Sleepy kitty, happy kitty,
Purr! Purr! Purr!

27. By letter dated August 17, 1933, Laura Pendleton MacCarteney asked Edith Newlin for permission to use her "Warm Kitty" poem as the lyrics to a song in a book of nursery school songs that MacCarteney was compiling. Newlin granted permission for that use, and the poem was included in the book *Songs for the Nursery School*.

28. *Songs for the Nursery School* was published by Defendant Willis Music in 1937 with the following copyright notice on its title page: "Copyright, MCMXXXVII, by The Willis Music Co."

29. Edith Newlin's "Warm Kitty" poem appears on page 27 of *Songs for the Nursery School* as the lyrics to a tune identified in *Songs for the Nursery School* as an English folk-tune. Edith Newlin is credited on that page as the author of the lyrics.

30. In the "Acknowledgements" page at the front of *Songs for the Nursery School*, MacCarteney thanked the companies and individuals "who have so kindly given permission to use the respective copyrights in the preparation of this book." In these Acknowledgements, MacCarteney specifically thanked Edith Newlin for permission to use her copyright for the Soft Kitty Lyrics. (Copies of the title and copyright page, the "Acknowledgements" page, and page 27 of *Songs for the Nursery School*, are attached as Exhibit 1.)

Copyright Registration and Renewal Filed of Songs for the Nursery School

31. *Songs for the Nursery School* was registered with the Copyright Office on November 17, 1937, as Registration No. E 65337, with Defendant Willis Music named as the claimant. (A copy of the relevant page of the Music Composition log of the Copyright Office for the year 1937, showing Registration No. E 65337, is attached as Exhibit 2.)

32. On June 22, 1964, the above registration was timely renewed by Defendant Willis Music in the Copyright Office in the name of Laura Pendleton MacCarteney as author, as Registration No. 339640. (A copy of the renewal copyright certificate for Registration No. 339640 is attached as Exhibit 3.)

33. Under the Copyright Act of 1909, applicable at the time, the registration of the copyright to *Songs for the Nursery School* in 1937 and the renewal of that copyright in 1964 served also to register and renew Edith Newlin's copyright in the Soft Kitty Lyrics.

Plaintiffs Inherit their Mother's Copyright to the Soft Kitty Lyrics

34. Under the Copyright Act of 1976, the copyright in *Songs for the Nursery School*, including Edith Newlin's copyright in the Soft Kitty Lyrics, will remain in existence for 95 years from the date of its publication in 1937 -- *i.e.*, until 2032.

35. Edith Newlin died in 2004. Her copyrights, including the copyright in the Soft Kitty Lyrics, were inherited by Plaintiffs, her surviving children, pursuant to the provisions of her will.

"The Big Bang Theory"

36. *The Big Bang Theory* is produced by Defendants Warner Entertainment and Chuck Lorre Productions, and broadcast in the United States by Defendant CBS over its CBS Television Network. *The Big Bang Theory* is broadcast throughout the world, including in Australia, Canada, Finland, France, Germany, Hungary, Japan, the Netherlands, Portugal, Spain and the United Kingdom.

37. In about 2011, Defendant Warner Entertainment entered into agreements for off-network syndication of re-runs of *The Big Bang Theory* on cable by Defendant Turner Broadcasting and on broadcast television by Defendant Fox Broadcasting. On information and belief, Turner Broadcasting, Fox Broadcasting and Fox Television have broadcast re-runs of *The Big Bang Theory* since 2011.

38. *The Big Bang Theory* premiered on CBS on September 24, 2007 and is currently in its ninth season on television. It was renewed for three seasons in March 2014, taking the show to its tenth season in 2016-2017.

39. *The Big Bang Theory* has been one of the highest rated shows on television, in terms of the number of viewers, in the United States, Canada, and the

United Kingdom. Defendant Warner Consumer Products stated in a June 5, 2015 press release that *The Big Bang Theory* is “Network television’s most-watched comedy among Adults 18-49 and #1 entertainment series among Total Viewers.” The ratings indicate that certain individual episodes were viewed on CBS by as many as 20 million people in the United States alone, which number does not include later viewership of re-runs. On information and belief, since 2011, when the off-network syndication began, *The Big Bang Theory* has also been one of the most watched re-runs on cable and broadcast channels.

40. On information and belief, Defendant Warner Home Entertainment manufactures and sells DVDs of *The Big Bang Theory* in the United States and other countries.

41. *The Big Bang Theory* has been the subject of one of the largest and most successful global licensing and merchandise programs for a television series. The merchandising program was built and managed by Defendant Warner Consumer Products and uses, on information and belief, about seventy (70) licensees around the world, who manufacture and sell a large array of products including apparel items, accessories and many other products. One of those licensees, Defendant Ripple Junction, manufactures, sells, and distributes a wide range of *Big Bang Theory* merchandise. The identities of most of the other licensees, distributors and retail outlets are not currently known to Plaintiffs. On information and belief, *Big Bang Theory* products are also sold online at the CBS online store run by Defendants CBS and CBS Consumer Products, at the TBS online store run by defendant Turner Broadcasting, and by other online sales channels, including Amazon.

Defendants Warner Entertainment and Chuck Lorre Productions Purport to Secure the Rights to the Copyrighted Soft Kitty Lyrics

42. On information and belief, in about 2007, Defendants Warner Entertainment and Chuck Lorre Productions decided that they wanted to use the Soft Kitty Lyrics on the *The Big Bang Theory*.

43. On information and belief, Defendant Warner Entertainment, knowing that the Soft Kitty Lyrics, along with public domain music, were contained in the book *Songs for the Nursery School*, published by Defendant Willis Music, approached Willis to request permission to use the Soft Kitty Lyrics on *The Big Bang Theory*.

44. Subsequently, on information and belief, in about 2007 Defendant Willis Music, without contacting the Plaintiffs and without Plaintiffs' authorization, entered into or facilitated an agreement purporting to authorize Warner Entertainment to use the Soft Kitty Lyrics on *The Big Bang Theory*. Willis Music states on its website: "Warner Brothers and I [Kevin Cranley, the President of Willis Music] worked together to secure the rights [to the Soft Kitty Lyrics] for the show and they have been using the song ever since."

45. *Songs for the Nursery School* makes clear on its Acknowledgement page and on page 27, where the lyrics appear, that Edith Newlin was the author of, and owned the copyright in, the Soft Kitty Lyrics. Defendants Warner Entertainment and Willis Music purposefully or recklessly ignored the statements in *Songs for the Nursery School* that Edith Newlin was the creator and owner of the copyright in the Soft Kitty Lyrics.

Defendants' Extensive Infringing Uses of Plaintiffs' Copyright

46. Since 2008, Defendants have used the Soft Kitty Lyrics repeatedly as a recurring theme in episodes of *The Big Bang Theory*, in advertising and promotion

connected to the show, and on merchandise items licensed, distributed and/or sold by Defendants.

47. Defendants have not been authorized by Plaintiffs to make any of these uses, which infringe Plaintiffs' copyright in the Soft Kitty Lyrics.

48. Defendants have used the Soft Kitty Lyrics in their entirety and with only a minor change in word order:

Soft kitty, warm kitty [instead of "Warm kitty, soft
kitty"],
Little ball of fur,
Happy kitty, sleepy kitty [instead of "Sleepy kitty, happy
kitty"],
Purr! Purr! Purr!

49. The Soft Kitty Lyrics have played a prominent role in the development and portrayal of one of the central characters in the program, Sheldon Cooper (played by Jim Parsons), who is presented as a brilliant scientist with the emotional maturity of a child. As Sheldon has let others know in the course of the sitcom, beginning in the show's first season, his mother sang the Soft Kitty Lyrics to him as a child, and he still wants them to be sung to him when he is sick. Sheldon in turn sings the Soft Kitty Lyrics to other characters on the show who are sick or troubled.

50. The Soft Kitty Lyrics have been used in their entirety without Plaintiffs' authorization on at least eight episodes of the show:

- (1) March 31, 2008, Season 1, Episode 11, "The Pancake Batter Anomaly": Penny (the show's main female character) sings "Soft Kitty" to Sheldon when he has a cold.

- (2) April 27, 2009, Season 2, Episode 21, “The Vegas Renormalization”: Sheldon demands that Penny sing “Soft Kitty” to him when he is homesick.
- (3) September 21, 2009, Season 3, Episode 1, “The Electric Can Opener Fluctuation”: Penny starts singing “Soft Kitty” to Sheldon when he is sad. Sheldon interrupts her because “sad is not sick.”
- (4) November 16, 2009, Season 3, Episode 8, “The Adhesive Duck Deficiency”: Penny asks Sheldon to sing “Soft Kitty” to her when she is feeling lightheaded. The two then sing it as a round.
- (5) September 30, 2010, Season 4, Episode 2, “The Cruciferous Vegetable Amplification”: Penny sings “Soft Kitty” to Sheldon’s Mobile Virtual Presence Device (Sheldon in robot form) and the two then perform “Soft Kitty” as a round, with Sheldon playing it on his recorder.
- (6) October 20, 2011, Season 5, Episode 6, “The Rhinitis Revelation”: Sheldon’s mother sings “Soft Kitty” to him after he gets sick from being in the rain.
- (7) May 2, 2014, Season 6, Episode 22, “The Proton Resurgence”: Sheldon sings “Soft Kitty” to Professor Proton when the professor is in the hospital.
- (8) January 29, 2015, Season 8, Episode 13, “The Anxiety Optimization”: Leonard (the show’s third main character) and Penny sing “Soft Kitty” to put Sheldon to sleep.

51. Defendants have also used the Soft Kitty Lyrics in their entirety without Plaintiffs' authorization as part of their extensive merchandising program. The Soft Kitty Lyrics have been displayed in their entirety on t-shirts, sweatshirts, hoodies, pajamas, mouse pads, mobile phone covers, wallets, air fresheners, refrigerator magnets, singing plush toys, and other products. With the exception of the singing plush toys, these merchandise items display the complete and verbatim Soft Kitty Lyrics without any musical accompaniment. This merchandise is sold on the CBS and TBS "Big Bang Theory" online stores as well as by Defendant Ripple Junction and other licensees, distributors, and sales outlets in the United States and other countries. (Screenshots of "Soft Kitty" merchandise available at the CBS, TBS and Amazon online stores, are attached, respectively, as Exhibits 4, 5 and 6).

52. On information and belief, Defendants and their licensees have exploited the Soft Kitty Lyrics in other ways that are not currently known to Plaintiffs.

53. Defendants have not only willfully infringed Plaintiffs' copyright in the Soft Kitty Lyrics, but they also failed on the program, on merchandise, or anywhere else to credit Plaintiffs' mother, Edith Newlin, as the author of the lyrics. Not only did Defendants fail to credit Edith Newlin, but they also went so far as to put a credit on some merchandise and accompanying packaging and tags, making it appear as if one of the Defendants themselves created the Soft Kitty Lyrics. The credit states: "Written by Bill Prady." Bill Prady is a principal of Defendant Chuck Lorre Productions, one of the producers of *The Big Bang Theory*. (Tags from a plush toy and a t-shirt that feature the Soft Kitty Lyrics and include this credit are attached as Exhibit 7).

54. In addition, Defendants have used the Soft Kitty Lyrics without authorization to promote and advertise *The Big Bang Theory*, including, without limitation, the following:

(1) In about November, 2010, defendant CBS conducted a “Soft Kitty” contest in which fans were asked to “upload 30-second videos of themselves singing the ‘Soft Kitty’ song.” The grand prize was a trip to Los Angeles for a taping of *The Big Bang Theory*.

(2) In advertisements for *The Big Bang Theory*, Defendant CBS has strung together into a single video the excerpts of the episodes in which the Soft Kitty Lyrics were performed.

(3) In December 2015, defendant Turner Broadcasting has been running a holiday-season advertisement for *The Big Bang Theory* in which a children’s choir sings the Soft Kitty Lyrics in their entirety. The advertisement then cuts to an image of a cat on stained glass and an end card promoting *The Big Bang Theory*.

(4) During promotional presentations for *The Big Bang Theory* at three or more Comic-Con conventions -- in 2010, 2012, and 2015 -- producers and leading actors from *The Big Bang Theory*, including Jim Parsons, Kaley Cuoco and Chuck Lorre, led large audiences in singing the Soft Kitty Lyrics. According to a Warner Consumer Products press release issued in 2013, Comic-Con, held annually in San Diego, is the “biggest pop culture convention in the world.”

55. The Soft Kitty Lyrics are among the best-known and most popular aspects of *The Big Bang Theory*. They have become a signature and emblematic feature of the show and a central part of the show's promotion.

Plaintiffs' Discovery of Defendants' Infringement

56. Plaintiffs discovered Defendants' infringements in August, 2014, when Plaintiff Ellen Newlin Chase, while researching her mother's history for an article she was writing, came across a blog post discussing the use of the Soft Kitty Lyrics on *The Big Bang Theory*, a program that the Plaintiffs had never viewed.

CLAIM FOR RELIEF

(Direct and Contributory Copyright Infringement Against Defendants)

57. Plaintiffs repeat and re-allege the allegations in paragraphs 1 through 56 of the Complaint.

58. Defendants' uses of the Soft Kitty Lyrics constitute direct infringement of Plaintiffs' exclusive rights of copyright as set forth in Section 106 of the Copyright Act, 17 U.S.C. § 106, including without limitation infringement of Plaintiffs' exclusive rights to reproduce the copyrighted work; to prepare derivative works based upon the copyrighted work; to distribute copies of the copyrighted work to the public by sale, license, or other transfer of ownership; to perform the copyrighted work publicly; and to display the copyrighted work publicly. Copyright Act, 17 U.S.C. § 106(1), 106(2), 106(3), 106(4), 106(5).

59. Defendants' purported authorizations to each other and to others of the right to use Plaintiffs' copyrighted work constitutes contributory infringement of Plaintiffs' exclusive right to authorize use of the copyrighted work as set forth in Section 106 of the Copyright Act, 17 U.S.C. § 106.

60. Defendants' acts of infringement were committed with knowledge or reckless disregard for Plaintiffs' exclusive rights, and constitute willful infringement of Plaintiffs' copyright.

61. Plaintiffs are entitled to recover from Defendants Plaintiff's damages and the profits made by Defendants from their infringements of Plaintiffs' copyright, or, if Plaintiffs so elect, statutory damages under Section 504 of the Copyright Act, 17 U.S.C. § 504.

62. Plaintiffs are entitled to recover from Defendants their costs, including their attorneys' fees, under Section 505 of the Copyright Act, 17 U.S.C. § 505.

63. Defendants' infringements have caused, and will continue to cause, unless enjoined by this Court, irreparable injury to Plaintiffs, who have no adequate remedy at law. Plaintiffs are entitled to preliminary and permanent injunctions against further acts of infringement by Defendants under Section 502 of the Copyright Act, 17 U.S.C. 502.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment be entered against Defendants for direct and contributory copyright infringement as follows:

- (1) Plaintiffs' actual damages and Defendants' profits attributable to their infringements of Plaintiffs' copyright and the profits of their agents, licensees, assigns, and all others acting in concert with them or pursuant to their authority; or, alternatively, if Plaintiffs so elect, statutory damages for willful copyright infringement;

- (2) Preliminary and permanent injunctions against continued acts of infringement by Defendants and by their agents, licensees, assigns, and all others acting in concert with them or pursuant to their authority;
- (3) Costs, including attorneys' fees;
- (4) Prejudgment interest; and
- (5) Such other and further relief as this Court may deem just and proper.

Dated: December 28, 2015

/s/ David B. Wolf
David B. Wolf (DW-2077)
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DEMAND FOR TRIAL BY JURY

Plaintiffs demand a trial by jury on all issues so triable.

Dated: December 28, 2015

/s/ David B. Wolf
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