

has significant contacts in the state of Tennessee on a regular basis, and its conduct and transactions have caused injury in this state.

5. This Court has personal jurisdiction over Termini because he owns real property in the state of Tennessee, the claims asserted against him arise from his actions and conduct in and affecting the state of Tennessee, he has significant contacts in the state of Tennessee on a regular basis, and he has committed tortious acts and caused tortious injury in this state.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) and (c) because a substantial part of the events giving rise to this action occurred in the Middle District of Tennessee and Defendants do business in or otherwise avail themselves of the benefits of this jurisdiction.

7. This Complaint has subject matter diversity jurisdiction pursuant to 28 U.S.C. § 1332 in that the dispute involves citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

FACTS

8. Ray Termini started Category 5 as a new independent record company, the business purpose of which would be to solicit from musical recording artists, such as Tritt, their talents and skills for the economic benefit of Category 5 and Termini. In the creation of a commercial musical recording, Category 5 serves to advance funds to make, distribute, and sell musical recorded works made by Tritt. The role and performance of a record company, its financial strength and its skill and abilities, are critical to the professional success of an artist such as Tritt.

9. Beginning in November, 2005, Termini approached Tritt and his management personnel to solicit him to sign a recording agreement with Category 5. In doing so, but

unknown to Tritt and his management team, Termini negligently, intentionally and/or fraudulently misrepresented his and Category 5's skill and ability to perform under such an agreement, namely by mischaracterizing or misrepresenting, by statement or omission, the sophistication of his business acumen and his wealth, and thus the stability and long term economic wherewithal of Category 5; his and its skill and competence as a record company; his and its industry knowledge and relevant experience; his and its financial skill and resources; the abilities of his and its professional promotion and advertising personnel; his and its willingness and desire to permit Tritt and his representatives to provide creative input, marketing and promotional influence for Tritt's records; and their ability to honor his and its financial obligations to Tritt under a contemplated recording agreement.

10. During these initial conversations, and in furtherance of his solicitation of Tritt as a Category 5 signed artist, Termini also told Tritt and his management that the operation of Category 5 would be fully staffed; that it would be very competitive in the market place; promised sufficient resources to run the record label and promote the records, and "that he would do business like no other label in town." Termini told Tritt and his management team that they "would build the label" around Tritt and would not sign any other musical recording artists to Category 5 without prior consultation with Tritt and his management team.

11. Each of the representations set out in paragraphs 9 and 10 above were represented to Tritt as true at the time made, were material, and intended reasonably to induce Tritt to sign a recording agreement with Category 5.

12. Tritt was interested in joining a record label that would provide him with creative and marketing input that he desired. Termini met with Tritt and his manager in December 2005 and Termini assured them that if Tritt signed as an artist with Category 5, Tritt would have

complete creative control and could record whatever type of album he wanted. Tritt was interested in Category 5 but was concerned that it was a start-up independent record label without a historic track record of success or experience. Thus, Tritt requested proprietary financial and other information from Termini. Termini had told Tritt and his manager that not only would they have control over the album, but the record company would be financially sound. Termini requested execution of a Confidentiality Agreement prior to providing financial information intended to induce Tritt to sign a recording agreement, personally having indicated that he was a man of substantial means and wealth. In fact, Termini represented orally at the outset of the discussions that a benefit to Tritt in signing a recording agreement with him and Category 5 was that the needed funding to perform its obligations was available, was “his”, and thus there would be no need to deal with a committee structure – as is the case with some record companies – to obtain such needed funding.

13. Reasonably relying on these assurances and information from Termini, on December 24, 2005, Tritt entered into a contract with Category 5 Records (the “Agreement”). Under the terms of the Agreement, Tritt was to provide his exclusive personal services as a recording and performance artist to Category 5 for one year with three separate consecutive one-year options, with a minimum recording commitment of at least one album per contract year, and in exchange for certain advances and royalties. The Agreement further provided that Category 5 would reimburse Tritt for reasonable travel and living expenses related to promotional activities and to provide charter jet services for Tritt’s use during tours conducted in the United States during 2006 and 2007.

14. The representations set out in paragraphs 9 through 11 above were—unknown to Tritt and his management—inaccurate, misleading, not based upon facts when made, and were

known to be so by Termini. Same were designed by Termini as part of a scheme and plan to induce Tritt to sign a multi-album recording agreement with Category 5, which, in reasonable reliance on these representations, Tritt did.

15. Almost immediately after Tritt executed the Agreement, Category 5 signed other artists without involving Tritt or first obtaining his consent. Tritt objected to adding these additional artists to the label roster because he was concerned that resources dedicated to his album would be depleted. Termini insisted that he had plenty of resources to adequately record, promote and market Tritt's album.

16. Following execution of the Agreement, Tritt and a producer, Randy Jackson, co-produced Tritt's much-anticipated album on Category 5 titled "The Storm."

17. While "The Storm" made for Category 5 and Termini was being completed and as it was launched to the market, the transaction induced by Termini and contemplated by the Agreement began to unravel. Termini failed to follow the direction and guidance of Tritt and his experienced team, interrupted and interfered with the technical production of the recording, including but not limited to the "mixing" of the album and re-touching of the album cover art, misspent needed advertising and promotion money, mismanaged the album's release, failed competently to promote "The Storm," and then terminated most of Category 5's employees prior to the release to the radio market of Tritt's second single from "The Storm." All of these steps, and others, were in violation of the representations that Termini had made to Tritt to induce him to sign the Agreement with Category 5, were disastrous to the success of the initial release of "The Storm" and the release of its second single – which Termini had described as a "fastball down the middle" – in the public music market. As a direct result, the recordings have failed to even show up on public radio play chart tracking.

18. For further example of Termini's conduct, when Tritt began recording "The Storm" in early 2007, it was agreed with Termini that the recording would occur in Los Angeles. Termini unilaterally decided and then directed Category 5 to utilize funds owed Tritt not for the covered tour travel that would promote the album as required in the Agreement, but instead for the album recording budget. Therefore, when Tritt traveled to tour and to meet necessary promotional activities related to the launch of "The Storm," Termini refused to pay for all of the expenses, even though owed by Category 5, under the Agreement.

19. After paying for some costs related to the promotion of the album as required in the Agreement, such as travel to Seattle and Los Angeles, Termini unilaterally decided to stop paying for this type of cost even though Termini or Category 5 promised to the contrary. On the eve of the release of the second single, Termini dismantled the promotion staff of Category 5.

20. Termini has refused to pay for contemplated travel costs for radio promotion shows in Cleveland and Dallas that David Shaw, former VP of National Promotion for Category 5, requested Tritt to perform. Consequently, Tritt was left in the unavoidable position of paying for these costs related to these promotional trips to live up to his obligation to make an appearance at a radio station or suffer possible irreparable damage to his career in that particular major market area due to inevitable loss of radio air time for the album. Termini later agreed "under extreme protest" to pay for transportation related to the Cleveland show.

21. Tritt has incurred approximately \$307,465.18 in such expenses described above to which he is entitled to reimbursement, plus interest.

22. The relationship induced by Termini further deteriorated when Termini caused Category 5 to fail to pay Tritt pursuant to the Agreement for royalties due on November 21,

2007. Based on sales of "The Storm" of approximately 76,734 units to date, Tritt is now owed over \$191,835.00, with an additional amount of \$308,165 due February 21, 2008, plus interest.

23. By letter dated November 16, 2007, Tritt's representative notified Category 5 that it was in breach of the Agreement for not making appropriate reimbursements as well as informing Category 5 that royalties due on November 21, 2007 were expected to be made on time. Despite numerous demands thereafter for payment and for assurances that payment was forthcoming, Category 5 has refused to reimburse Tritt for his promotional expenses incurred on its behalf or make the royalty payment as required under the Agreement.

24. As of December 1, 2007, Category 5 owes but has not paid over \$399,300.18 in total now due to Tritt.

25. In addition to the above-described conduct, Category 5 has now not only laid off and/or terminated its entire promotion staff on the eve of an anticipated release of Tritt's second single from the album known as "Something Stronger Than Me," but Category 5 currently only has two of approximately thirteen employees left, none of which are involved in promotion of the record. Upon information and belief, Category 5 has ceased operations for all intents and purposes.

26. Termini has refused to communicate with or otherwise approve of anyone else at Category 5 to work with Tritt's professional manager, a step that prevents performance of the Agreement. As early as the summer of 2007, Termini, on information and belief, informed the Category 5 staff to avoid dealing with Tritt's designated manager, all to Tritt's detriment.

27. Termini has directly threatened to harm Tritt's future career by making disparaging remarks about Tritt and his "crappy management" to other record labels that Tritt might want to sign a recording agreement with in the future.

28. Because of Defendants' failure competently to support, promote and advertise Tritt's first and second singles and "The Storm", as required under the Agreement, "The Storm" has not been a commercial success as anticipated, all to Tritt's damage.

29. While dealing with the above conduct and circumstances and in his effort to mitigate his past and future damages caused by Defendants, Tritt learned from a news article published nationally on November 18, 2007 that the Connecticut State Attorney General Richard Blumenthal is investigating Haven Healthcare, a Connecticut company that operates nursing homes. Termini is the Chief Executive Officer and founder of Haven Healthcare. Among other things, Haven Healthcare reportedly has not only allowed its debts to go unpaid, it also is reported that the Connecticut State Attorney General is investigating whether \$8,500,000 of company funds—reportedly obtained through the United States Medicaid healthcare program—were wrongly used to launch Category 5 Records in December 2005.

30. The Connecticut Attorney General is reportedly currently investigating Termini's supposed use of millions of dollars in U.S. Medicaid money for business and real estate transactions, including the capitalization of Category 5, not related to Haven Healthcare.

31. Tritt was not aware that Haven Healthcare had invested in or otherwise had any relationship with Category 5 until these recent news reports, nor the source of the funds Termini used to capitalize and operate Category 5.

32. In the face of these revelations, Termini caused Haven Healthcare to file for bankruptcy on November 21, 2007 after the State of Connecticut began scrutinizing that company's history of reported patient-care violations and debt problems, and Termini's reported use of the funds paid to it other than for its operations and the potential use of employees of Haven Healthcare to staff Category 5.

33. Upon information and belief, Category 5 is from a practical standpoint defunct and is expected to close its doors within a matter of days, and Termini is facing financial difficulties.

34. The Agreement contains the following unenforceable choice of law and venue provision: “This agreement shall be deemed entered into in the State of New York, and the validity, interpretation and legal effect of this agreement shall be governed by the laws of the State of New York applicable to contracts entered into and performed entirely within the State of New York. The New York courts, only, will have jurisdiction of any controversies regarding this agreement; and, any action or other proceeding which involves such a controversy will be brought in the courts located in the State of New York, and not elsewhere...” The provision is null and void to deprive this Court of jurisdiction and venue, as New York has no reasonable relation to the transaction or any of the parties. Furthermore, Defendants’ breach of contract and tortious conduct were committed in Tennessee and, thus, the state of Tennessee has a more significant public policy interest in adjudicating this matter than the state of New York.

CLAIMS FOR RELIEF

First Claim for Relief – Breach of Contract and Implied Covenant of Good Faith and Fair Dealing against Category 5

35. Plaintiff incorporates by reference herein the Paragraphs 1 through 34 above.
36. The Agreement between Tritt and Category 5 is valid, binding and enforceable.
37. Tritt has, at all times, performed his obligations under the Agreement.
38. Pursuant to the terms of the Agreement, Category 5 is contractually obligated to make certain payments to Tritt.

39. Category 5 has failed and refused and continues to fail and refuse to make payments in the amounts and at the times provided for in the Agreement and, therefore, is in breach of the Agreement.

40. Tritt is entitled to judgment against Category 5 for the entire unpaid balance owing under the Agreement, after the application of all allowable credits and offsets, as of the date of this Complaint, in excess of \$399,300.18.

41. Category 5's failure and refusal to make these payments and provide adequate assurances that future payments owed will be timely made, constitute violations of the covenant of good faith and fair dealing implicit in the Agreement.

42. Based on the scheme perpetrated by the Defendants, their failure to provide adequate assurances, and the circumstances surrounding their current and future financial situation, any notice requirements under the Agreement are void or should be deemed satisfied, or, at the very least, subject to reformation.

43. As a direct and proximate result of the breaches of the Agreement by Category 5, Tritt has been damaged in excess of \$399,300.18 to date.

Second Claim for Relief – Fraudulent Inducement to Contract against both Defendants

44. Plaintiff incorporates by reference Paragraphs 1 through 34 above.

45. As described in detail above, Termini personally and on behalf of Category 5 made affirmative misrepresentations of material fact to Tritt, representing that Category 5 was competent, and financially sound and backed by Termini's personal wealth, that Category 5 and its staff was competent to operate a record label and use reasonable efforts to advertise and promote Tritt's album and singles to radio, retail outlets, and others.

46. Termini's representations to Tritt were inaccurate and false when made, and Termini acted intentionally, recklessly, willfully and/or maliciously in making them. Termini knew or should have known that these representations were inaccurate and false and intended or knew that Tritt would rely reasonably on the representations to his detriment.

47. Tritt justifiably and reasonably relied on Termini's representations in entering into the Agreement.

48. Tritt has since suffered damage and injury as a direct and proximate result of his reliance on the false and inundated information provided by Termini in an amount to be determined at trial.

49. As a consequence of this illegal inducement, the Agreement is now, and at all times mentioned herein, null and void and should be cancelled and set aside.

Third Claim for Relief – Anticipatory Breach against Category 5

50. Plaintiff incorporates by reference herein the Paragraphs 1 through 34 above.

51. Category 5 has not made payments due and owing under the Agreement and cannot provide Tritt with adequate assurances of when or if those and future payments will be made. Based on Haven Healthcare's recent bankruptcy and Category 5's continuing financial and/or business demise, Category 5 will not be able to make payments to Tritt as required by the Agreement, including but not limited to \$308,165 owed in February 2008.

52. Category 5 has failed to provide adequate record label support in promoting and advertising Tritt's album, including touring support, as is customary in the commercial music industry and as is required by the Agreement. Based on Termini's continued threats and termination of most of Category 5's employees, Category 5 will not be able to perform its obligations pursuant to the Agreement.

53. As a consequence of this anticipatory breach of the entire Agreement, Tritt has been further damaged, including irreparable damage to his career, in an amount in excess of \$10,000,000 and is relieved from future performance of any obligation under the Agreement due to Defendants' breaches.

Fourth Claim – Common Law Interference with Business Relationships against Termini

54. Plaintiff incorporates by reference herein the Paragraphs 1 through 34 above.

55. Termini was aware of Tritt's existing business and contractual relationship with Category 5.

56. Termini intentionally and maliciously interfered with this business relationship by making and threatening to make false, derogatory, disparaging and/or defamatory statements about Tritt and his management, refusing to deal with Tritt's appointed representatives, and directing employees at Category 5 to take actions detrimental to Tritt's career and Agreement with Category 5.

57. As a direct and proximate result of Termini's tortious interference with Tritt's business relations, Tritt is entitled to compensatory and punitive damages in an amount to be determined at trial.

Fifth Claim – Violation of T.C.A. § 47-50-109 against Termini

58. Plaintiff incorporates by reference herein the Paragraphs 1 through 34 above.

59. Tritt had a valid and binding agreement with Category 5 and Termini had full knowledge of this contractual relationship.

60. Termini intentionally and maliciously, by inducement, persuasion, and/or misrepresentation, procured or induced Category 5's breach of the Agreement.

61. As a direct and proximate result of Termini's actions, Tritt is entitled to compensatory and treble damages in an amount to be determined at trial.

Sixth Claim – Violation of Tennessee Consumer Protection Act against both Defendants

62. Plaintiff incorporates by reference herein the Paragraphs 1 through 34 above.

63. The intentional, malicious and fraudulent actions and schemes taken by the Defendants individually and/or in concert with each other as described above constitute unfair and deceptive trade practices in direct violation of the Tennessee Consumer Protection Act.

64. Based upon the averments of Plaintiff II herein Defendants' failure to disclose the investment by Haven Healthcare into Category 5 and the reported sum of that investment, and financial struggles of Category 5, prior to and during the life of the Agreement, same are practices which are unfair or deceptive within the meaning of the Tennessee Consumer Protection Act.

65. Defendants' false, unfair and deceptive acts and practices have proximately caused Tritt to suffer lost profits and damage to his career and reputation. Moreover, since Defendants' false, unfair and deceptive acts and practices were intentional, willful, fraudulent and with specific knowledge, Tritt is entitled to compensatory and treble damages in an amount to be determined at trial, as well as attorneys fees and costs.

Seventh Claim – Injunctive Relief against Category 5 and Appointment of Receiver

66. Plaintiff incorporates by reference herein the Paragraphs 1 through 34 above.

67. Tritt has notified Category 5 on several occasions of its breach and requested immediate cure.

68. Category 5 has admitted its failure to make such payments, its inability to finance such payments at this time, and thus its breaches.

69. Haven Healthcare, apparently the principal investor in Category 5, is in bankruptcy and under investigation for fraud and illegal arts. Upon information and belief, both Defendants face further and serious financial difficulties and are, in all likelihood, unable or unwilling to pay their debts as they accrue.

70. As a result of Category 5's breach of the Agreement and its potential or current inability or unwillingness to pay its debts, Tritt has suffered and will continue to suffer irreparable injury absent a grant of injunctive relief. Tritt has protectable interests deserving of injunctive protection and has a substantial likelihood of success on the merits of this Complaint.

71. The public interest will be furthered by enforcing the Agreement and enjoining Category 5 from continued violation of the Agreement.

72. Category 5 should be immediately enjoined from damaging, concealing, removing, selling, leasing, trading, assigning, liquidating, encumbering or otherwise transferring or disposing of any of the audio record "masters" recorded by Tritt and the copyrights related thereto; from assigning, utilizing, encumbering, expending, concealing, diverting, or otherwise transferring or disposing of any cash proceeds from the sale of Tritt's albums; and from releasing any additional singles from Tritt's album, "The Storm." Category 5 should be immediately required to surrender and/or assign ownership of the masters and copyrights for the album "The Storm" to Tritt, free and clear of any liens and encumbrances, and make a full and complete accounting of all moneys received by it, spent by it, and the use thereof.

73. Without such relief, Tritt will suffer immediate and irreparable injury, loss and damage for which there is no adequate remedy at law.

74. The injunctive relief sought herein is necessary pending this Court's final resolution of Tritt's claims. The issuance of the requested injunction will not cause undue inconvenience or loss to Category 5, but will prevent irreparable injury, loss and damage to Tritt.

75. Given the actions taken by Defendants as alleged above and Category 5's likely insolvency, Tritt further requests that this Court appoint a receiver to operate and manage the affairs of Category 5 pursuant to Fed. R. Civ. P. 66 and in accordance with the established principles of equity.

WHEREFORE, PLAINTIFF DEMANDS AND PRAYS FOR THE FOLLOWING RELIEF:

1. That proper process be issued and be served upon the Defendants requiring them to appear and answer or otherwise respond to this Complaint within the time required by law;

2. That the Court find Category 5 in breach of its Agreement with Tritt, rescind the Agreement for Category 5's fraudulent inducement and anticipatory breach of the entire Agreement, and award monetary damages in excess of \$10,000,000 as a result of Category 5's breaches;

3. That the Court enter a monetary judgment against the Defendants for compensatory damages and at Tritt's election, treble or punitive damages, for their tortious conduct;

4. That the Court grant preliminary injunctive relief against Category 5, and their agents, servants, employees and all persons acting with them:

a. enjoining Category 5 from damaging, concealing, removing, selling, leasing, trading, assigning, liquidating, encumbering or otherwise transferring or disposing of any of the masters recorded by Tritt;

b. enjoining Category 5 from assigning, utilizing, encumbering, expending, concealing, diverting, or otherwise transferring or disposing of any cash proceeds from the sale of Tritt's albums;

c. enjoining Category 5 from releasing any additional singles to radio from Tritt's album, "The Storm";

d. requiring Category 5 to surrender and/or assign ownership of the masters and copyrights for the album "The Storm" to Tritt, free and clear of any liens and encumbrances; and

e. requiring Category 5 to make a full and complete accounting and to certify to the Court on a monthly basis that it has complied with subpart (b) above or, alternatively, requiring Category 5 to deposit all revenue from the sale of Tritt's record album into an acceptable trust account or the registry of the Court until the final disposition of this matter.

5. That the Court appoint a receiver to operate and manage the affairs of Category 5 pursuant to Fed. R. Civ. P. 66 and in accordance with the established principles of equity; and

6. That the Court grant an award of Plaintiff's attorneys' fees, costs, and all pre- and post-judgment interest and fees to the fullest extent allowed by law; and

7. Such further and other general relief to which they may be entitled.

PLAINTIFF DEMANDS A JURY.

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