

1 with plaintiff's participation as a performing and recording artist and songwriter in the
2 multi-platinum popular musical group known as PAPA ROACH.

3 **JURISDICTION AND VENUE**

4 2. This Court has subject matter jurisdiction over this action in that the amount
5 in controversy exceeds the sum or value of \$25,000, exclusive of interest, costs and
6 attorneys' fees.

7 3. The alleged unlawful acts and violations described below were in part
8 conceived, carried out and made effective within the City and County of Sacramento,
9 State of California. All defendants named in the above-caption transact or have
10 transacted business within this County.

11 4. Venue is proper in this County pursuant to Code of Civil Procedure section
12 395(a) in that one or more defendant named in the above caption resided in this County at
13 the time this action commenced.

14 **THE PARTIES**

15 5. At all times relevant herein, plaintiff DAVID BUCKNER was and still is an
16 individual residing in the State of California.

17 6. At all times relevant herein, defendant PAPA ROACH was and still is a
18 California general partnership.

19 7. At all times relevant herein, defendant PAPA ROACH, LLC, was and still
20 is a California limited liability company.

21 8. At all times relevant herein, defendant PAPA ROACH TOURING, INC.,
22 was and still is a California corporation.

23 9. At all times relevant herein, defendant VIVA LA CUCARACHA MUSIC,
24 INC., was and still is a California corporation.

25 10. At all times relevant herein, defendant NEW NOIZE RECORDS, INC., was
26 and still is a California corporation.

27 11. At all times relevant herein, defendant PR REALTY, LLC, was and still is a
28 California limited liability company.

1 12. At all times relevant herein, defendant JACOBY SHADDIX was and still is
2 an individual residing in the State of California.

3 13. At all times relevant herein, defendant JERRY HORTON was and still is an
4 individual residing in the State of California.

5 14. At all times relevant herein, defendant TOBIN ESPERANCE was and still
6 is an individual residing in the State of California.

7 15. At all times relevant herein, defendant UNIVERSAL MUSIC GROUP,
8 INC., was and still is a Delaware corporation.

9 16. At all times relevant herein, defendant CHERRY LANE MUSIC CO.,
10 INC., was and still is a New York corporation.

11 17. The true names and identities of defendants DOES 1 through 15 are
12 unknown to BUCKNER, who therefore sues such defendants by such fictitious names.
13 BUCKNER will seek leave to amend his complaint to state their true names and
14 capacities when the same have been fully ascertained. BUCKNER is informed and
15 believes and on that basis alleges that each of the fictitious defendants participated in the
16 acts alleged herein.

17 **FACTS COMMON TO ALL CAUSES OF ACTION**

18 18. In or about February 1993, BUCKNER and SHADDIX formed the musical
19 group popularly known as PAPA ROACH (the "Group"). HORTON and ESPERANCE
20 joined the Group later. At or about that time, these four individuals created a general
21 partnership operating under the name PAPA ROACH and entered into an oral partnership
22 agreement (the "Papa Roach Partnership Agreement") for the purpose of carrying on the
23 business of the Group. That business included, among other things, composing,
24 arranging, recording, producing and performing music to present to the public, which the
25 members of the Group intended and agreed to carry on by consensus and on an equal
26 shared basis.

27 19. Unless otherwise specified, at all times relevant herein, the business of the
28 Group was conducted by PAPA ROACH. Further, some or all of the band-related

1 business entities were and are alter-egos for PAPA ROACH under the “single enterprise”
2 rule: Each of these business entities was and continues to be an instrumentality or conduit
3 of PAPA ROACH in the pursuit of a single business venture; upon information and
4 belief, disregard of the separate nature of these entities may be necessary, given the
5 circumstances, to prevent an injustice upon BUCKNER.

6 20. As a performing member of the Group, BUCKNER contributed to every
7 aspect of the Group, including, but not limited to, creation and promotion of the Group’s
8 name and logo; the composition, selection and arrangement of its songs; the Group’s
9 stage presence, performance and attire; the hiring of professional, technical and support
10 staff (including the selection of an attorney and full-time personal manager); and other
11 related matters directly affecting the quality of the Group’s performance and its
12 presentation to record companies and to the public.

13 21. From the time the Group formed, BUCKNER devoted a significant amount
14 of his time, energy and resources to build recognition for the Group, its music and the
15 PAPA ROACH brand, and to develop the Group’s goodwill in the music industry,
16 making the Group the success it would ultimately become and which included the
17 Group’s signing a long-term recording artist agreement with DREAMWORKS
18 RECORDS, the predecessor-in-interest to UNIVERSAL MUSIC GROUP, INC., and a
19 long-term music publishing agreement with DREAMWORKS MUSIC PUBLISHING,
20 the predecessor-in-interest to CHERRY LANE MUSIC PUBLISHING CO., INC..
21 During this period, BUCKNER entirely gave up any and all other opportunities as a
22 musician and performing artist and for much of this time, his participation in the Group as
23 a performing member was his sole means of income and support.

24 22. In or about October 1999, BUCKNER, SHADDIX, HORTON and
25 ESPERANCE formed and registered PAPA ROACH, LLC, for the purpose of carrying
26 on certain aspects of the business of the Group. That business included, among other
27 things, entering into the foregoing recording artist agreement (also entered into by the
28 individual members of the Group) and receiving royalty revenues generated by the sale

1 and other use of its recordings. At all times relevant herein, BUCKNER was and still is
2 an equal member of PAPA ROACH, LLC, entitled to share all company income and
3 assets.

4 23. In or about May 2000, BUCKNER, SHADDIX, HORTON and
5 ESPERANCE formed and registered VIVA LA CUCARACHA MUSIC, INC., for the
6 purpose of carrying on certain aspects of the business of the Group. That business
7 included, among other things, entering into the foregoing music publishing agreement
8 (also entered into by the individual members of the Group) and receiving royalty revenues
9 generated by the sale and other use of its musical compositions or songs. At all times
10 relevant herein, BUCKNER was and still is an equal owner of VIVA LA CUCARACHA,
11 INC., entitled to share all company income and assets.

12 24. In or about March 2001, BUCKNER, SHADDIX, HORTON and
13 ESPERANCE formed and registered NEW NOIZE RECORDS, INC. for the purpose of
14 carrying on certain aspects of the business of the Group. That business included, among
15 other things, conducting the business of, and receiving revenues generated by, the
16 Group's wholly-owned record label, New Noize Records. At all times relevant herein,
17 BUCKNER was and still is an equal owner of NEW NOIZE RECORDS, INC., entitled to
18 share all company income and assets.

19 25. In or about July 2004, BUCKNER, SHADDIX, HORTON and
20 ESPERANCE formed and registered PAPA ROACH TOURING, INC., for the purpose
21 of carrying on certain aspects of the business of the Group. That business included,
22 among other things, receiving revenues generated from its live concerts and merchandise
23 sales. At all times relevant herein, BUCKNER was and still is an equal owner of PAPA
24 ROACH TOURING, INC., entitled to share all company income and assets.

25 26. In or about May 2006, BUCKNER, SHADDIX, HORTON and
26 ESPERANCE formed and registered PR REALTY, LLC, for the purpose of carrying on
27 certain aspects of the business of the Group. That business included, among other things,
28 purchasing and maintaining certain real property and improvements to be used as a

1 recording studio and rehearsal space located in Sacramento, California. At all times
2 relevant herein, BUCKNER was and still is an equal member of PR REALTY, LLC,
3 entitled to share all company income and assets.

4 27. On or about December 24, 2007, SHADDIX, HORTON and ESPERANCE,
5 among others, advised BUCKNER that they no longer considered him a regular
6 performing member of the Group.

7 28. Beginning in advance of that date and to the present, SHADDIX, HORTON
8 and ESPERANCE, together with the Group's professional representatives, have exercised
9 dominion and control over the affairs of the Group and its various business entities. They
10 have assumed sole possession and control of the business and assets of the Group,
11 including its name, trademark, logo, goodwill, contractual entitlements, and the
12 copyrights to its sound recordings and musical compositions, and have controlled,
13 operated and conducted the same to the exclusion of BUCKNER, without making a fully
14 accurate and complete accounting to him, and without paying him his share of income
15 and other proceeds from the Group's activities, in violation of their fiduciary and
16 contractual obligations to him. These actions have included, but are not limited to, the
17 following:

18 A. In or about January 2007, SHADDIX, HORTON and ESPERANCE
19 (acting individually as well as by and through PR REALTY, LLC)
20 borrowed \$210,000 from Broadway Federal Bank FSB, pledging as
21 collateral for the loan the real property PR REALTY, LLC owned.
22 They did this without BUCKNER's prior knowledge or consent.
23 The proceeds of that loan were used to underwrite various
24 undertakings of the Group as well as the rock-and-roll lifestyle of
25 SHADDIX, HORTON and ESPERANCE, principally while they
26 toured as PAPA ROACH, and otherwise to benefit them and certain
27 SHADDIX family members to the exclusion of BUCKNER. Upon
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1 information and belief, BUCKNER participated in no part of the
2 proceeds from this loan.

3 B. Starting in or about January 2008, SHADDIX, HORTON and
4 ESPERANCE (acting individually as well as by and through PAPA
5 ROACH, LLC) began borrowing monies, eventually totaling in
6 excess of \$400,000, from UNIVERSAL MUSIC GROUP, INC.
7 They did this without BUCKNER's prior knowledge or consent.
8 The proceeds of that loan were used to underwrite the production
9 and recording of several tracks intended for the Group's next record
10 release, as well as a promotional extended play recording and a
11 promotional music video. None of the foregoing featured
12 BUCKNER and he participated in no part of the proceeds from this
13 loan. UNIVERSAL MUSIC GROUP, INC. then proceeded to pay
14 itself back by applying royalties on account of PAPA ROACH, LLC,
15 against the foregoing indebtedness, by transferring these royalties to
16 a separate account set up for this purpose. By this device,
17 SHADDIX, HORTON and ESPERANCE diverted monies otherwise
18 payable to PAPA ROACH, LLC, to themselves, without any
19 corresponding benefit to BUCKNER.

20 C. Beginning soon after BUCKNER's exclusion from the Group as a
21 regular performing member, SHADDIX, HORTON and
22 ESPERANCE disclaimed BUCKNER's involvement or interest in
23 any future opportunities and endeavors (including so-called "works
24 in progress") of the Group. By this action, these defendants intended
25 to exclude BUCKNER from those opportunities and endeavors as
26 well as the continuing value of the Group's goodwill, and to
27 appropriate those opportunities and endeavors as well as that good
28 will to themselves.

1 D. Following BUCKNER's exclusion from the Group as a regular
2 performing member, SHADDIX, HORTON and ESPERANCE
3 continued to pay some of the Group's ongoing expenses via passive
4 income received by NEW NOIZE RECORDS, INC. The net effect
5 of this action was to zero-out that entity's net income. By this
6 device, SHADDIX, HORTON and ESPERANCE diverted monies
7 otherwise payable to BUCKNER to themselves, without any
8 corresponding benefit to BUCKNER.

9 E. From about January 2005 to the present, the Group carried certain
10 loans to its individual members on the books and records of PAPA
11 ROACH TOURING, LLC. In BUCKNER's case, that loan
12 purportedly amounts to almost \$35,000. Despite BUCKNER's
13 demand, SHADDIX, HORTON and ESPERANCE have failed, and
14 continue to fail, to provide verification that either (i) the underlying
15 charges constituting the foregoing amount are legitimate and
16 properly charged to BUCKNER or (ii) the policy for charging
17 individual members of the Group was applied in a consistent and fair
18 manner among all of the individual members of the Group.

19 F. Following BUCKNER's exclusion from the Group as a regular
20 performing member, SHADDIX, HORTON and ESPERANCE have
21 charged and continue to charge BUCKNER for accounting and legal
22 fees incurred on behalf of the Group, notwithstanding that (i) neither
23 the accountants or the attorneys have a contractual or legal basis for
24 charging BUCKNER for such fees and (ii) both the accountants and
25 the attorneys representing the Group are in direct conflict with
26 BUCKNER in that they are facilitating all of the foregoing actions
27 on behalf of SHADDIX, HORTON and ESPERANCE, to
28 BUCKNER's detriment.

1 **FIRST CAUSE OF ACTION**

2 **(Declaratory Relief)**

3 **(Against SHADDIX, HORTON and ESPERANCE)**

4 29. BUCKNER realleges and restates the foregoing paragraphs 1 through 28.

5 30. An actual controversy of a justiciable nature has arisen and now exists
6 between BUCKNER, on the one hand, and SHADDIX, HORTON and ESPERANCE, on
7 the other hand, concerning their respective rights and duties under their agreement(s) with
8 one another. BUCKNER contends that he is due one equal share of all assets and income
9 earned by the Group's business entities from January 1993 to the present and continuing
10 through to dissolution of those entities.

11 31. In the alternative, assuming that SHADDIX, HORTON and ESPERANCE
12 terminated the foregoing agreement(s) by and among the individual members of the
13 Group, BUCKNER contends that he is due an equal share of these entities' assets and net
14 income from any and all sources whatsoever and a pro-rated share of future monies
15 received from all works-in-progress and all unfinished business of the Group at the time
16 of his departure from the Group, regardless of who among the individual defendants
17 provides the required services following termination.

18 32. A further actual controversy of a justiciable nature has arisen and now
19 exists between BUCKNER and SHADDIX, HORTON and ESPERANCE concerning
20 their respective rights and duties in that BUCKNER contends that the business, assets and
21 goodwill of the Group, including but not limited to the song copyrights of the Group, are
22 his property or the property of one or more of the Group's entities, and that upon
23 dissolution some or all of that property should be returned to him.

24 33. On information and belief, SHADDIX, HORTON and ESPERANCE, and
25 each of them, dispute BUCKNER's contentions.

26 34. BUCKNER desires a judicial determination of his rights and duties, and a
27 declaration that his contentions are correct with respect to the above.

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THIRD CAUSE OF ACTION

(Constructive or Resulting Trust)

(Against All Defendants)

40. BUCKNER realleges and restates the foregoing paragraphs 1 through 39.

41. Defendants, and each of them, have held, and continue to hold, property belonging to BUCKNER, including, but not limited to, monies owing to BUCKNER.

42. By virtue of the above, in equity all such property in the possession of defendants, and each of them, belong to BUCKNER, to be held in trust for his benefit, plus interest thereon.

43. BUCKNER has no adequate remedy at law and will suffer irreparable harm unless a trust is impressed on all such sums.

FOURTH CAUSE OF ACTION

(Accounting)

(Against All Defendants)

44. BUCKNER realleges and restates the foregoing paragraphs 1 through 43.

45. Beginning in January 2008, and at various times thereafter, defendants, and each of them, became indebted to BUCKNER for money they have had and received. Defendants owe to BUCKNER a sum in excess of the jurisdictional minimum of this Court, the exact amount of which can only be ascertained by an accounting.

46. BUCKNER therefore requests that the Court order an accounting by defendants of all monies received or disbursed by or on behalf of the Group. BUCKNER further requests that he have judgment for all sums due, with interest thereon, as shown by such an accounting.

FIFTH CAUSE OF ACTION

(Breach of Fiduciary Duty)

(Against SHADDIX, HORTON and ESPERANCE)

47. BUCKNER realleges and restates the foregoing paragraphs 1 through 46.

1 48. SHADDIX, HORTON and ESPERANCE owed and continue to owe
2 BUCKNER a fiduciary duty, which includes a duty of the highest fidelity and good faith
3 regarding all matters related to the Group's business and financial affairs.

4 49. These individuals violated, and continue to violate, their fiduciary
5 obligations to BUCKNER by engaging in a pattern and practice of self-dealing, placing
6 their own interests ahead of the interests of their partner, wrongfully depriving him of
7 income from the Group's catalog of recorded music and using partnership assets to enrich
8 themselves.

9 50. As a direct and proximate result of these defendants' breach of their
10 fiduciary duties, BUCKNER has been damaged in an amount which he cannot ascertain
11 with complete certainty plus interest thereon, in an amount greater than \$25,000, to be
12 proven at trial.

13 51. The alleged acts constituting this breach of fiduciary duty were committed
14 with oppression, fraud or malice, as defined in Civil Code §3294.

15 **SIXTH CAUSE OF ACTION**

16 **(Dissolution of Partnership)**

17 **(Against SHADDIX, HORTON and ESPERANCE)**

18 52. BUCKNER realleges and restates the foregoing paragraphs 1 through 51.

19 53. BUCKNER desires to dissolve PAPA ROACH.

20 54. Beginning in or about January 2008, SHADDIX, HORTON and
21 ESPERANCE took exclusive control and possession of the books, papers, accounts, and
22 records of the partnership business. From that time until the present, defendants have
23 excluded BUCKNER from participation in the business and disagreements have arisen
24 between BUCKNER and defendants regarding the operation of the partnership business.
25 Feelings between BUCKNER and defendants have become strained and antagonistic.

26 55. Accordingly, BUCKNER is entitled to dissolution by court decree of this
27 entity, pursuant to subdivision (5) of section 16801 of the Corporations Code, in that
28 these defendants have engaged in conduct relating to partnership business that makes it

1 not reasonably practicable for BUCKNER to carry on that business in partnership with
2 these defendants.

3 **SEVENTH CAUSE OF ACTION**

4 **(Dissolution of Limited Liability Companies)**

5 **(Against SHADDIX, HORTON and ESPERANCE)**

6 56. BUCKNER realleges and restates the foregoing paragraphs 1 through 55.

7 57. BUCKNER desires to dissolve PAPA ROACH, LLC, and PR REALTY,
8 LLC.

9 58. The management of the foregoing companies is subject to internal
10 dissension, and dissolution is reasonably necessary for the protection of the rights and
11 interests of BUCKNER.

12 59. Accordingly, BUCKNER is entitled to dissolution by court decree, of these
13 entities pursuant to subdivision (a) of section 17351 of the Corporations Code.

14 **EIGHTH CAUSE OF ACTION**

15 **(Dissolution of Corporations)**

16 **(Against SHADDIX, HORTON and ESPERANCE)**

17 60. BUCKNER realleges and restates the foregoing paragraphs 1 through 59.

18 61. BUCKNER desires to dissolve PAPA ROACH TOURING, INC., and
19 VIVA LA CUCARACHA MUSIC, INC.

20 62. The foregoing corporations are not subject to the Banking Law, Public
21 Utilities Law, Savings and Loan Association Act, or Sections 1010–62 of the Insurance
22 Code.

23 63. BUCKNER is the owner of twenty five percent (25%) of the equity of each
24 of the foregoing corporations which are close corporations.

25 64. SHADDIX, HORTON and ESPERANCE, who are in control of the
26 foregoing corporations, have knowingly countenanced persistent unfairness toward
27 BUCKNER, in that these defendants have excluded BUCKNER from participation in the
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1 business and denied him full and complete access to the corporate books, papers,
2 accounts and records.

3 65. Accordingly, BUCKNER is entitled to dissolution by court decree of these
4 entities, pursuant to subdivisions (a) and (b) of section 1800 of the Corporations Code.

5 **WHEREFORE**, plaintiff DAVID BUCKNER prays for the following relief:

6 **Under his First Cause of Action:**

7 For a judicial declaration that:

- 8 A. BUCKNER is due an equal one-quarter share of all assets and income
9 earned by the Group's business entities from February 1993 to the present,
10 including those monies and other consideration paid or payable by
11 UNIVERSAL MUSIC GROUP and CHERRY LANE MUSIC
12 PUBLISHING to those entities, and continuing through to dissolution of
13 those entities;
- 14 B. In the alternative, assuming the agreement(s) by and among the individual
15 members of the Group was (or were) terminated, BUCKNER is due an
16 equal one-quarter share of the Group's entities' assets and net income from
17 any and all sources whatsoever and a pro-rated share of future monies
18 received from all works-in-progress and all unfinished business of the
19 Group at the time of his departure from the Group, regardless of who
20 among the individual defendants provides the required services following
21 termination; and
- 22 C. The business, assets and goodwill of the Group, including but not limited to
23 the song copyrights of the Group, are his property or the property of one or
24 more of the Group's entities, and that upon dissolution of those entities
25 some or all of that property shall be returned to him.

26 **Under his Second Cause of Action:**

27 For damages in an amount in excess of \$25,000, plus interest thereon, to be proven
28 at trial;

1 **Under his Third Cause of Action:**

2 For imposition of a constructive trust on all property in the possession or control of
3 all named defendants otherwise belonging to the Group's business entities and/or
4 BUCKNER to be held in trust for his benefit;

5 **Under his Fourth Cause of Action:**

6 For an accounting;

7 **Under his Fifth Cause of Action:**

8 For damages in an amount in excess of \$25,000, plus interest thereon, together
9 with exemplary and punitive damages, to be proven at trial;

10 **Under his Sixth Cause of Action:**

11 That the Court decree a winding up and dissolution of PAPA ROACH,
12 entertaining such proceedings as may be necessary or proper for the winding up and
13 dissolution of the partnership, and, in that regard, that the court make such orders for
14 winding up and dissolution of PAPA ROACH as justice and equity require; and

15 **Under his Seventh Cause of Action:**

16 That the Court decree a winding up and dissolution of PAPA ROACH, LLC, and
17 PR REALTY, LLC, entertaining such proceedings as may be necessary or proper to for
18 the involuntary winding up or dissolution of a limited liability company, and, in that
19 regard, make such orders for winding up and dissolution of PAPA ROACH, LLC, and PR
20 REALTY, LLC, as justice and equity require;

21 **Under his Eighth Cause of Action:**

22 That the Court decree a winding up and dissolution of PAPA ROACH TOURING,
23 INC., and VIVA LA CUCARACHA MUSIC, INC., entertaining such proceedings as
24 may be necessary or proper for the involuntary winding up or dissolution of a close
25 corporation, and, in that regard, make such orders for the winding up and dissolution of
26 PAPA ROACH TOURING, INC., and VIVA LA CUCARACHA MUSIC, INC., as
27 justice and equity require;

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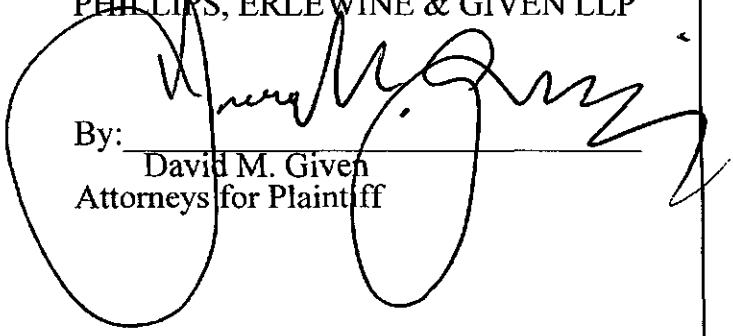
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Under All his Causes of Action:

For the costs of suit, including attorney's fees if appropriate, and such other and further relief as this court deems just and proper.

DATED: December 8, 2008

PHILLIPS, ERLEWINE & GIVEN LLP

By: 
David M. Given
Attorneys for Plaintiff



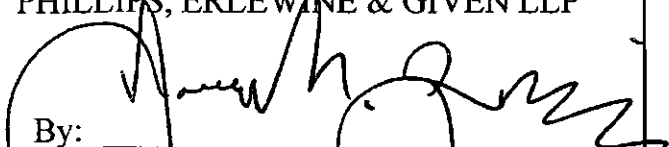
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DEMAND FOR TRIAL BY JURY

Plaintiff demands trial by jury on all claims so triable.

DATED: December 8, 2008

PHILLIPS, ERLEWINE & GIVEN LLP

By: 
David M. Given
Attorneys for Plaintiff




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VERIFICATION

I, David Buckner, am the plaintiff in this action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and, as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: December 3, 2008



David Buckner

