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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92050998
Party	Defendant Aguila Records Inc.
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1906.001

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

AGUILA RECORDS, INC., an Illinois
Corporation, and **AGUILA RAID
PUBLISHING, INC.**, an Illinois
Corporation,

Plaintiffs,

v.

**NUEVA GENERACIÓN MUSIC GROUP,
INC.**, a Texas Corporation, **MARTIN
FABIAN, MARISA L. CABALLERO,
RENE URBINA, CHRIS URBINA,
HECTOR URBINA, ERIC URBINA,
RODOLFO AVITIA, OSCAR URBINA,
SR. and OSCAR URBINA, JR.**,

Defendants.

FILED: JUNE 4, 2009
09CV3399
JUDGE ZAGEL
MAGISTRATE JUDGE SCHENKIER
AO

No.:

VERIFIED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

NOW COME the Plaintiffs, Aguila Records, Inc., and Aguila Raid Publishing, Inc., by and through its attorneys, EklWilliams PLLC and Husch, Blackwell, Sanders, Welsh & Katz, and complaining of the Defendants, Nueva Generación Music Group, Inc., a Texas Corporation, Martin Fabian, Marisa L. Caballero, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., states as follows:

INTRODUCTION

1. This matter is brought to seek equitable and legal relief related to the Defendants' past and ongoing infringements of the Plaintiff's copyright and trademark interests in the goodwill, musical compositions and sound recordings of a Latin country musical group known as "Alacranes

Musical,” or *Musical Scorpions*, and for state law unfair competition, breach of contract and tortious interference with contractual relations claims. The Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., with the knowing assistance and contributorily infringing conduct of the Defendants, Nueva Generación Music Group, Inc., Martin Fabian and Marisa L. Caballero, have started a venture in a new musical group, variously billed as “Alacranes Musical Inc.,” “The Urbinas of Alacranes Musical” or “The New Alacranes Musical.” Through (1) published advertisements and promotions, (2) public performances and (3) copying and distribution of sound recordings, the Defendants’ new joint venture violates the Plaintiff’s copyrights in the musical compositions and sound recordings of “Alacranes Musical” songs and the Plaintiff’s registered and common-law trademark rights in the name “Alacranes Musical” and the stylized scorpion word mark¹, and in so doing is also passing themselves and this new venture off as “Alacranes Musical” by falsely using the “Alacranes Musical” arbitrary mark with the intent and result of confusing fans of “Alacranes Musical” with the impression that the new venture is “Alacranes Musical” or a derivative act thereof, all to the financial and reputational detriment of the Plaintiff and the “Alacranes Musical” group.

This action is also brought to seek legal and equitable relief related to the conduct of the



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Defendants, Neuva Generación Music Group, Inc., Martin Fabian and Marisa L. Caballero, for interfering with the contractual business relationship between the Plaintiff and the Defendants Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., which interference has damaged the Plaintiff's investments and profits, and which threatens ongoing damages of an uncertain nature.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the federal claims pursuant to 28 U.S.C. §1331, 28 U.S.C. §1338(a), 15 U.S.C. §1114, et seq., and 17 U.S.C. §101, et seq., and supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. §1367(a). This Court also independently maintains jurisdiction over the Plaintiff's state law claim for tortious interference on grounds of diversity of the parties, pursuant to 28 U.S.C. §1332. Venue is appropriate in this District pursuant to 28 U.S.C. §1391(b) and §1400(a), because the Plaintiff and the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., reside or have offices in this District, and many of the events at issue in this suit occurred in this District.

THE PARTIES

3. The Plaintiffs, Aguila Records, Inc., and Aguila Raid Publishing, Inc., each are a musical entertainment, management, recording, agency and/or publishing concern duly incorporated by the laws of the State of Illinois operating out of West Chicago, DuPage County, Illinois.

4. The Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., have been at all times relevant musical artists and/or performers and contract-employees of the Defendant, Aguila Records, Inc., each of whom are

believed to reside in the Aurora, Illinois, area and whom at all relevant times during said employment were artists in the Latin country musical group known as “Alacranes Musical,” or *Musical Scorpions*.

5. The Defendants, Nueva Generación Music Group, Inc., Martin Fabian and Marisa L. Caballero, at all relevant times have been engaged in the business of managing, producing, recording, marketing and distributing musical performance groups of Latin Music, including Duranguense and regional Latin music, operating out of Texas for musical and performance artists presented and performing across the United States and Mexico and operating in interstate commerce.

FACTS COMMON TO ALL COUNTS OF THE COMPLAINT

The Rise of “Alacranes Musical” in the Latin Country Music Genre

6. In approximately 1998 or 1999, Oscar Urbina, Sr., Oscar Urbina, Jr., and Guillermo Ibarra, then residents of Aurora, Illinois, started and performed publicly in an original musical enterprise that came to be called “Alacranes Musical.” In or around 1999, Pedro Avila, who subsequently founded the Plaintiff, Aguila Records, Inc., operated as the manager / promoter of this early version of “Alacranes Musical,” and invested his time and money in “Alacranes Musical” such that from the inception of the band, the group and Pedro Avila were jointly engaged in the business and artistic venture. From the outset, Pedro Avila exerted influence over the style and content of the group’s act, and functioned similar to the producer of a theater company for the group. The business and artistic venture between “Alacranes Musical” and Pedro Avila (hereinafter “joint venture of ‘Alacranes Musical’”), wrote, composed and performed Latin country music, sometimes referred to as Duranguense style, both throughout Mexico and the United States, for profit.

7. From its very early performances in 1998 or 1999, the joint venture of “Alacranes

Musical” used only the name “Alacranes Musical” in its promotional and advertising materials, with no logo or mark. After 2001, the Plaintiff was the first to use and attach a stylized depiction of a scorpion to the name “Alacranes Musical” in the spirit of its name “Alacranes,” representing the desert denizen of Durango, Mexico, and the personality of the music. The Plaintiff was the first to use such an arbitrary mark in the genre of Duranguense music in the United States and Mexico.

8. On or about 2004, the “Alacranes Musical” group was composed of 7 performers: Rene Urbina, Rodolfo Avitia, Sergio Federico, Oscar Urbina Jr., Oscar Urbina, Sr., Guillermo Ibarra, Chris Urbina, and Hector Urbina. Prior to the time the Defendants, Chris Urbina, Hector Urbina and Rodolfo Avitia joined the “Alacranes Musical” group, the group was comprised consistently of Oscar Urbina, Sr., Oscar Urbina, Jr., and Guillermo Ibarra, and other various temporary performers, since the group’s inception in 1998 or 1999 in Aurora, Illinois.

9. On March 9, 2001, Pedro Avila formed the Plaintiff, Aguila Records, Inc., which began employing Oscar Urbina, Sr., Oscar Urbina, Jr., and Guillermo Ibarra in their capacity as performers and musical artists, and in such capacity continued to manage, promote and represent the interests of the former joint venture of “Alacranes Musical.”

10. Specifically, after March 9, 2001, the Plaintiff, Aguila Records, Inc., arranged for all of the group’s performances and appearances while touring, and negotiated for and set the fees for same. Further, Mr. Avila and the Plaintiff, Aguila Records, Inc., ran the operation of the group’s touring activities, wherein the he and/or the Plaintiff paid all costs and expenses related to the operation, such as travel and lodging and recording expenses, promotional expenses and salaries of persons associated with but not members of the group. Likewise, during this time period, Mr. Avila and/or the Plaintiff, Aguila Records, Inc., paid the members of the group a weekly salary. Finally,

during this time period, the Plaintiff, Aguila Records, Inc., recorded "Alacranes Musical" performances and songs and distributed said recordings in interstate commerce in the United States.

11. During the period of this employment, management and representation, the aforesaid performers and artists, Oscar Urbina, Sr., Guillermo Ibarra, as well as the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., and other occasional performers and members, contributed, were part of and worked as "Alacranes Musical" under an oral employment agreement with Aguila Records, Inc., wherein the Plaintiff and each member of the "Alacranes Musical" group orally agreed that the Plaintiff, Aguila Records, Inc., was to own the copyright and/or all license rights to all of the "Alacranes Musical" group's musical compositions and sound recordings, in exchange for which the Plaintiff, Aguila Records, Inc., would promote the group's work, act as the group's agent in all performance and recording matters, incur the cost and expenses related to all such activities, including transportation expenses, lodging expenses, sound engineering, sound mixing and sound recording expenses, and occasionally meals expenses, while touring and recording, and pay the members of the "Alacranes Musical" group regular salary payments for their contributions to the group's artistic performances, services and recordings as "Alacranes Musical."

12. In addition to the above terms, it was an express agreement between the aforesaid primary and occasional members of "Alacranes Musical," including specifically the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., and the Plaintiff, Aguila Records, Inc., that no member of the group "Alacranes Musical" was permitted to perform with any other musical group, record any musical composition, or be subject to management or promotion of any person or concern other than the Plaintiff, Aguila

Records, Inc., and that all copyrights in each musical composition and sound recording of the members and/or group of "Alacranes Musical" would be owned by and/or exclusively licensed to the Plaintiff, Aguila Records, Inc.

13. In addition to the above, on September 9, 2003, the Defendants, Oscar Urbina, Sr. and Oscar Urbina, Jr., each executed a written "artists contract," wherein the Defendants, Oscar Urbina, Sr. and Oscar Urbina, Jr., each entered into an exclusive recording and performing agreement that remains in effect today, wherein the Defendants, Oscar Urbina, Sr. and Oscar Urbina, Jr., each assigned in perpetuity all trademark and other rights to the name "Alacranes Musical" to the Plaintiff, Aguila Records, Inc., and further assigned all right and license to musical compositions or sound recordings of "Alacranes Musical" in which he held or may hold during the contract period a property interest to the Plaintiff, Aguila Records, Inc., as works-for-hire.

14. By 2003, the popularity of "Alacranes Musical" group's music began to rise dramatically. In 2003, the Plaintiff, Aguila Records, Inc., signed a licensing agreement with Univision Music Group, a subsidiary of Univision, a multimedia conglomerate of Spanish language television, radio, news, sports and entertainment. The agreement, in summary, provided that the Plaintiff, Aguila Records, Inc., would have "Alacranes Musical" provide a specified number of record albums over a discreet contract period, and that Aguila Records, Inc., would grant during that period of time an exclusive license to Univision for exploitation of the "Alacranes Musical" recordings in exchange for royalties on sales of albums, videos and other licensed products distributed in interstate commerce.

15. From September 2003 to some time in early 2009, the parties faithfully carried out their obligations under the aforementioned agreements to much popular success. By 2006, the

popularity of the "Alacranes Musical" group had reached new highs in the Latin country music genre. Over that period of time and into 2009, the "Alacranes Musical" group, including the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., made musical compositions and sound recordings which are owned by and/or exclusively licensed to the Plaintiff, Aguila Records, Inc., and/or licensed to Univision Music that were exploited and distributed by the Plaintiff, Aguila Records, Inc., and/or under the aforementioned Univision Music Licensing Agreement, including musical compositions and sound recordings contained on the following albums:

- | | |
|------------------------------------|-----------------------------|
| * 2003 Furia Alacranera | * 2004 Polkas Alacraneras |
| * 2004 A Cambio de Que? | * 2005 100% Originales |
| * 2005 Nuestra Historia Y Algo Mas | * 2006 Simplemente Lo Mejor |
| * 2006 A Paso Firme | * 2007 Linea de Oro |
| * 2007 Puros Corridos Venenosos | * 2008 Tu Inspiracion |

16. For each of the above albums, the trademark stylized scorpion, as described in ¶7 (and shown in footnote 1, supra) with the name "Alacranes Musical," was used as the recognizable arbitrary mark of the band for consumers of this genre of music. Since its first use by the Plaintiff, Aguila Records, Inc., in 2001 described above, the scorpion depiction and word mark "Alacranes Musical" have become famous marks identifying the style of Duranguense music played by "Alacranes Musical" with the "Alacranes Musical" group, and such trademarks are owned by the Plaintiff, Aguila Records, Inc. On November 14, 2006, the Plaintiff, Aguila Records, Inc., was granted trademark protection to the name "Alacranes Musical," under registration # 3,170,684.² On

²Apparently in anticipation of this infringement suit, the Defendant, Oscar Urbina, Jr., filed a Cancellation Action on May 19, 2009, with the United States Patent & Trademark Office challenging only the Plaintiff's trademark in the name "Alacranes Musical." It is currently pending.

April 29, 2008, the Plaintiff, Aguila Records, Inc., was granted trademark protection to the stylized word mark (hereinafter "band logo") depicted in footnote 1, above, under registration #3,416,668.

17. One of the songs from the album "A Paso Firme," is the hit song, "*Por Tu Amor*," which since its release into interstate commerce in 2006 has been regularly one of the top 20 songs in the industry ranking survey "Billboard," for "Hot Latin Songs." Due to the song's popularity, the Plaintiff, Aguila Raid Publishing, Inc., obtained and registered a copyright in the musical composition, under registration # PA0001374345.

18. *Por Tu Amor* was first written cooperatively by employees of the Plaintiff, Aguila Records, Inc., Eduardo Urbina and Jose Lugardo del Torro in early 2006 as a work-for-hire in the course of their employment with the Plaintiff, Aguila Records, Inc., in early 2006, and recorded on the "A Paso Firme" album. The musical composition, therefore, is owned by the Plaintiff, Aguila Records, Inc., and its sound recording is licensed to Univision Music under the Licensing Agreement referred to in ¶14, above.

19. In or around October of 2006, the Plaintiff, Aguila Records, Inc., and the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina and Rodolfo Avitia, orally entered into an extension of the existing oral agreement as described in ¶¶9, 10, 11, and 12, above, with an additional express term that the salary would be reviewed at the end of 2007, and the further express term that all prior oral agreements would remain in effect for the next 10 (ten) years. The essential terms of this oral agreement were memorialized in a writing signed by the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina and Rodolfo Avitia, on October 10, 2006 and each continues to remain in effect. The "artists contract" between the Plaintiff, Aguila Records, Inc., and each of the Defendants, Oscar Urbina, Sr. and Oscar Urbina, Jr., reference in ¶13, above, also

remains in effect at the present time.

DEFENDANT'S VIOLATIONS OF FEDERAL LAW AND THE ORAL AGREEMENTS

20. In approximately April of 2009, the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., ceased carrying out their obligations under the above described agreements. Specifically, each ceased to appear at scheduled live performances of "Alacranes Musical" which the Plaintiff, Aguila Records, Inc., was under contract with third-parties to provide, resulting in the Plaintiff, Aguila Records, Inc., being named in damages suits in Mexico.

21. However, since approximately April of 2009, the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., have continued to appear and perform live performances under the name "*Alacranes Musical*," performing songs such as "*Por tu Amor*" and "*Por Amarte Asi*" which are the exclusive copyrighted property of the Plaintiff Aguila Raid Publishing, Inc., and the Plaintiff, Aguila Records, Inc, respectively.

22. After a reasonable opportunity for further investigation or discovery, there is likely to be evidentiary support that, prior to the time that the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., ceased performing their obligations under the above described agreements, the Defendants, Nueva Generación Music Group, Inc., Martin Fabian and Marisa L. Caballero (hereinafter collectively "NGMG"), communicated with the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and/or Oscar Urbina, Jr., the desire to sign them away from the Plaintiff, Aguila Records, Inc., and as one of their own musical recording artists. After a reasonable opportunity for further investigation or discovery, there is likely to be evidentiary support

that, at the time that the Defendants, NGMG, communicated with the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and/or Oscar Urbina, Jr., they knew that these Defendants were bound by agreements with the Plaintiff, Aguila Records, Inc. to remain a member of, perform for and record only for the benefit of the Plaintiff, Aguila Records, Inc.

23. After a reasonable opportunity for further investigation or discovery, there is likely to be evidentiary support that, despite being possessed of actual knowledge of the contractual agreement binding these Defendants to the Plaintiff under promises of exclusive performance and recording obligations at the time, the Defendants, NGMG, induced the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., to breach their agreements and break their promises to the Plaintiff by leaving Aguila Records, Inc., starting a new musical performing venture but under the same name and logo of "Alacranes Musical," and signing on with the Defendants, NGMG, under a contractual management and/or recording agreement.

24. The conduct of the Defendants, NGMG, was and continues to be a purposeful interference with the Plaintiff's contractual relationships with the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., and the Plaintiffs' protected copyrights and trademarks.

25. Specifically, the Defendants, NGMG, have through individual and/or concerted action interfered with the contractual relationship between the Plaintiff, Aguila Records, Inc., and the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr., and Oscar Urbina, Jr., and infringed on the protected property interests of the Plaintiff, Aguila

Records, Inc. and Aguila Raid Publishing, Inc., in that the Defendants, NGMG, have represented, promoted and arranged for the above described live performances and appearances, including performances of the above copyright protected songs, knowing that the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., are under exclusive management and artists' contracts with the Plaintiff, Aguila Records, Inc., and knowing that the name and logo for "*Alacranes Musical*" are the trademarked property of the Plaintiff, Aguila Records, Inc.

26. In fact, the Defendants, NGMG, have and continue to openly promote, and the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., have and continue to openly appear and perform as "*Alacranes Musical*" on the internet, radio and television without license or permission of the Plaintiff, Aguila Records, Inc., to the financial and reputational detriment of the Plaintiffs, Aguila Records, Inc. and Aguila Raid Publishing, Inc.

27. Despite demands served upon the Defendants, NGMG, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., to cease and desist the violations of the Plaintiff's rights described above, these Defendants continue to violate the Plaintiff's rights, and continue to appear and perform as "*Alacranes Musical*" using the name and logo that are the trademarked property of the Plaintiff, Aguila Records, Inc, and continue to perform songs that are owned and/or exclusively licensed to the Plaintiffs, Aguila Records, Inc. and Aguila Raid Publishing, Inc.

28. In addition to all of the above, the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., currently unlawfully

possess and continue to use a tour bus that is the property of the Plaintiff, Aguila Records, Inc., that has been branded on the outside with the trademarked name and band logo of "*Alacranes Musical*" owned by the Plaintiff, Aguila Records, Inc., and despite demands from the Plaintiff for the return of the bus, the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., continue to use, possess and/or operate the bus in the course of their breaching and infringing activities as described herein above without license, permission, or any compensation and/or corresponding benefit to the Plaintiff, Aguila Records, Inc.

29. At the present time, the Plaintiff believes that the Defendants, NGMG, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., may be preparing to exploit musical compositions and/or sound recordings owned by and/or exclusively licensed to the Plaintiff, Aguila Records, Inc. without license or permission.

COUNT I

VIOLATION OF LANHAM ACT – 15 U.S.C. 1114 AND 1125(A), AND 1125(C)

30. Plaintiff incorporates herein by reference ¶¶1 through 29 above.

31. As set forth above, the Defendants, NGMG, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., without the consent of the Plaintiff, Aguila Records, Inc., used and continue to use, in interstate commerce, the registered trademarks "*Alacranes Musical*" and the band logo depicted in footnote 1, above, in connection with the Defendants' offering for sale, distribution and/or advertising of the performances and music of the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., which is likely to cause confusion, mistake, and to deceive consumers as to the source, origin, sponsorship, approval, affiliation, connection and/or association concerning the goods and services of the Plaintiff and Defendants, in violation of 15 U.S.C.

1114(1)(a) and 1125(a).

32. Furthermore, as set forth above, the Defendants have, in connection with the above described activities, used in commerce an identical depiction of a scorpion associated with the name "*Alacranes Musical*" affixed to promotional, advertising, and/or recording materials for the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., which is likely to cause confusion, mistake and to deceive as to the source, origin, sponsorship, approval, affiliation, connection and/or association concerning the goods and services of the Plaintiff and Defendants, in violation of 15 U.S.C. 1125(a)(1)(A) and 1125(c).

33. Defendants have infringed and continue to infringe the Plaintiff's exclusive rights in Plaintiffs' famous trademarks in "*Alacranes Musical*," and the band logo by using or authorizing the use of protected commercial identifying marks and words in promotional materials, advertising materials, internet websites, performances and/or recordings (including the trade dress thereof). Since its introduction and continuing to date, the registered trademarks "*Alacranes Musical*" and band logo have achieved a phenomenal level of consumer recognition in all areas of the United States and abroad. These marks became famous throughout the United States prior to commencement of Defendants' infringing acts as alleged herein.

34. Defendants have and continue to knowingly and intentionally violate Plaintiff's rights under 15 U.S.C. § 1125(c) by its unauthorized use of the registered trademarks "*Alacranes Musical*" and band logo in such a way as to cause dilution of the distinctive quality of Plaintiff's famous marks. Further, Defendants' acts of infringement were and are done with knowledge that the acts constituted an infringement of the Plaintiff's exclusive rights, and are therefore willful.

WHEREFORE, the Plaintiff, Aguila Records, Inc., respectfully prays this Honorable Court

to enter judgment against the Defendants, Neuva Generación Music Group, Inc., Martin Fabian, Marisa L. Caballero, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., are and have engaged in ongoing infringement of the Plaintiff's exclusive trademark rights in a willful manner, and for the following relief:

- A. Permanently enjoin the Defendants from infringing the Plaintiff's trademark rights and interests pursuant to 15 U.S.C. 1116(a) and 1125(c)(1);
- B. An accounting of all sales and/or earnings of Defendants, Neuva Generación Music Group, Inc., Martin Fabian, Marisa L. Caballero, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., since the first infringing use of Plaintiff's trademarks;
- C. An award of damages in the treble amount of Defendants' profits from the date of first infringement and loss of sales suffered by the Plaintiff, and the costs of this action, pursuant to 15 U.S.C. §1117(a);
- D. Impoundment, removal and/or destruction of all promotional, billing, advertising, labeling or other materials in or on which the scorpion mark is used, pursuant to 15 U.S.C. §1118, including the aforementioned tour bus; and
- E. An award of reasonable attorneys' fees.

COUNT II

VIOLATION OF COPYRIGHT ACT – 17 U.S.C. 106 AND 501

35. Plaintiff incorporates herein by reference ¶¶1 through 34 above.

36. As set forth above, the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., copied, performed and/or recorded the original musical compositions and/or sound recordings of the songs "*Por Tu Amor*" and "*Por Amarte Asi*," which are solely owned and enjoy copyright protection by the Plaintiff, Aguila Raid Publishing, Inc., and the Plaintiff, Aguila Records, Inc., without consent or license from the Plaintiff, in violation of 17 U.S.C. §§106 and 501(a).

37. Furthermore, as set forth above, the Defendants, Neuva Generación Music Group, Inc., Martin Fabian and Marisa L. Caballero, contributed to and facilitated the above described infringing activity.

38. Defendants' acts of infringement (and contributory activity) were done with knowledge that the acts constituted an infringement of the Plaintiff's exclusive rights, and are therefore willful.

WHEREFORE, the Plaintiff, Aguila Records, Inc., respectfully prays this Honorable Court to enter judgment against the Defendants, Neuva Generación Music Group, Inc., Martin Fabian, Marisa L. Caballero, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., and to find that the Defendants, Neuva Generación Music Group, Inc., Martin Fabian, Marisa L. Caballero, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., are and have engaged in ongoing infringement of the Plaintiff's exclusive copyright rights in a willful manner, and for the following relief:

- A. Permanently enjoin the Defendants from infringing the Plaintiff's copyright rights and interests pursuant to 17 U.S.C. §502(a);
- B. An accounting of all sales related to unauthorized performances and/or recordings by Defendants of "Por Tu Amor" and "Por Amarte Asi," and any other musical composition exploited by the Defendants in which the Plaintiffs have a copyright;
- C. An award of damages at the election of the Plaintiff pursuant to 17 U.S.C. §504(a);
- D. Impoundment, removal and/or destruction of infringing recordings and/or performances pursuant to 17 U.S.C. §503; and
- E. An award of costs and reasonable attorneys' fees pursuant to 17 U.S.C. §505.

COUNT III
STATE LAW CLAIMS – UNFAIR COMPETITION

39. Plaintiff incorporates herein by reference ¶¶1 through 38 above.

40. As stated above, the Plaintiff, Aguila Records, Inc., possessed a reasonable expectation of continuing to perform, record and sell its musical product to consumers throughout the United States and Mexico about which the Defendants, Neuva Generación Music Group, Inc., Martin Fabian, Marisa L. Caballero, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., were aware.

41. As stated above, the Defendants, Neuva Generación Music Group, Inc., Martin Fabian, Marisa L. Caballero, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., intentionally and willfully interfered with the Plaintiff's expectations by engaging in tactics designed to confuse the consuming public about the new group affiliation and the origin of the new group's songs, and such confusion is believed to have occurred.

42. As a proximate result of the aforesaid acts of the Defendants, the Plaintiff, Aguila Records, Inc., has suffered and will in the future continue to suffer damages.

WHEREFORE, the Plaintiff, Aguila Records, Inc., respectfully prays this Honorable Court to enter judgment against the Defendants, Neuva Generación Music Group, Inc., Martin Fabian, Marisa L. Caballero, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., jointly and severally, in a sum in excess of \$75,000.00, and to permanently enjoin the Defendants from engaging in the conduct described hereinabove.

COUNT IV
STATE LAW CLAIM – BREACH OF CONTRACT

43. Plaintiff incorporates herein by reference ¶¶1 through 42 above.

44. As stated above, the parties had engaged and entered into mutual oral and written covenants, including the promises on the part of the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina and Rodolfo Avitia, that each would not perform or record with any other management or recording label than the Plaintiff, Aguila Records, Inc., for ten years from October 2006. The essential terms of this agreement with the Plaintiff, Aguila Records, Inc., and each of the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, and Rodolfo Avitia have been memorialized in writing and have been partially performed.

45. As stated above, the Defendants, Oscar Urbina, Sr. and Oscar Urbina, Jr., each entered into written covenants with the Plaintiff, Aguila Records, Inc., wherein each promised that he would not perform or record with any other management or recording label than the Plaintiff, Aguila Records, Inc., and that the Plaintiff, Aguila Records, Inc., owned all copyrights and license to each Defendant's musical compositions and sound recordings created during the term of the contract as works-for-hire. The terms of each agreement with the Plaintiff, Aguila Records, Inc., and the Defendants, Oscar Urbina, Sr. and Oscar Urbina, Jr., is in writing.

46. As a result of these enforceable agreements, the Plaintiff, Aguila Records, Inc., has relied to its detriment.

47. The Defendants each have breached his obligations under the oral and written agreements with the Plaintiff, which breach has caused the Plaintiff damages in an amount that is ongoing and to be determined.

WHEREFORE, the Plaintiff, Aguila Records, Inc., by and through its attorneys, Ekl Williams PLLC, respectfully prays this Honorable Court to enter judgment against the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., in a sum in excess of \$75,000.00, and to permanently enjoin the Defendant from engaging in the conduct described hereinabove.

COUNT V

STATE LAW CLAIM - TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONSHIP

48. Plaintiff incorporates herein by reference ¶¶ 1 through 47, above.

49. As stated above, there existed at all relevant times an enforceable contractual relationship between the Plaintiff and the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr.

50. The Defendants, Nueva Generación Music Group, Inc., Martin Fabian, Marisa L. Caballero, by and through their duly authorized agents and/or employees, being aware of the contractual relationship between the Plaintiff and the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., purposely induced the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., to breach material terms of the aforementioned contractual agreements, thereby interfering with the aforementioned contractual agreements.

51. Each said interference and breach has proximately resulted in pecuniary injury to the business and reputation of the Plaintiff, including the Plaintiff's past investments in marketing, branding and image of the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., and "Alacranes Musical," and will in the future continue to proximately cause pecuniary injury to the Plaintiff in an

uncertain amount.

WHEREFORE, the Plaintiff, Aguila Records, Inc., respectfully prays this Honorable Court to enter judgment in its favor and against the Defendants, Neuva Generación Music Group, Inc., Martin Fabian, Marisa L. Caballero, jointly and severally, in a sum in excess of \$75,000.00, and further to provide the following relief:

- A. Permanently enjoin the Defendants from entering into any business or contractual relationship with the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., that constitutes and interference with, or otherwise induces a violation of, any material term of the contract between the Plaintiff and these Defendants;
- B. An accounting of all Defendants' sales of any and all recording albums or live or recorded performances of the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., earned or made under arrangements of the Defendants through to the date of judgment;
- C. Impoundment, removal and destruction of all recordings and/or performances of the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., recorded, produced and/or made under any agreement between the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., and the Defendants, Nueva Generación Music Group, Inc., Martin Fabian and Marisa L. Caballero.

COUNT VI

STATE LAW CLAIM – CONVERSION / UNJUST ENRICHMENT

52. Plaintiff incorporates herein by reference ¶¶1 through 51, above.

53. As stated above, there existed at all relevant times a tour bus owned and improved by the Plaintiff, Aguila Records, Inc, with the Plaintiff's trademarks to the name and logo of "*Alacranes Musical*" affixed to the exterior of the bus.

54. The Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., are unlawfully in possession of and, without

corresponding compensation or enrichment to the Plaintiff, continue to use and enjoy the benefits of use of said property.

55. As a proximately result of the above described conduct, the Plaintiff, Aguila Records, has been unlawfully deprived possession and enjoyment of the property, and the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., have been unjustly enriched.

WHEREFORE, the Plaintiff, Aguila Records, Inc., respectfully prays this Honorable Court to enter judgment in its favor and against the Defendants, Rene Urbina, Chris Urbina, Hector Urbina, Eric Urbina, Rodolfo Avitia, Oscar Urbina, Sr. and Oscar Urbina, Jr., jointly and severally, in a sum in excess of \$50,000.00

PLAINTIFF DEMANDS A JURY OF TWELVE.

Respectfully submitted by:

By: s/ Patrick L. Provenzale

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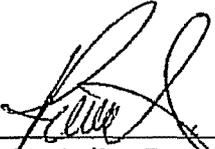
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Attorneys for Plaintiffs

Unsworn Declaration Pursuant to 28 U.S.C. §1746

I, Pedro Avila, under penalty of perjury under the laws of the United States of America, do hereby attest, declare, verify and certify that the facts alleged in the complaint in this matter are true and correct to the best of my knowledge, unless otherwise alleged as upon information or belief, in which case I verily believe such facts to be true.

Executed this 3rd day of June, 2009.



Pedro Avila - Declarant