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7 TrueLake Holdings Limited,
8 and Beijing TrueLake Culture Limited

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11
12 TRUELAKE HOLDINGS LIMITED, a Hong
13 Kong company, and BEIJING TRUELAKE
14 CULTURE LIMITED, a Chinese corporation,

15 Plaintiffs,

16 v.

17 HIMALAYA MEDIA INC., a Delaware
18 Corporation, SHIMARAYA JAPAN
19 KABUSHIKI KAISHA, a Japanese company,
20 and XI DA (SHANGHAI) NETWORK
21 TECHNOLOGY CO., LTD., a Chinese
22 company,

23 Defendants.

E-FILING

CASE NO. 3:20-cv-06639

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT AND UNFAIR
BUSINESS PRACTICES**

DEMAND FOR JURY TRIAL

1 Plaintiffs, TrueLake Holdings Limited and Beijing TrueLake Culture Limited,
2 (collectively “TrueLake” or “Plaintiffs”) hereby plead the following claims for copyright
3 infringement and unfair trade practices by Defendants, Xi Da (Shanghai) Network Technology
4 Co., Ltd, d/b/a Ximalaya FM, Shimaraya Kabushiki Kaisha and Himalaya Media Inc.,
5 (collectively “Defendants”), as follows:

6 **THE PARTIES**

7 1. Plaintiff TrueLake Holdings Limited is a Hong Kong Company having its
8 principal place of business at Crawford House, Suite 1104, 70 Queen's Rd. Central, Hong Kong.

9 2. Plaintiff Beijing TrueLake Culture Limited is a Chinese corporation having its
10 principal place of business in Beijing, China.

11 3. TrueLake publishes and distributes audio books for the Chinese language market.
12 TrueLake focuses on providing high-quality audiobooks of works both created originally in
13 Chinese and translated from non-Chinese sources. Chinese language audio books distributed by
14 TrueLake include the entirety of George R.R. Martin’s “Song of Ice and Fire” series (also known
15 as “Game of Thrones”), Dan Brown’s “The Da Vinci Code,” several works by Stephen King,
16 including “Rita Hayworth and the Shawshank Redemption,” “It,” “The Green Mile,” and the
17 modern children’s classic, “Diary of a Wimpy Kid,” by Jeff Kinney.

18 4. Defendant Xi Da (Shanghai) Network Technology Co., Ltd, d/b/a Ximalaya FM
19 (“Ximalaya”) is a Chinese company having its headquarters and principal place of business in
20 Shanghai, China.

21 5. Ximalaya produces and distributes apps for use on mobile devices using the
22 Android or iOS operating system. The apps are distributed through at least the Apple App Store
23 and the Google Play Store. Through the apps, users, including users in this Judicial District, can
24 access audio content stored on servers located throughout the world. When users select a title
25 shown on one of the Defendants’ apps, that work is copied from Defendants’ servers to the
26 user’s mobile device.

1 6. Defendant Shimaraya Japan Kabushiki Kaisha, (“Shimaraya”) d/b/a Simarya
2 Japan, Ximalaya Japan and Himalaya Japan, is a Japanese company having its principal place of
3 business at 6-2F, Strawberry Shibuya Udagawa Building, 10-2 Udagawa-cho, Shibuya-ku,
4 Tokyo, Japan and is, upon information and belief a subsidiary of Defendant Ximalaya.

5 7. Beginning in 2017, Shimaraya began operating the <http://ximalaya.jp> website and
6 offering an app by which users, outside China, could access audio content, including certain
7 content distributed by the Ximalaya app and Ximalaya website in China. The app was
8 distributed, at least, through the Apple App Store and the Google Play Store.

9 8. Defendant Himalaya Media Inc. (“Himalaya”) is a Delaware Corporation having
10 its principal executive office at 612 Howard St., Suite 400, San Francisco, California. Its
11 registered agent for service of process is Xingxin Liu, also located at 612 Howard St., Suite 400,
12 San Francisco, California. Upon information and belief and based upon statements by
13 representatives of Himalaya, Ximalaya is the parent organization of Himalaya.

14 9. Beginning in approximately 2019, upon information and belief, Himalaya took
15 over production and distribution of apps for use on mobile devices using the Android or iOS
16 operating system that had been previously distributed by Shimaraya. The apps are distributed, at
17 least, through the Apple App Store and the Google Play Store. Through their apps, Defendants
18 make available to users, including users in this Judicial District, audio content stored on their
19 servers, including servers located in the United States. When users select a title shown on one of
20 the apps, that work is copied by Defendants from Defendants’ servers to the user’s mobile
21 device.

22 10. Defendants also distribute audio recordings through their apps and store those
23 recordings on their servers at the request of third-parties.

24 **JURISDICTION AND VENUE**

25 11. This is an action for copyright infringement arising under the copyright laws of
26 the United States, Title 17, United States Code. Jurisdiction as to these copyright claims and
27 pending claims is conferred on this Court by 28 U.S.C. §§ 1331 and 1367.

1 12. Venue is proper in the Northern District of California under 28 U.S.C. § 1391.

2 13. This Court has personal jurisdiction over Ximalaya. Ximalaya has conducted and
3 does conduct business within the State of California and within this judicial district, including
4 through its distribution of its apps through the Apple App Store and the Google Play Store and
5 through the provision of downloads of infringing works to mobile devices within the judicial
6 district.

7 14. This Court has personal jurisdiction over Himalaya. Himalaya has conducted and
8 does conduct business within the State of California and within this judicial district, including
9 through its distribution of its app through the Apple App Store and the Google Play Store and
10 through the provision of downloads of infringing works to mobile devices within the judicial
11 district, as well as the location of its principal executive offices within the district.

12 15. This Court has personal jurisdiction over Shimaraya. Shimaraya has conducted
13 and does conduct business within the State of California and within this judicial district,
14 including through its distribution of its apps through the Apple App Store and the Google Play
15 Store and through the provision of downloads of infringing works to mobile devices within the
16 judicial district.

17 **THE INFRINGED WORKS**

18 16. The work "Hu Xue Yan" (胡雪巖), created by Gao Yang, was originally
19 published in serialized form in Taiwan between August 1969 and June 1974, and was published
20 in a three-volume collection in 1974. The work "Red Cap Merchant" (紅頂商人), created by
21 Gao Yang, was originally published in serialized form in Taiwan between August 1971 and
22 January 1974 and in collected form in Taiwan in 1977. The work "Deng Huo Lou Tai" (燈火樓
23 臺), created by Gao Yang, was originally published in multiple volumes in Taiwan in 1985 and
24 1986.

25 17. The works "Hu Xue Yan," "Red Cap Merchant," and "Deng Huo Lou Tai" were
26 subsequently published in China under the names "Red Cap Merchant: Hu Xueyan" (紅頂商人
27 胡雪岩) and "Biography of Hu Xueyan" (胡雪岩全传).

28

1 18. Plaintiffs TrueLake Holdings Limited and Beijing TrueLake Culture Limited have
2 the exclusive worldwide license from the rights-holder, Linking Publishing Co., Ltd., to publish
3 and sell the works “Hu Xue Yan,” “Red Cap Merchant,” and “Deng Huo Lou Tai,” (collectively
4 “Red Cap Merchant Works”) in audiobook format in Mandarin Chinese.

5 19. The audio work “History of China (Cathay Version)” (华夏演义), created by
6 Yongchao Guan(关勇超), comprising 366 episodes, was created and first published in China in
7 2003.

8 20. The audio work “History of China (General Version)” (中国通史演义), created
9 by Yongchao Guan(关勇超), comprising 500 episodes, was created and first published in China
10 in 2008.

11 21. Plaintiff TrueLake Holdings Limited, has received the exclusive license outside
12 China from the rights-holder, Yongchao Guan (关勇超), to publish and sell the works “History
13 of China (Cathay Version)” and “History of China (General Version)” (collectively “History of
14 China Works”) in audiobook format in Mandarin Chinese.

15 22. Per a June 19, 2018 agreement with rights-holder, Harry N. Abrams, Inc.,
16 Plaintiff, TrueLake Holdings Limited has received the exclusive world-wide rights to publish,
17 manufacture, distribute, sell, and license bilingual Mandarin Chinese-English audio versions of
18 these multiple works: 1) “Diary of a Wimpy Kid,” 2) “Diary of a Wimpy Kid: Rodrick Rules,”
19 3) “Diary of a Wimpy Kid: The Last Straw,” 4) “Diary of a Wimpy Kid: Dog Days,” 5) “Diary
20 of a Wimpy Kid: The Ugly Truth,” 6) “Diary of a Wimpy Kid: Cabin Fever ,” 7) “Diary of a
21 Wimpy Kid: The Third Wheel,” 8) “Diary of a Wimpy Kid: Hard Luck,” 9) “Diary of a Wimpy
22 Kid: The Long Haul,” 10) “Diary of a Wimpy Kid: Old School,” 11) “Diary of a Wimpy Kid:
23 Double Down,” and 12) “Diary of a Wimpy Kid- The Getaway,” (collectively “Diary of a
24 Wimpy Kid Works”).

25 23. The text literary work, “Diary of a Wimpy Kid” was created in 2005, and its
26 copyright registered with the U.S. Copyright Office on April 03, 2007, with Registration Number
27 TX0006557202. Per a June 19, 2018 agreement with rights-holder for this work, Harry N.

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1 Abrams, Inc., Plaintiff has the exclusive world-wide right to publish, manufacture, distribute,
2 sell, and license bilingual Mandarin Chinese-English audio versions of this work.

3 24. The text literary work, “Diary of a Wimpy Kid: Rodrick Rules” was created in
4 2007, and its copyright registered with the U.S. Copyright Office on May 29, 2008, with
5 Registration Number TX0007004152. Per a June 19, 2018 agreement with rights-holder for this
6 work, Harry N. Abrams, Inc., Plaintiff has the exclusive world-wide right to publish,
7 manufacture, distribute, sell, and license bilingual Mandarin Chinese-English audio versions of
8 this work.

9 25. The text literary work, “Diary of a Wimpy Kid: The Last Straw” was created in
10 2008, and its copyright registered with the U.S. Copyright Office on January 01, 2009, with
11 Registration Number TX0006970323. Per a June 19, 2018 agreement with rights-holder for this
12 work, Harry N. Abrams, Inc., Plaintiff has the exclusive world-wide right to publish,
13 manufacture, distribute, sell, and license bilingual Mandarin Chinese-English audio versions of
14 this work.

15 26. The text literary work, “Diary of a Wimpy Kid: Dog Days” was created in 2008,
16 and its copyright registered with the U.S. Copyright Office on October 19, 2009, with
17 Registration Number TX0007043053. Per a June 19, 2018 agreement with rights-holder for this
18 work, Harry N. Abrams, Inc., Plaintiff has the exclusive world-wide right to publish,
19 manufacture, distribute, sell, and license bilingual Mandarin Chinese-English audio versions of
20 this work.

21 27. The text literary work, “Diary of a Wimpy Kid: The Ugly Truth” was created in
22 2009, and its copyright registered with the U.S. Copyright Office on November 17, 2010, with
23 Registration Number TX0007288314. Per a June 19, 2018 agreement with rights-holder for this
24 work, Harry N. Abrams, Inc., Plaintiff has received the exclusive world-wide right to publish,
25 manufacture, distribute, sell, and license bilingual Mandarin Chinese-English audio versions of
26 this work.

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1 28. The text literary work, “Diary of a Wimpy Kid: Cabin Fever “ was created in
2 2010, and its copyright registered with the U.S. Copyright Office on November 21, 2011, with
3 Registration Number TX0007454584. Per a June 19, 2018 agreement with rights-holder for this
4 work, Harry N. Abrams, Inc., Plaintiff has the exclusive world-wide right to publish,
5 manufacture, distribute, sell, and license bilingual Mandarin Chinese-English audio versions of
6 this work.

7 29. The text literary work, “Diary of a Wimpy Kid: The Third Wheel” was created in
8 2012, and its copyright registered with the U.S. Copyright Office on December 26, 2012, with
9 Registration Number TX0007652302. Per a June 19, 2018 agreement with rights-holder for this
10 work, Harry N. Abrams, Inc., Plaintiff has the exclusive world-wide right to publish,
11 manufacture, distribute, sell, and license bilingual Mandarin Chinese-English audio versions of
12 this work.

13 30. The text literary work, “Diary of a Wimpy Kid: Hard Luck” was created in 2013,
14 and its copyright registered with the U.S. Copyright Office on January 29, 2014, with
15 Registration Number TX0007892799. Per a June 19, 2018 agreement with rights-holder for this
16 work, Harry N. Abrams, Inc., Plaintiff has the exclusive world-wide right to publish,
17 manufacture, distribute, sell, and license bilingual Mandarin Chinese-English audio versions of
18 this work.

19 31. The text literary work, “Diary of a Wimpy Kid: The Long Haul” was created in
20 2014, and its copyright registered with the U.S. Copyright Office on February 24, 2015, with
21 Registration Number TX0007995844. Per a June 19, 2018 agreement with rights-holder for this
22 work, Harry N. Abrams, Inc., Plaintiff has the exclusive world-wide right to publish,
23 manufacture, distribute, sell, and license bilingual Mandarin Chinese-English audio versions of
24 this work.

25 32. The text literary work, “Diary of a Wimpy Kid: Old School” was created in 2015,
26 and its copyright registered with the U.S. Copyright Office on December 21, 2015, with
27 Registration Number TX0008208283. Per a June 19, 2018 agreement with rights-holder for this
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1 work, Harry N. Abrams, Inc., Plaintiff has the exclusive world-wide right to publish,
 2 manufacture, distribute, sell, and license bilingual Mandarin Chinese-English audio versions of
 3 this work.

4 33. The text literary work, “Double Down”, a/k/a “Diary of a Wimpy Kid: Double
 5 Down,” was created in 2016, and its copyright registered with the U.S. Copyright Office on
 6 November 14, 2016, with Registration Number TX0008350394. Per a June 19, 2018 agreement
 7 with rights-holder for this work, Harry N. Abrams, Inc., Plaintiff has the exclusive world-wide
 8 right to publish, manufacture, distribute, sell, and license bilingual Mandarin Chinese-English
 9 audio versions of this work.

10 34. The text literary work, “Diary of a Wimpy Kid- The Getaway, a/k/a “Diary of a
 11 Wimpy Kid: The Getaway,” was created in 2017, and its copyright registered with the U.S.
 12 Copyright Office on November 15, 2017, with Registration Number TX0008549712. Per a June
 13 19, 2018 agreement with rights-holder for this work, Harry N. Abrams, Inc., Plaintiff has the
 14 exclusive world-wide right to publish, manufacture, distribute, sell, and license bilingual
 15 Mandarin Chinese-English audio versions of this work.

16 **INFRINGEMENT BY DEFENDANTS**

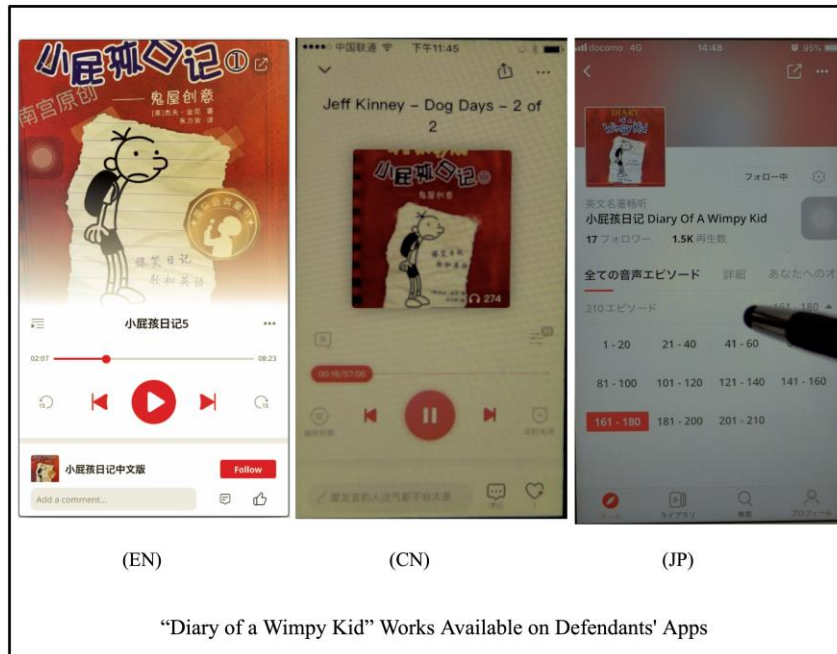
17 35. As illustrated below, Defendants advertise, offer, and make available through
 18 their apps, infringing copies of the China History works.



36. As illustrated below, Defendants advertise, offer, and make available through their apps, infringing copies of the Red Cap Merchant Works.



37. As illustrated below, Defendants advertise, offer, and make available through their apps, infringing copies of the Diary of a Wimpy Kid Works



38. In addition to advertising, offering for sale, and making available through their apps infringing copies of the Diary of a Wimpy Kid Works, the Red Cap Merchant Works, and the History of China Works (collectively, the "TrueLake Infringed Works") without

1 authorization from Plaintiffs, Defendants house on their servers, advertise through their websites,
2 and distribute through their websites and servers, illicit and infringing copies of the TrueLake
3 Infringed Works without authorization from Plaintiffs.

4 39. Defendants distribute through their own website and through, at least, the Apple
5 App Store and the Google Play store, apps which allow users to copy infringing materials,
6 including the TrueLake Infringed Works, to their mobile or other electronic device.

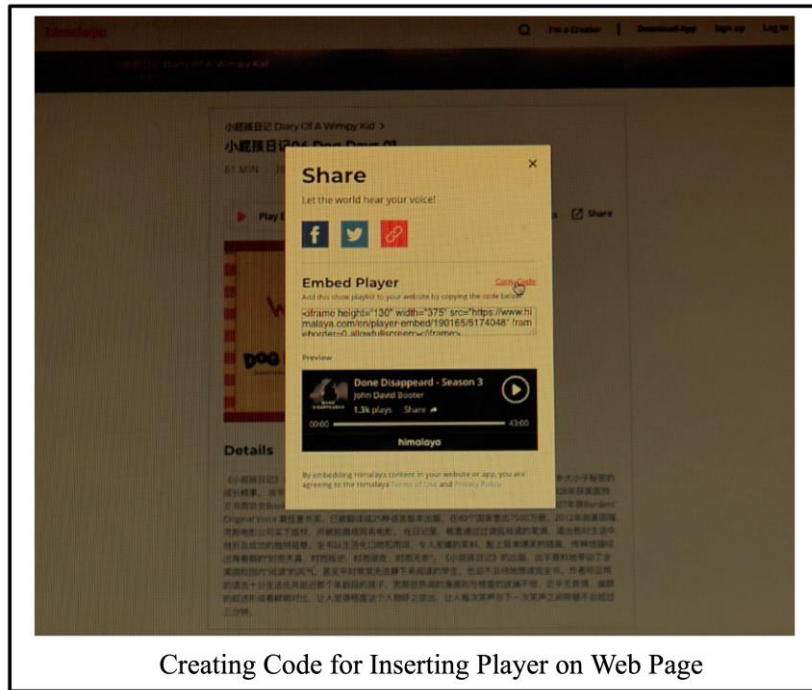
7 40. Additionally Defendants stream through their websites, www.ximalaya.com and
8 www.himalaya.com, infringing materials, including the TrueLake Infringed Works.

9 41. Defendants enable through their apps and websites, www.ximalaya.com and
10 www.himalaya.com, the copying and download of infringing content, including, upon
11 information and belief, the TrueLake Infringed Works. Upon information and belief, the content
12 made available for download is located, at least in part, in the United States.

13 42. Defendants, through their apps and websites, www.ximalaya.com and
14 www.himalaya.com, implement and facilitate the sharing through social media, as illustrated
15 below, of infringing content including the TrueLake Infringed Works.



1 43. Defendants, through their apps and websites, www.ximalaya.com and
 2 www.himalaya.com, implement and facilitate the embedding of links into other websites, as
 3 illustrated below, that create audio players that enable the playing of infringing content,
 4 including the TrueLake Infringed Works.



17 44. Upon information and belief, infringing works, including the TrueLake Infringed
 18 Works, have been copied from the servers and website of Ximalaya to the website and servers of
 19 Himalaya and/or Shimaraya. These actions were taken by, or at the direction, of Ximalaya
 20 and/or Himalaya or Shimaraya.

21 45. Defendants do not proactively police the materials available from their app and on
 22 their website for copyright infringing material. In addition to the TrueLake Infringed Works,
 23 Defendants, upon information and belief, have distributed, and are currently distributing,
 24 millions of copies of other works in violation of copyright law.

COUNT I

(Copyright Infringement)

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27 46. TrueLake restates and incorporates by reference each of the allegations set forth
 28 in the paragraphs above, as if fully set forth herein.

1 47. As noted in paragraphs 22 through 34, above, TrueLake holds the exclusive
2 world-wide licensed right to produce and distribute bilingual Chinese/English language
3 audiobook versions of the Diary of a Wimpy Kid Works.

4 48. As noted in paragraph 21, above, TrueLake holds the exclusive licensed right to
5 produce and distribute audiobook versions of the History of China Works, outside of China.

6 49. As noted in paragraph 18, above, TrueLake holds the exclusive world-wide
7 licensed right to produce and distribute audiobook versions of the Red Cap Merchant Works.

8 50. Upon information and belief, Defendants have through their apps, website, and
9 their servers, knowingly distributed millions of infringing and unauthorized copies of the
10 TrueLake Infringed Works throughout the U.S. and the world.

11 51. Upon information and belief, Defendants have through their apps, website, and
12 their servers, knowingly encouraged, aided, and assisted users to make millions of infringing and
13 unauthorized copies of the TrueLake Infringed Works throughout the U.S. and the world.

14 52. Defendants profit from, and have profited from, their infringement, including but
15 not limited to by profiting from their apps through in-app advertising, in-app purchases, and the
16 sales of premium user benefits in conjunction with their apps.

17 53. In order to maximize their profits, Defendants' business model turns a blind eye
18 to the rampant use of their apps and websites to store, download and distribute infringing
19 content.

20 54. Upon information and belief, Defendants review and monitor works published
21 through their apps and make available from their websites, but, in order to maximize their
22 profits, do not provide adequate screening for the provision of unauthorized, illegal, or infringing
23 content, and do not provide any mechanisms, or extend any effort, to confirm whether works
24 being placed on their servers and distributed through their app are being provided by someone
25 who has the legal right to do so.

26 55. Upon information and belief, Defendants' infringements, direct and induced, are
27 and have been, knowing and willful.

28

1 56. By this unlawful copying, use, and distribution, Defendants have violated
2 TrueLake's exclusive rights under 17 U.S.C § 106 in violation of 17 U.S.C. §501.

3 57. Defendants have realized unjust profits, gains, and advantages as a proximate
4 result of their infringement.

5 58. Defendants will continue to realize unjust profits, gains, and advantages as a
6 proximate result of their infringement as long as such infringement is permitted to continue.

7 59. TrueLake is entitled to an injunction restraining Ximalaya and Himalaya from
8 engaging in any further such acts in violation of United States copyright laws. Unless
9 Defendants are enjoined and prohibited from infringing the copyrights exclusively licensed to
10 TrueLake, inducing others to infringe those copyrights, and Defendants are enjoined from
11 producing and/or distributing an app through which they have knowingly and willfully enabled
12 infringement, Defendants will continue to intentionally infringe and induce infringement of
13 copyrights licensed to TrueLake.

14 **COUNT II**

15 **(Unfair Trade Practices under Cal. Bus. & Prof. Code §17200 et seq.)**

16 60. TrueLake restates and incorporates by reference each of the allegations set forth
17 in the paragraphs above, as if fully set forth herein.

18 61. Defendants, through their practices of failing to police their app and their websites
19 for the presence of unauthorized and/or copyright infringing material and/or the distribution of
20 such material has engaged in unlawful, unfair, and/or fraudulent business practices.

21 62. Defendants, through their practices of knowingly making available through their
22 websites and apps copies of unauthorized and/or copyright infringing material have used
23 unlawful, unfair, and/or fraudulent means to attract users to their website and/or their apps.

24 63. Defendants, through their practice of distributing unauthorized and infringing
25 works have damaged the market for TrueLake's high-quality, authorized and legal audio books.

26 64. As a result of the unlawful, unfair, and/or fraudulent business practices of
27 Defendants, upon information and belief, TrueLake has lost revenues from the TrueLake
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1 Infringed Works and Defendants have profited by their unlawful, unfair, and/or fraudulent
2 business practices.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, TrueLake respectfully prays for judgment in favor of TrueLake and
6 against Defendants, as follows:

7 A. Entry of judgment holding Defendants liable for the infringement of the
8 copyrights at issue in this litigation;

9 B. Entry of judgment holding Defendants liable for unfair business practices under
10 Cal. Bus. & Prof. Code § 17200 et seq.

11 C. An order permanently enjoining Defendants, their officers, agents, servants,
12 employees, attorneys, and affiliated companies, their assigns and successors in interest, and those
13 persons in active concert with them, from continued acts of infringement of the copyrights at
14 issue in his litigation;

15 D. An order that all copies made or used in violation of TrueLake's licensed rights be
16 destroyed;

17 E. An order permanently enjoining Defendants, their officers, agents, servants,
18 employees, attorneys, and affiliated companies, their assigns and successors in interest, and those
19 persons in active concert with them, from distributing any mobile app that enables continued acts
20 of infringement;

21 F. An order awarding TrueLake statutory damages and damages according to proof
22 resulting from Defendants' infringements of the copyrights at issue in this litigation, together
23 with prejudgment and post-judgment interest;

24 G. An order for Defendants to disgorge to TrueLake any and all monies received as a
25 result of their unlawful, unfair, and/or fraudulent business practices;

26 H. An order awarding TrueLake its costs and attorneys' fees under 17 U.S.C. § 505;
27 and

28 I. For such other and further relief as this Court may deem just and proper.

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DEMAND FOR A JURY TRIAL

TrueLake hereby demands a jury trial on all issues and claims so triable.

Dated: September 22, 2020

Respectfully submitted,

LTL ATTORNEYS LLP

By: /s/ Vincent M. Pollmeier

Vincent M. Pollmeier

Enoch H. Liang

*Attorneys for Plaintiffs
TrueLake Holdings Limited, and
Beijing TrueLake Culture Limited.*

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS TRUELAKE HOLDINGS LIMITED, a Hong Kong company, and BEIJING TRUELAKE CULTURE LIMITED, a Chinese Corporation

(b) County of Residence of First Listed Plaintiff Hong Kong (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) LTL ATTORNEYS LLP, 300 S. Grand., 14th Floor Los Angeles, CA 90071

DEFENDANTS HIMALAYA MEDIA INC., a Delaware Corporation, SHIMARAYA JAPAN KABUSHIKI KAISHA, a Japanese company, and XI DA (SHANGHAI) NETWORK TECHNOLOGY CO., LTD., a Chinese company

County of Residence of First Listed Defendant San Francisco County, CA (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

17 USC §§ 106, 501
Copyright Infringement and Unfair Business Practices

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2) (Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.