

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DAVID JOHANSEN, JOHN LYON, and
PAUL COLLINS, *individually and on behalf of all
others similarly situated,*

Plaintiffs,

- against -

SONY MUSIC ENTERTAINMENT INC.,
and JOHN DOES 1–10,

Defendants.

OPINION AND ORDER

19 Civ. 1094 (ER)

Ramos, D.J.:

David Johansen (“Johansen”), John Lyon (“Lyon”) and Paul Collins (“Collins”, and with Johansen and Lyon, “Plaintiffs”), bring this putative class action against Sony Music Entertainment (“Sony”) for declaratory judgment and copyright infringement. Pending before the Court is Sony’s motion to dismiss all claims. Doc. 43. For the reasons discussed below, the motion is DENIED.

I. BACKGROUND¹

Johansen is an American singer, songwriter and actor, who began his career in the early 1970s. Compl. ¶ 6. Johansen entered into a recording agreement with Sony in or about 1978. *Id.* ¶ 26. Pursuant to that agreement, Johansen released five albums, *David Johansen, The David Johansen Group Live, In Style, Here Comes the Night*, and *Live It Up*. *Id.* ¶ 26.

¹ The following facts are drawn from the Complaint, Doc. 5, “together with those ‘documents . . . incorporated in it by reference’ and ‘matters of which judicial notice may be taken.’” *Wilson v. Merrill Lynch & Co.*, 671 F.3d 120, 123 (2d Cir. 2011) (citation omitted); *see also City of Brockton Ret. Sys. V. Avon Prods., Inc.*, No. 11 Civ. 4665(PGG), 2014 WL 4832321, at * 12 (S.D.N.Y. Sept. 29, 2014) (Courts may also consider any document where the complaint “relies heavily upon its terms and effect, thereby rendering the document integral to the complaint.”) (internal quotation marks and citations omitted).

On June 15, 2015, Johansen served a notice of termination on Sony:

RE: NOTICE OF TERMINATION UNDER 17 U.S.C. § 203 and 37 C.F.R. § 201.10

Dear Sir or Madam:

The undersigned persons are the authors of the works listed on Schedule A annexed hereto. Pursuant to 17 U.S.C. § 203 and 37 C.F.R. § 201.10, we are hereby serving notice of our intention to terminate the grant or transfer of copyrights and the rights of the copyright proprietor in the works listed below. To the best of our knowledge and belief, this notice has been signed by the only persons whose signatures are necessary to terminate the grant under 17 U.S.C. § 203.

Works: See Schedule A

Name of Author(s): David Johansen

Copyright Date: See Schedule A

Copyright Registration No: See Schedule A

Effective Date of Termination: See Schedule A

Grant Hereby Terminated: All grants or transfers of copyright and all rights of copyright proprietor, including publication and recording rights, in and to the above sound recordings including, without limitation to the grant dated in or about 1984 between the recording artist David Johansen and Blue Sky Records/CBS, Inc.

Name(s)/Address(es) of
Person(s) Executing Termination: David Johansen



A handwritten signature in black ink, appearing to read "David Johansen", written over a horizontal line.

See id. Ex. A at 2.

Additionally, a "Schedule A" as follows is attached to the notice:

Schedule A

<u>Work</u>	<u>Author</u>	<u>Publication Date</u>	<u>Copyright Registration No</u>	<u>Termination Notice Date</u>	<u>Effective Date of Termination</u>
David Johansen	David Johansen	April 28, 1978	SR000001580	June 15, 2015	June 16, 2017
The David Johansen Group Live	David Johansen	January 19, 1979	SR0000025693	June 15, 2015	June 16, 2017
In Style	David Johansen	July 27, 1979	SR0000011210	June 15, 2015	June 16, 2017
Here Comes The Night	David Johansen	June 5, 1981	SR0000029673	June 15, 2015	June 16, 2017
Live It Up	David Johansen	May 28, 1982	SR0000038234	June 15, 2015	June 16, 2017

Id. Ex. A at 3. The Copyright Office duly recorded Johansen's notice on July 28, 2015. *Id.*

On June 14, 2017, two years after Johansen's termination notice was sent, Sony sent a letter of refusal to Johansen. *Id.* ¶ 29; *see also id.* Ex. B. The letter cites, as reasons for its refusal, that:

(a) "the Works are works made for hire," and thus not subject to termination; (b) "the [n]otice does not adequately identify the specific grant David Johansen seeks to terminate, as the [n]otice broadly makes reference to all grants or transfers of copyright in and to certain sound recordings 'including, without limitation to the grant dated in or about 1984 between the recording artist David Johansen and Blue Sky Records/CBS, Inc.'"; (c) Sony is unaware of any grant made in 1984, and "to the extent that any grant was made," the grant was made before 1978 and thus 17 U.S.C. § 203 does not apply; and (d) to the extent there was a grant in 1984, termination could not be effected before 2019. *Id.*

Lyon, professionally known as Southside Johnny, is an American singer and songwriter who first achieved prominence in the mid-1970s, and was signed by Sony’s predecessor, CBS Records, Inc. (“CBS”), in or about 1976.” *Id.* ¶ 7. Pursuant to a recording agreement with Sony in or about 1978, Lyon released two albums, *Hearts Of Stone* and *Having A Party with Southside Johnny*. *Id.* ¶ 30. On June 1, 2015, Lyon served a notice of termination on Sony substantially similar to Johansen’s termination notice. *Id.* Ex. C at 2. The attached “Schedule A,” substantially similar in form to that in Johansen’s termination notice, indicated that the “Publication Date[s]” are October 13, 1978 for *Hearts Of Stone*, and May 23, 1980 for *Having A Party With Southside Johnny*. *Id.* Ex. C at 3. Two years later on June 1, 2017, Sony sent Lyon a letter of refusal similar to the one that Johansen received. *Id.* Ex. D.

Collins, a musician and songwriter best known for his musical group Paul Collins’ Beat, entered into a recording agreement in 1979 with CBS. *Id.* ¶ 8. Pursuant to that agreement, Collins released two albums, *The Beat* and *The Kids Are The Same*. *Id.* ¶ 34. On July 15, 2015, Collins sent a notice of termination that was substantially similar to Johansen and Lyon’s termination notice, except that it identified “Grant Hereby Terminated” as “*All grants or transfers of copyright proprietor, including publication and recording rights, in and to the above sound recordings including, without limitation to the grant dated in or about 1979 between the recording artist Paul Collins d/b/a [t]he Beat/Paul Collins Beat and CBS, Inc.*” *Id.* Ex. E. at 2. The “Publication Date[s]” are September 21, 1979 for *The Beat* and January 29, 1982 for *The Kids Are The Same*. *Id.* at 3. Collins’ termination notice also contained a schedule A:

Schedule A

<u>Work</u>	<u>Author</u>	<u>Publication Date</u>	<u>Copyright Registration No</u>	<u>Termination Notice Date</u>	<u>Effective Date of Termination</u>
The Beat	Paul Collins	September 21, 1979	SR0000013516	July 15, 2015	June 16, 2017
The Kids Are The Same	Paul Collins	January 29, 1982	SR0000033181	July 15, 2015	July 16, 2017

Id. Ex. F.

Plaintiffs commenced the instant action on February 5, 2019. Plaintiffs claim that as of the effective dates of termination, they regained ownership of the sound recordings identified in their respective termination notices, and the exclusive right to reproduce and distribute them. *Id.* ¶ 40. However, Sony allegedly continues to exploit those sound recordings throughout the United States. Plaintiffs seek in the instant action declaratory relief and monetary damages resulting from Sony’s infringement.

On June 11, 2019, Sony moved to dismiss the Complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), on the basis that the three termination notices are invalid. Doc. 43.

II. LEGAL STANDARD

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible “when the plaintiff pleads factual content that allows the court to draw the

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