

# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

Case No. \_\_\_\_\_ - Civ.

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ANGELA E. NOBLE CLERK U.S. DIST. CT. S. D. OF FLA. - MIAMI

Primous Fountain,  
Plaintiff,

vs.

Michael Tilson Thomas, New World Symphony, Inc, Martin Sher,  
Defendants

## OVERVIEW

In January 2020 a legally binding agreement was entered into between Plaintiff PRIMOUS FOUNTAIN, and Defendants Michael Tilson Thomas (MTT) and the orchestra NEW WORLD SYMPHONY (NWS). Thomas and the orchestra, with this agreement, intended to celebrate the music of Fountain in a concert devoted exclusively to Fountain's work (music compositions). This concert had been scheduled and publicly announced by the NWS for their 2021-22 season. (See Annexure A) Public announcement of the concert. (All annexures are attached at the end of the document). Thomas is co-founder and then music director, now artistic director laureate, of the NWS. The agreement was explicit, implied and oral established.

On June 22, 2020 conductor Michael Tilson Thomas phoned Fountain - excitingly telling Fountain over and over again how original his music is - and he offered to Fountain to conduct a concert with the NWS exclusively of Fountain's music. Fountain agreed. [See Annexure B – Showing an Agreement had been made.].

This concert had been in on-going planning between all Defendants and Plaintiff for two years. The concert was scheduled and publicly announced for April 16, 2022. Thomas and the NWS entitled the concert, **"Primous Fountain: An American Original"**.

Later the Defendants tried to contrive the fact that they had to postpone the concert, that they were legally bound to continue with, attempting to misled the Plaintiff to think by alluding that due to health reasons the concert was to be "**Postponed**". (Annexure C) The fraudulent misrepresentation was constituted here because Thomas was continuing conducting then and up to this date despite implying to Fountain that the music director Thomas could not conduct concerts due to health reason (**When it came to conducting the concert that was agreed between Thomas, the NWS and Fountain**). In fact, Thomas was far in advance scheduled to conduct, and did conduct, the NWS in three concerts that following 2022-23 season in which Fountain concert was (led to believe) to be postponed to, but was not given. (See Annexure D, D1)

Leaving Fountain's work to date not performed in the USA for over 40 years which Thomas and the NWS was well aware of.

Composing music has been the only work Fountain has done for a living since leaving high school in Chicago, where Fountain was raised in Chicago's Southside Ida B. Wells Housing Projects.

## I. PRELIMINARY STATEMENT

This Complaint arises from a deliberately breached agreement to present a full concert of the orchestral works of **Primous Fountain**, a composer and Black American with an over 50-year career in orchestral composition. Mr. Fountain's orchestral works, which include nine symphonies and numerous other Orchestral compositions are distinctive and profound contributions to the orchestral repertoire, earning support from musical legends such as the late **Quincy Jones**, who commissioned his Second Symphony and has endorsed him as "He is the future."

In 2020, Mr. Fountain was approached by Michael Tilson Thomas (MTT), Artistic Director of the New World Symphony (NWS), with a proposal to present a concert exclusively dedicated to Mr. Fountain's orchestral music. Over the next two years, the Plaintiff collaborated with MTT and NWS on detailed planning. Considering their repeated confirmations and institutional credibility, Mr. Fountain prepared and delivered 14 full-format orchestral scores, comprising over two thousand pages, formatted for performance and created at his own expense. These scores were accepted, reviewed, and included in the promotional planning of a concert titled "Primous Fountain: An American Original."

The Plaintiff understood this concert to be a performance and a rare recognition of his work within a historically exclusionary industry. The concert also carried deep personal and professional meaning. It was positioned to be a significant career milestone and, notably, it would have honoured the lifelong mentorship and support of **Quincy Jones**, whose direct involvement in Mr. Fountain's career included a long phone call proposing a 15-city U.S. symphony orchestra tour exclusively of Mr. Fountain's symphonies, and a meeting in Switzerland to discuss producing this concert tour- a groundbreaking new venture for Mr. Jones, and potentially transformative for the Plaintiff. (See **Annexure K**)

Without cause or explanation, the Defendants silently cancelled the concert, never issued a public notice, and refused to return the orchestral scores. Despite multiple follow-ups, the Plaintiff received only a vague acknowledgment that the "full concert" was no longer going forward. This breach of trust and contract is not merely negligent; it reflects a broader cultural pattern: a denial of visibility, opportunity, and restitution for Black Americans in American classical institutions.

The **failure to return the orchestral materials**, while perhaps not explicitly requested, is highly significant. As stated in the Plaintiff's legal analysis:

*"It is customary within the professional orchestral community that if a performance is cancelled, scores of this nature—mainly when provided at the expense and effort of the composer—are returned as a matter of professional courtesy. The failure to return them under the circumstances of this case could support an inference of intentional retention to avoid acknowledging cancellation or breach. In context, the refusal or neglect to return these materials may be interpreted as further evidence of the Defendants' efforts to avoid legal accountability and obscure the agreement's existence."*

This Complaint is not simply about a performance that did not occur. It is about the **loss of a once-in-a-lifetime opportunity**, disregarding a **binding agreement**, the **cultural silencing of a significant voice**, and the **strategic withholding of materials and acknowledgment** by those in positions of institutional power.

The Plaintiff seeks recognition of this breach, compensatory and punitive damages, and a public record of the injustice. He further seeks relief not only for himself but to shine a light on the structural inequities plaguing American musical institutions — and reclaim the wrongfully denied legacy.

## II. JURISDICTION AND VENUE

1. This Court has **subject matter jurisdiction** over this action pursuant to **28 U.S.Code § 1331**, as Plaintiff asserts claims arising under federal law, including but not limited to:
  - **42 U.S.Code § 1981** (racial discrimination in contracting),
  - **15 U.S.Code § 1125(a)** (false advertising under the Lanham Act),  
and
  - **17 U.S.Code § 501 et seq.** (copyright infringement).
2. The Court has supplemental jurisdiction over the Plaintiff's state law claims, which include breach of contract, conversion, and unjust enrichment, pursuant to 28 U.S.C. § 1367(a), as these claims arise from the same nucleus of operative fact as the federal claims.
3. **Venue is proper** in this judicial district pursuant to **28 U.S.C. § 1391(b)(1) and (2)** because:
  - A substantial part of the events or omissions giving rise to the claims occurred in this district;
  - Defendants, including the **New World Symphony, Inc.**, are domiciled and maintain their principal offices in **Miami Beach, Florida**;
  - Defendants **Michael Tilson Thomas** and **Martin Sher** conduct business in this district and act in furtherance of the agreement here.
  - *Defendants Michael Tilson Thomas and Martin Sher (who, at all times relevant to this Complaint, conducted business in this district as Senior Vice President for Artistic Planning and Programs at the New World Symphony) engaged in conduct giving rise to Plaintiff's claims within the Southern District of Florida. Sher's subsequent employment with the Detroit Symphony Orchestra does not alter jurisdiction, as the alleged acts or omissions occurred while he was an agent of the New World Symphony in Florida.*
4. Defendants are subject to **personal jurisdiction** in this district because they purposefully availed themselves of the privileges of conducting business here and engaged in conduct that gave rise to Plaintiff's claims within the **Southern District of Florida**.

### III. PARTIES

5. **Plaintiff Primous Fountain is a renowned American composer** currently residing in the State of **Wisconsin**. With a career spanning over five decades, Mr. Fountain is one of the few living Black American symphonic composers. “Is highly possible the only living or passed American composer whose works include **nine symphonies**, numerous orchestral suites, choral compositions, and chamber works. He is internationally recognized for his contributions to classical music and has been awarded **two Guggenheim Fellowships**. His work has been supported and championed by iconic cultural figures, including the late **Quincy Jones**, who commissioned Mr. Fountain’s Second Symphony and described him as “he is the future.”
6. **Defendant Michael Tilson Thomas**, during the 2 years, was the **Music Director of the New World Symphony**, now **Artistic Director Laureate of the New World Symphony**. He was actively engaged in artistic and programming leadership at NWS at all times relevant to this Complaint. He is a resident of the **State of Florida**. Mr. Thomas initiated the concert proposal at the heart of this Complaint, directly communicated with Plaintiff, and oversaw the planning and repertoire development for what was to be a landmark concert dedicated solely to Plaintiff’s orchestral works.
7. **Defendant, New World Symphony, Inc.**, is a Florida-based nonprofit orchestral academy with its principal place of business located at **500 17th Street, Miami Beach, Florida 33139**. The institution describes itself as “America’s Orchestral Academy” and operates as a prestigious platform for training emerging classical musicians. At all times relevant, NWS acted through its authorized agents, including MTT and Martin Sher, in connection with the agreement made with the Plaintiff.
8. **Defendant Martin Sher served as the Senior Vice President for Artistic Planning and Programs at the New World Symphony at all times relevant to this Complaint. He is now Vice President and Chief Artistic & Operating Officer of the Detroit Symphony Orchestra (DSO), with business offices at the Max M. & Marjorie S. Fisher Music Center, 3711 Woodward Avenue, Detroit, MI 48201. Sher’s liability arises from his actions and omissions while acting as an agent of the New World Symphony in Florida. He was a resident of Florida. Mr. Sher served as a principal liaison between the Plaintiff and MTT and was actively involved in the logistics, communications, and final coordination of the concert project. He directly corresponded**

with the Plaintiff throughout the planning phase and played a critical role in the subsequent failure to fulfill the agreement. Notably, at no point did Mr. Sher or any representative of the Defendants formally cancel the concert; instead, communications ceased without explanation, leaving the concert in an indefinite state of postponement, effectively unfulfilled to date.

## IV. FACTUAL ALLEGATIONS

### A. Formation of the Agreement

9. Plaintiff **Primous Fountain** is an American composer, Black American, and recipient of two Guggenheim Fellowships. He has composed **nine symphonies** and over **twenty-one major orchestral works** over the course of a fifty-year career. His compositions have been performed in Europe but have **not been performed in the United States in over 40 years**, despite critical acclaim and international support. Born and raised in Chicago's South Side **Ida B. Wells Housing Projects**, composing music has been his life's work and sole professional endeavor since leaving high school.
10. In **January 2020**, Plaintiff **Primous Fountain** entered into a **legally binding agreement**—express, implied, and oral—with **Michael Tilson Thomas (MTT)** and the **New World Symphony (NWS)**. This agreement was explicit in its purpose: to present a full concert dedicated **exclusively** to Mr. Fountain's orchestral compositions, which Mr. Thomas and The New World Symphony (NWS) titled **"Primous Fountain: An American Original."**
11. On **June 22, 2020**, MTT called the Plaintiff personally. During this phone call, he expressed great excitement over the originality of Fountain's music and offered to **conduct a concert comprised entirely of his works**. The plaintiff accepted this offer. (See **Annexure B.**)
12. The concert was formally **scheduled for April 16, 2022**, and publicly announced as part of the **NWS 2021–2022 season**. This announcement was made both internally and to the public, and it clearly communicated that the program would feature **only Primous Fountain's music**. (See **Annexure A.**)
13. The agreement included **consideration from both parties**: Mr. Fountain would provide original orchestral scores, meticulously prepared for live performance, and grant the New World Symphony the right to use his intellectual property for the exclusive concert. In return, under a barter -style agreement, the New World Symphony and Michael Tilson Thomas

committed to publicly presenting and performing Fountain's compositions under Thomas's direction. This mutual exchange of non-monetary value also implicitly included the associated benefits of professional exposure, reputational recognition, and potential opportunities for further engagement.

14. The parties engaged in extensive communication and planning over a two-year period. At the request of MTT and NWS, Plaintiff prepared, printed, and mailed full conductor's scores of over a dozen of his orchestral works for performance. Preparation included reviewing and formatting each score meticulously over weeks, often working through the night, to ensure they were performance-ready. The scores provided included: Symphony 8, Symphony 7, Symphony 6, Symphony 5, Symphony 4, Symphony 3, Symphony 2, Symphony 1, Cello Concerto, Caprice, Manifestation, Espiritu, Exiled, String Orchestra, and Ritual Dances of the Amaks. Some works, such as Symphony No. 8, exceeded 463 pages. (See Annexure G.)

## **B. The Planning Period and Promotional Commitments**

14. Following the June 2020 agreement, the concert planning between Plaintiff and Defendants progressed actively over the course of nearly two years. All communications affirmed the intent to present a **full concert dedicated exclusively to Fountain's works**, scheduled for **April 16, 2022**, at the New World Center in Miami Beach, Florida.
15. As part of this planning, Plaintiff engaged in substantial and sustained correspondence with **Michael Tilson Thomas, Martin Sher**, and other members of the NWS team. These communications included repertoire selection, formatting instructions, and performance logistics. At every step, Plaintiff was treated as the concert's central artistic figure and was led to believe the performance would proceed as agreed.
16. On October 28, 2020, Plaintiff was instructed to prepare large-format performance conductor scores, from which individual musicians' parts could be extracted. By early 2021, Plaintiff had compiled, printed, and mailed 15 complete orchestral works, including Symphonies 1–8, a Cello Concerto, Ritual Dances of the Amaks, and additional large-scale compositions. The printed scores for some symphonies exceeded 400 pages, in 11x17 format, and were formatted specifically for MTT and the NWS orchestra. Only one chamber work—a piano solo piece—was sent separately.

17. In a June 9, 2021, email from **Martha Levine**, then administrative staff at NWS, Plaintiff's contributions were acknowledged with the recognition of "hundreds of hours" of labor invested in score preparation and formatting. Ms. Levine, who had been keeping in communication with Plaintiff as Mr. Thomas had indicated she would remain in close contact with him, further underscored the level of effort and professional commitment Plaintiff had made in preparing for the concert. (See **Annexure G.**)
18. The Defendants issued **public announcements and promotional materials** confirming the concert. In their season preview, and on their website, the concert was listed under the title: "*Primous Fountain: An American Original*"
19. Additionally, in a July 23, 2021 email, **Martin Sher** wrote "*We are so thrilled to be working with you for this concert.*" This language, along with references to the concert in internal scheduling documents, further confirmed the parties' intent to fulfill the agreement. (See **Annexure E.**)
20. These actions collectively formed a pattern of ongoing performance. The plaintiff's planning, scheduling, promotional publication, and delivery of scores show that both parties were actively executing the agreement. Under established legal doctrine, this conduct—coupled with public reliance and tangible preparations—further establishes a contract under Florida law and supports enforceability under federal contract principles.

### C. Quincy Jones's Role and the Lost Legacy

21. The concert "**Primous Fountain: An American Original**" carried not only contractual and artistic significance but also profound **personal and cultural meaning** for the Plaintiff and the society as a whole. It was envisioned, in large part, as a public tribute to the legacy and mentorship of the late **Quincy Jones**, whose support of Fountain spanned decades.
22. Quincy Jones first encountered Fountain's work when the Plaintiff was a teenager living in the **Ida B. Wells Housing Projects** of Chicago. After reading a handwritten orchestral score titled *Manifestation*, Jones immediately recognized Fountain's genius, calling him "the future." He provided **financial support**, mentorship, and encouragement for Fountain to pursue composition full-time, effectively becoming his **patron for many years and advocate**.

23. Jones later **commissioned Fountain's Second Symphony** and remained actively engaged in his development as a serious symphonic composer. Their relationship was not limited to sporadic gestures—it was deeply formative and sustained. (See **Annexure F.**)
24. At one point, Mr. Jones phoned the Plaintiff to propose organizing a **15-city U.S. orchestral tour** dedicated entirely to performing Fountain's music. This was followed by a **personal meeting in Switzerland**, where the two met to discuss further Jones producing the concert tour – a new venture for Jones.
25. The NWS concert, if performed, could have rekindled this opportunity. Its success, visibility, and critical reception might have led Jones to produce the long-discussed recording of Fountain's symphonic works—a move that would have been **historically groundbreaking** for both men and the classical music industry.
26. In fact, **Quincy Jones and Qwest TV** entered into discussions and preliminary collaboration with NWS directly in anticipation of this concert. That partnership with Qwest TV was built on the **novelty and cultural significance** of performing an entire concert of Fountain's music. (See Annexure K)
27. However, while Defendants went on to **benefit from the association** with Quincy Jones and Qwest TV for other institutional projects, they **quietly abandoned** the very concert that motivated the partnership in the first place. In doing so, they retained the prestige and capital from the Jones Association while **excluding** the artist to whom it was owed. (See Annexure L)
28. When Quincy Jones passed away in 2023, Fountain and Jones permanently lost the opportunity to publicly celebrate their legacy together. Had the concert proceeded as agreed, it could have led to a public acknowledgment of Jones's decades-long investment in Fountain's career and possibly launched the recording and recognition Jones had long envisioned for the Plaintiff. It would have greatly benefitted the Plaintiff's career and future opportunities, while also serving as a public expression of his appreciation for all the support and mentorship Jones had extended to him.
29. Instead, the Defendants' silence, dismissal, and failure to follow through on the agreement **denied Mr. Fountain a tribute** to his mentor and **deprived Mr. Jones of realizing** his belief in Fountain's musical genius—a loss compounded by Jones's passing.

30. Defendants' conduct amounts to **unjust enrichment**. They leveraged their connection to Quincy Jones to enhance their institutional reputation and programming reach while simultaneously excluding and silencing the **composer whose work** inspired and brought about that relationship. This pattern reflects a broader issue of appropriation, misrepresentation, and systemic racial disregard.

## **D. Fraudulent Postponement and Public Misrepresentation**

31. At some point in 2022, despite two years of planning and extensive material submission by the Plaintiff, the Defendants silently removed the April 16, 2022, concert "Primous Fountain: An American Original" from the NWS performance calendar. The exact timing of this removal is uncertain, but it is believed to have occurred around the time of the May 9, 2022 email from Martin Sher. Notably, the concert may have still been listed on Michael Tilson Thomas's personal online performance schedule even after the scheduled date had passed. No public cancellation or private explanation was issued at that time.

32. Plaintiff only became aware of the removal from an email received from Martin Sher on May 9, 2022, stating, "I hope you'll be pleased to know that we are confirmed to perform Ritual Dances this coming season." This statement was disingenuous, as up until that time, all plans had solely involved the exclusive concert dedicated to the Plaintiff's music. The email arrived abruptly, with no explanation, and suggested an entirely unrelated concert titled "Spanish Dances," which was later scheduled for December 10, 2022, and featured works by South American composers. The Plaintiff's concert had vanished without announcement, acknowledgment, or apology, replaced by a program with no connection to the original agreement or artistic vision. (See Annexure I)

33. In an email dated **July 23, 2021**, Defendant **Martin Sher** wrote:

*"Though we had to step away from a full concert of your music, we are still planning to include one of your works in a future program."*

This vague reference to a "step away" was the first indirect admission of cancellation—deliberately ambiguous, and lacking the transparency expected in professional orchestral programming. (See Annexure M)

34. Defendants suggested to the Plaintiff, without formal notice, that the concert might have been "postponed" due to Michael Tilson Thomas's health concerns. However, this claim proved misleading. Mr. Thomas was publicly

scheduled to, and did in fact, conduct three NWS concerts during the 2022–2023 season. This is the same season the Defendants misled Fountain to believe his concert would be rescheduled; however, his concert was not rescheduled. Instead, Mr. Thomas conducted three other concerts, disregarding his obligation to deliver and conduct the exclusive concert dedicated to the Plaintiff. (See **Annexure D.**)

35. The postponement narrative was clearly contrived. Rather than postponing Mr. Fountain’s concert or assigning it to another conductor—as is standard industry practice—Defendants proceeded with unrelated programming, while continuing to **withhold Plaintiff’s scores** and **issue no statement** about the cancellation.
36. This was not an oversight. It was a calculated effort to distance themselves from the agreement, **minimize public scrutiny**, and avoid acknowledging their failure to honor a historic commitment.
37. Making matters worse, even after having received the first not responded to the demand letter, the Defendants’ public-facing language remained contradictory. On the NWS website, the Plaintiff was still referred to as:

Defendants publicly stated “*Primous Fountain – longtime friend and collaborator of MTT*”—despite no collaboration being realized, and the only planned concert had been canceled. (See **Annexure J.**) While Thomas had conducted a work of Fountain’s in 1977 with a different orchestra, there had been no contact between them from that time until 2020. This proclamation was misleading, as the Defendants’ behavior demonstrated clearly that no friendship or longstanding collaboration existed. There was no present collaboration realized, and the only concert that had been agreed upon was ultimately not performed.

38. When coupled with these misleading communications, The refusal to return the orchestral scores further reinforces the inference of willful misconduct. As noted in the Plaintiff’s own legal review:

*“The failure to return [scores] under the circumstances of this case could support an inference of intentional retention to avoid acknowledging cancellation or breach... [and] may be interpreted as further evidence of the Defendants’ efforts to avoid legal accountability and to obscure the existence of the agreement.”*

39. Plaintiff sent two formal demand letters via certified mail to all Defendants, explicitly outlining the breach and requesting restitution. Defendants failed to respond to either communication. This silence evidence willful disregard

of contractual obligations and reinforces the pattern of intentional misconduct alleged herein. (See Annexures N, R, S)

40. These actions collectively reflect a pattern of intentional and willful misrepresentation. The Defendants' conduct—including vague claims of postponement, conflicting public statements, and silent program substitutions—was aimed at deflecting responsibility, obscuring the truth, and suppressing the Plaintiff's voice, legacy, and legal standing.

## **E. Contractual Breach and Withholding of Materials**

41. The Plaintiff entirely performed under the agreement by delivering to the Defendants a complete set of fourteen (14) full orchestral scores, formatted at the Defendants' request and printed in professional 11x17 conductor format, along with one solo work titled Piano Solo. These materials included the Plaintiff's Symphonies Nos. 1 through 8, Manifestation, Ritual Dances of the Amaks, Caprice, Espiritu, and Exile. The Piano Solo work was also scheduled for performance alongside the orchestral works in the exclusive concert. Additionally, the concert was to include a filmed performance by the Dance Theatre of Harlem of their ballet "Manifestations," choreographed by the late Arthur Mitchell to Fountain's orchestral work Manifestation, as well as the showing of a video conversation between Thomas and Fountain.
42. Per their request, the New World Symphony and Michael Tilson Thomas received these scores physically. They were not digital mockups or reference drafts but fully realized, conductor-ready scores, representing **hundreds of hours of labor** and significant personal financial investment.
43. Once Defendants received these scores, they continued concert planning for up to two years, reinforcing that performance was imminent. Plaintiff's name remained in internal programming notes and season previews, confirming both **intent and reliance** by the Defendants.
44. Upon Defendants' quiet cancellation of the concert, **no effort was made to return the scores**, despite industry-standard practice requiring the return of original materials when a performance is canceled.
45. No request was made by the Plaintiff for the return of his property. The materials remain in the Defendants' possession to this day.
46. This continued possession of the scores, coupled with the cancellation, constitutes not just a **breach of contract** but **conversion**—an unlawful exercise of control over Plaintiff's tangible personal property.

47. As discussed in the Plaintiff's legal analysis, the failure to return these scores under these specific circumstances supports a **reasonable inference of intentional retention**:

*"...to avoid acknowledging cancellation or breach... and to obscure the existence of the agreement."*

48. In doing so, Defendants deprived Plaintiff of his contractual right to performance and temporarily hindered his ability to repurpose or license his own works elsewhere, as the only performance-ready copies, formatted and printed to the specifications requested by the Defendants, remain held by them. While new copies can be produced, the cost of printing one page of 11x17 score paper is \$0.52 per page, representing a significant expense given the large number of pages involved in each orchestral score.
49. Plaintiff notes that although replacement copies of the materials can be produced, doing so would require substantial financial and logistical effort due to the formatting and printing standards required for orchestral performance.
50. Given this, Plaintiff contends that the continued possession of the original materials by Defendants, without consent or return, represents an unreasonable and burdensome interference with his rights as a composer and copyright holder.
51. Moreover, by continuing to hold Plaintiff's intellectual property while providing no clarification about its status or future use, the Defendants exacerbated the harm, **obstructing future opportunities**, suppressing the visibility of Plaintiff's work, and undermining Plaintiff's ability to assert control over his artistic output.
52. Defendants' conduct, in sum, constitutes a **material breach of the parties' agreement**, a **failure of restitution**, and an **intentional violation of the Plaintiff's rights to his property**.

## **F. Racial Discrimination and Historical Underrepresentation**

53. The conduct of Defendants—namely, the quiet cancellation of a fully planned, fully-promoted, and fully-prepared concert featuring the works of a living Black American who is a composer, without explanation, public

notice, restitution, or rescheduling—must be viewed within the larger context of systemic exclusion of Black Americans who are composers in the American classical music industry.

While the term “Black composers” is standard, its usage often contributes to marginalization, subtly relegating Black Americans' contributions to the periphery. This mirrors a similar pattern in the popular music industry, where phrases such as “Black music” have historically served to label, and in effect diminish, the creative ownership of Black Americans over the very genres they originated.

In reality, all modern popular music genres—soul, R&B (rhythm and blues), hip hop, gospel, blues, rock and roll, house, country, punk, trance, and jazz—trace their roots to the musical traditions developed by enslaved Africans in the United States. These genres evolved over centuries of cultural expression, resistance, and innovation. The misappropriation of these genres by white musicians, often with rebranding—such as the transformation of “shake, rattle and roll” into “rock and roll”—has perpetuated the erasure of Black authorship in music history.

What is now known globally as pop music is, in essence, the folk music of Black Americans. The contributions of Black Americans in both classical and popular music deserve accurate recognition and full inclusion, without dilution or distortion.

54. Black composers constitute **less than 0.5%** of those performed in major American symphony halls. In most professional orchestras, it is not uncommon for **there to be zero Black full-time musicians**, nor for a single program in a season to include works by a Black composer.
55. The Plaintiff, **Primous Fountain**, has not had his orchestral works performed in the United States for **over 40 years**, despite having composed nine symphonies and receiving international critical acclaim. This is not due to lack of merit. Reviews of his music have drawn comparisons to the complexity and brilliance of **Stravinsky, Prokofiev, and Bartók**. A 1980 review in the *Buffalo Courier Express* stated: **“Fountain takes off where Stravinsky finished.”**
56. In this historical climate, the planned concert by the New World Symphony was not just a professional opportunity—it was a historic corrective. A concert exclusively featuring Fountain's orchestral works, performed by a major American orchestra and conducted by MTT, would have been the first of its kind in recent U.S. history. Such a concert, centered entirely on the music of a single composer—a rarity in itself—would have publicly acknowledged Fountain as an American original and an American treasure.

The involvement and sponsorship of Quincy Jones would have further elevated the event, making it a moment of profound cultural significance and historic importance.

57. The Plaintiff was promised not token representation, but center stage—an entire evening of works bearing his name, reputation, and legacy. The public announcement, entitled “**Primous Fountain: An American Original**,” reinforced this promise. That promise was never fulfilled.
58. Instead, when the concert was quietly removed, the Defendants **minimized Plaintiff’s presence** by shifting from a complete program to including **only one-third** of a single movement from one of his works in a different, unrelated concert titled “**Spanish Dances**”—a concert featuring entirely South American composers. Without Plaintiff’s input or consent, this unilateral reclassification amounted to **cultural erasure**. (See Annexure I)
59. Not only was the piece miscontextualized, but after receiving the Plaintiff’s first demand letter, even that excerpt was removed from the program and quietly shuffled into another concert—again without attribution, collaboration, or public notice. These actions demonstrate a **deliberate effort to obscure Plaintiff’s contribution**, rather than honor it.
60. The handling of the Plaintiff’s work stands in contrast to the continued **privileging of non-Black composers** within the NWS programming structure. No full-time Black American musician was hired during Michael Tilson Thomas’s 25-year tenure as music director of the San Francisco Symphony. As of 2024, the number of Black musicians in that orchestra has increased—marginally—to **only one**.
61. The **discriminatory exclusion** of the Plaintiff in this case was not passive; it was operational. The plaintiff was offered a central platform. He performed. He delivered. Then he was silently erased.
62. Plaintiff was replaced, diminished, and displaced—not due to artistic merit, health reasons, or administrative error, but through **intentional misdirection** that aligns with a longstanding pattern of racialized suppression in elite musical institutions.
63. Defendants’ conduct, including:
  - the abrupt program change;
  - the concealment of cancellation;
  - the strategic retention of Plaintiff’s property;

- and the false public narrative of continued collaboration—reflects a willful refusal to treat the Plaintiff on **equal contractual and professional footing** with similarly situated non-Black composers (or, alternatively phrased, composers who are white).

64. Under 42 U.S.C. § 1981, Plaintiff asserts that he was denied “**the same right... to make and enforce contracts... as is enjoyed by white citizens**”. The conduct of the Defendants—taken together—reflects a **denial of performance, a withholding of economic opportunity, and a refusal to acknowledge harm**, all on the basis of race.
65. Plaintiff asserts that the cancellation, silence, exclusion, and appropriation at the center of this complaint cannot be viewed merely as a breach or oversight but must also be recognized as a form of **racial discrimination in contracting**, in violation of federal law.

## **G. Diminishment, Diversion, and Misuse of Works**

66. Following the cancellation of the concert “Primous Fountain: An American Original,” Defendants unilaterally altered the scope of the Plaintiff’s participation without notice or consent. Instead of fulfilling the agreed commitment to feature an entire program of his works, Defendants inserted **only one-third** of a single movement of *Ritual Dances of the Amaks* into a different concert titled “**Spanish Dances.**” (See Annexure I)
67. This concert bore no connection to the Plaintiff’s heritage, compositional style, or geographic origin. It featured works by South American composers and was thematically inconsistent with Mr. Fountain’s identity as a Black American composer. The plaintiff’s work has absolutely no relationship to Spanish music or Spanish dances. Including his excerpted work in that program was not only a distortion of the agreement but also an act of cultural misplacement and minimization, reasonably suggesting nefarious intent based on how the substitution was handled that the cancellation, silence, exclusion, and appropriation at the center of this complaint cannot be viewed merely as a breach or oversight but must also be recognized as a form of racial discrimination in contracting, in violation of federal law.
68. Upon receiving the Plaintiff’s first **formal demand letter**, which the Defendants never responded to, the Defendants removed the Plaintiff’s name and the partial work from that concert program without explanation. They

then quietly inserted the same excerpt into a later program with similarly diluted visibility, **without any public acknowledgment**, apology, or explanation to the Plaintiff. At the same time ignored the demand letter received.

69. These actions were neither accidental nor benign. They represented a deliberate attempt to:

- **Avoid accountability** for cancelling the exclusive concert;
- **Misappropriate portions** of the Plaintiff's work without honoring his full artistic vision;
- **Protect institutional credibility** while quietly sidelining a historically marginalized voice.

70. In addition to the programming decisions, Defendants continued to publicly describe Plaintiff as a "**longtime friend and collaborator of MTT,**" creating the false appearance that the collaboration had occurred when, in fact, the promised performance had been **erased**, and the Plaintiff had been **excluded without explanation**. (See Annexure J.)

71. These misrepresentations violate the trust and integrity inherent in public artistic programming, particularly when involving living composers whose work is being commodified and framed in public discourse.

72. Moreover, the substitution of one-third of a work into a thematically unrelated concert violated the **clear understanding between parties** that Plaintiff's work would be presented in its full scope and in context. The failure to honor this understanding constitutes a **material alteration of the agreement**, and supports both a **breach of contract** and a **false designation of origin** claim under federal law.

73. The **unauthorized use of a portion** of Plaintiff's composition in unrelated programming diluted the integrity of the original work, diminished its perceived significance, and deprived Plaintiff of the meaningful recognition and audience engagement that a dedicated concert would have provided.

74. Defendants' pattern of minimizing the Plaintiff's presence while **continuing to benefit** from institutional diversity narratives and their association with Quincy Jones constitutes **misuse of artistic property, unjust enrichment**, and a **continued campaign of reputational harm**.

## H. False Advertising Under 15 U.S.C. § 1125

75. Under 15 U.S.C. § 1125(a) (Lanham Act), it is unlawful for any person or entity, in commercial advertising or promotion, to make **false or misleading representations of fact** that misrepresent the nature, characteristics, or origin of goods, services, or commercial activities. The Defendants' actions fall squarely within this statutory violation.
76. In 2021 and 2022, the New World Symphony (NWS) and Michael Tilson Thomas publicly announced and widely promoted a concert titled: **"Primous Fountain: An American Original"**
77. The concert was marketed as a **landmark event**, described in press materials and internal communications as a program that would feature the orchestral works of Mr. Fountain exclusively. These announcements appeared on **NWS's official website**, in email campaigns, and in season subscription materials. (See **Annexure A.**)
78. These public promotions led both the general public and the artistic community to believe that the Plaintiff's works would be performed in full, and that the concert was a confirmed engagement, not merely a possibility or proposal.
79. Despite this extensive promotion, the concert was **never performed**, and the Defendants **never issued a formal or informal cancellation notice** to the public or the Plaintiff. This silence left colleagues, sponsors, and audiences confused and misinformed about the event's cancellation, with some assuming that the Plaintiff was responsible for the failure to perform.
80. Following the concert's quiet removal from the calendar, Defendants continued to reference the Plaintiff in promotional language—describing him as a **"longtime friend and collaborator of MTT"**—despite no such collaboration being realized. These statements created a **false impression of association and fulfillment**. (See **Annexure J.**)
81. The concert announcement was used to **bolster the public image of the Defendants**, attract audience interest, and strengthen diversity narratives at a time when major institutions faced increasing public scrutiny over the lack of representation of Black composers and musicians.
82. By failing to perform the concert, by repurposing the Plaintiff's name and reputation without actual performance, and by continuing to promote vague associations with the Plaintiff's name and legacy, Defendants **misled the public, donors, and artistic collaborators**.

83. These actions had direct and measurable consequences:
- The Plaintiff's **reputation suffered**, as no public explanation was given;
  - Audiences and professional peers wrongly assumed **the performance had occurred**;
  - The Plaintiff was denied the **visibility, credit, historic significant, and career momentum** associated with this orchestral concert exclusively of his works.
84. These representations meet the threshold for **false and misleading statements in commercial promotion**, as outlined in 15 U.S.C. § 1125(a), and constitute a **deceptive commercial practice** that harmed the Plaintiff's standing, visibility, and income potential.
85. Plaintiff, therefore, seeks compensatory and statutory damages for false designation of origin, misrepresentation, and reputational harm in accordance with the Lanham Act and other applicable federal and state laws.

## I. Copyright Infringement Under 17 U.S.C. § 501

86. The Plaintiff is the sole author and copyright owner of all orchestral compositions referenced in this Complaint, including but not limited to **Symphonies Nos. 1–8, Caprice, Espiritu, Exile, Manifestation, Ritual Dances of the Amaks, and Cello Concerto**. These compositions were created, developed, and completed solely by the Plaintiff and are protected under **Title 17 of the United States Code**, including Sections 102, 106, and 501.
87. Plaintiff granted the Defendants **limited, conditional permission** to perform these works solely in the context of a **single concert event** entitled "*Primous Fountain: An American Original*," featuring exclusively his music, to be conducted by MTT and promoted as such.
88. The license granted by Plaintiff was **specific in scope**. Any use of the compositions outside of the agreed-upon full-concert context was expressly prohibited. This condition was further **communicated in writing** when the Plaintiff, after learning of the concert's removal, notified the Defendants via email that no part of his music was authorized for performance unless presented in the original exclusive context. (See **Annexure P.**)
89. Despite this express revocation of permission, **Martin Sher** requested orchestral performance parts from Plaintiff multiple times. While Plaintiff

declined to provide those parts, the Defendants retained **complete conductor's scores** from which such parts could easily be extracted and performed without Plaintiff's knowledge.

90. While Plaintiff has no direct confirmation that unauthorized performances occurred, the inclusion of Plaintiff's name and partial works in multiple concert schedules—including the **"Spanish Dances" program**—and their abrupt removal without explanation, suggests that Defendants either:
- **Scheduled and rehearsed** portions of Plaintiff's copyrighted works without permission; or
  - **Used his name and content** in public advertising without lawful authorization or licensing.
91. Such acts, if they occurred, would constitute **copyright infringement** under **17 U.S.C. § 501**, violating the Plaintiff's exclusive rights to reproduction, public performance, and distribution.
92. Even the threat of such unauthorized use, coupled with continued possession of the scores and misleading public promotions, gives rise to injunctive relief. However, Plaintiff has not demanded the return of the physical scores prior to initiating this action, as he remains open to injunctive relief in the form of a court-ordered exclusive performance of his works. Nonetheless, if such performance is not ordered, Plaintiff seeks the immediate return of all materials and a permanent injunction prohibiting any further use of his works without a valid license.
93. The damage from any infringement would be substantial. Plaintiff's compositions are rare, valuable, and unperformed in the U.S. for over four decades. Unauthorized use would compromise the **exclusivity, artistic control, and commercial value** of future performances and licensing opportunities.
94. Pursuant to the **Copyright Act of 1976**, Plaintiff seeks:
- **Statutory damages** for any unauthorized use;
  - In the event specific performance is not ordered by the Court, Plaintiff further requests the return of all copies and score materials in Defendants' possession as part of the equitable relief sought;
  - **Attorneys' fees and costs**;
  - And such other relief as the Court deems just under **17 U.S.C. § 504 and § 505**.

## V. CLAIMS FOR RELIEF

### Count I – Breach of Contract

*(Against all Defendants)*

95. Plaintiff repeats and re-alleges Paragraphs 1 through 92 as though fully set forth herein.
96. A valid and enforceable agreement existed between Plaintiff and Defendants for the presentation of a concert titled “*Primous Fountain: An American Original*”, to be performed exclusively by the New World Symphony under the direction of Michael Tilson Thomas and featuring exclusively Plaintiff’s orchestral compositions.
97. The agreement was entered into through mutual assent, supported by consideration, including:
- (a) The Plaintiff’s provision of 14 conductor-ready orchestral scores,
  - (b) formatting and labor performed at the request of Defendants,
  - (c) mutual reliance and performance over a two-year period, and
  - (d) public and internal promotion of the concert by the Defendants.
98. Plaintiff fully performed his obligations under the agreement, including delivering scores and complying with all artistic and logistical requirements set forth by Defendants.
99. Defendants materially breached the agreement by:
- Unilaterally cancelling the concert without notice, explanation, or opportunity to cure;
  - Failing to return the Plaintiff’s scores;
  - Refusing to engage in a substitute performance or rescheduling;
  - Misusing the Plaintiff’s name and work in unrelated contexts.
100. As a result of the Defendants’ breach, Plaintiff has suffered substantial damages, including:
- Loss of performance opportunity;
  - Reputational harm;
  - Financial costs associated with score preparation;
  - Missed opportunities for future For future performances, commissions, recordings, and sponsorship
  - Loss of vast opportunities that could have resulted from and with, and even most importantly afterward, with Quincy Jones, who, along with his Qwest TV, was taken active participation towards the development of the concert.

101. Plaintiff seeks compensatory damages, restitution, and such other equitable relief as the Court deems just and proper.

**Count II – Racial Discrimination in Contracting (42 U.S.C. § 1981)**  
*(Against all Defendants)*

102. Plaintiff repeats and re-alleges Paragraphs 1 through 99 as thoughtfully set forth herein.

103. Under 42 U.S.C. § 1981, all persons within the United States shall have the same right to make and enforce contracts as is enjoyed by white citizens.

104. Plaintiff, a Black American and composer, was denied the right to enforce the contract on equal terms as similarly situated non-Black composers.

105. Defendants entered into a binding agreement with Plaintiff, accepted and promoted his works, and then failed to honor their commitment—cancelling the concert without explanation, concealing the breach, and refusing return or redress.

106. Defendants continued to present themselves publicly as having a relationship with Plaintiff, while minimizing his artistic contribution and depriving him of professional credit.

107. The denial of contract performance, failure to return property, and concealment of breach reflect a pattern of conduct that disproportionately affects Black artists in orchestral programming and were committed with discriminatory intent or willful disregard of the Plaintiff's rights.

108. Defendants' conduct violated Plaintiff's rights under 42 U.S.C. § 1981, causing direct and ongoing harm.

109. Plaintiff seeks compensatory and punitive damages, attorneys' fees, and declaratory and injunctive relief as permitted by law.

**Count III – False Advertising and False Designation of Origin**  
*(Under 15 U.S.C. § 1125(a); Against all Defendants)*

Plaintiff repeats and re-alleges Paragraphs 1 through 107 as though fully set forth herein.

110. Under the **Lanham Act (15 U.S.C. § 1125(a))**, it is unlawful for a party, in commercial advertising or promotion, to misrepresent the nature,

characteristics, or origin of goods, services, or commercial activities.

111. Defendants, by publicly promoting the concert "*Primous Fountain: An American Original*", misrepresented that such a performance was scheduled and would occur, and used Plaintiff's name, reputation, and work to enhance their own credibility and programming visibility.
112. These promotional representations were materially misleading to:
- The general public;
  - Concert subscribers;
  - Collaborators such as Qwest TV and Quincy Jones;
  - And professional peers within the classical music and orchestral communities.
113. Defendants never issued a cancellation notice, correction, or public explanation after the concert was removed, and continued to imply collaboration with Plaintiff in subsequent materials.
114. These acts constitute **false advertising**, **false endorsement**, and **false designation of origin** under § 1125(a), causing Plaintiff reputational injury, lost opportunity, and public confusion regarding the nature of his involvement with the Defendants.

**The plaintiff is entitled to:**

- Actual and statutory damages;
- Disgorgement of any commercial benefit obtained from misuse of his name and reputation;
- Injunctive relief;
- Attorneys' fees and litigation costs.

**Count IV – Copyright Infringement**  
(Under 17 U.S.C. § 501; Against all Defendants)

Plaintiff repeats and re-alleges Paragraphs 1 through 114 as though fully set forth herein.

115. The plaintiff is the registered copyright holder and exclusive author of all

works provided to the Defendants in connection with the planned concert, including Symphonies 1–8 and various orchestral works

116. The plaintiff granted the Defendants a conditional license to perform his copyrighted works **only** as part of the agreed-upon concert. He later expressly revoked that permission when the concert was removed and no alternative plan was proposed.
117. Defendants retained the full orchestral scores and repeatedly requested additional parts, suggesting preparation or rehearsal of the works outside the authorized context.
118. Defendants publicly scheduled and promoted at least one performance in which an excerpt of Plaintiff's work was included without his consent and in violation of the license scope.
119. Even if no unauthorized performance occurred, the **threatened use, retention, and commercial benefit** derived from possessing and referencing the Plaintiff's copyrighted works violates the spirit and protections of 17 U.S.C. § 501 et seq.

**Plaintiff seeks:**

- Injunctive relief;
- Return of all physical and digital copies;
- Statutory and/or actual damages;
- Attorneys' fees and any other relief authorized under **Sections 504–505** of the Copyright Act.

**Count V – Conversion and Unjust Enrichment**  
*(Under Florida Law; Against all Defendants)*

Plaintiff repeats and re-alleges Paragraphs 1 through 121 as though fully set forth herein.

120. Plaintiff delivered 14 full-format original orchestral scores to the Defendants for use in a concert. These were not promotional materials or drafts—they were performance-ready scores produced at personal expense.
121. Defendants took possession of these materials, retained them after the concert was cancelled.
122. This unauthorized retention constitutes **conversion** under Florida law: an

act of dominion or control over the property of another inconsistent with the other's rights.

123. Defendants have also been **unjustly enriched** by:

(a) Publicly promoting Plaintiff's name to enhance their reputation;

(b) Leveraging Quincy Jones and Qwest TV's involvement, obtained through association with Plaintiff,

and

(c) Retaining intellectual and physical property without compensation.

**The plaintiff is entitled to:**

- Restitution for unjust enrichment;
- Compensatory damages for conversion and property interference;
- Court costs and further equitable relief.

## **VI. PRAYER FOR RELIEF**

Plaintiff **Primous Fountain** respectfully seeks the following relief from this Court to redress the injuries caused by Defendants' breach of contract, discriminatory conduct, deceptive public misrepresentations, and unlawful retention of artistic property:

### **A. Specific Performance**

1. **Concert Performance:** An injunction requiring the Defendants to organize and execute the concert titled "*Primous Fountain: An American Original*", originally scheduled for April 16, 2022. The performance should:
  - Be dedicated exclusively to the orchestral compositions of Plaintiff;
  - Be conducted by **Michael Tilson Thomas**, or an equally prominent conductor or conductors, subject to Plaintiff's approval;
  - Be performed by an orchestra of equivalent professional stature to the New World Symphony;
  - Include appropriate crediting, publicity, and press exposure for Plaintiff's name, biography, and artistic legacy.

2. The performance shall be conducted at a venue of equivalent visibility, acoustics, and audience reach as the New World Center in Miami Beach, Florida, and shall be accompanied by:
  - o Archival video and audio recording;
  - o Press and promotional support;
  - o Artist talk or legacy event curated by Plaintiff and his advisors.
3. The performance is to be for a two-day (2) concert exclusively for the Plaintiff's work.

**B. Monetary Damages (*In the alternative, or in addition to specific performance*)**

**1. Organizational Costs:**

An award of damages sufficient to cover the full cost of independently producing two comparable orchestral concerts under Plaintiff's direction. These costs include:

- o Hiring of musicians for the creation of an orchestra compatible in size and quality to that of the NWS;
- o Hiring of conductor of equal prominence as Michael Tilson Thomas;
- o Rental of a suitable concert venue and rehearsal facilities;
- o Travel, accommodation, and per diem for musicians and technical staff;
- o Professional recording, videography, marketing, and press outreach;
- o Administrative assistance and event management services.

*(A budget estimate for such a production, based on similarly scaled orchestras, is attached hereto as Annexure Q.)*

**2. Compensatory Damages:**

For lost artistic, commercial, and cultural opportunities, including:

- o Revenue anticipated from a proposed **15-city orchestral tour** that would have followed the original concert;
- o Sponsorship and grant opportunities that were in development at the time of the concert announcement;
- o Long-term financial and institutional losses tied to the failure to reintroduce Plaintiff's music into the U.S. concert repertoire.

**3. Punitive Damages:**

In the amount of **\$15 million**, for the Defendants' **malicious, willful, and deceitful conduct**—including fraudulent misrepresentation, racial exclusion, and reputational harm. These damages are warranted to deter

similar public art institutions' misconduct and acknowledge the intentional denial of opportunity and legacy.

#### 4. **Emotional Distress and Reputational Harm:**

Compensation for the emotional suffering, anguish, and humiliation Plaintiff experienced due to:

- The Defendants' sudden and silent abandonment of a long-promised public event;
- The appropriation of his name in ongoing promotional language;
- The irreversible loss of honoring his mentor **Quincy Jones** through this performance before Mr. Jones's passing.

*(See Annexure J: NWS promotional language continuing to refer to Plaintiff as a "longtime friend and collaborator of MTT" despite no performance ever taking place.)*

#### **C. Equitable and Declaratory Relief**

1. A court declaration that a legally enforceable contract existed between Plaintiff and Defendants, and that Defendants materially breached it.
2. A permanent injunction barring Defendants from without Plaintiff's consent:
  - Further using, publishing, performing, or referencing Plaintiff's copyrighted works;
  - Retaining, copying, or distributing his orchestral scores in any capacity.
3. An order requiring the **immediate return of all scores and materials**, physical and digital, in the Defendants' possession.

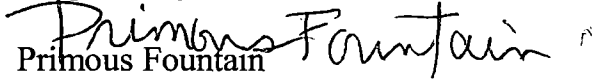
#### **D. Statutory and Ancillary Relief**

1. Statutory damages and/or actual damages under:
  - The **Lanham Act**, 15 U.S.C. § 1125(a);
  - The **Copyright Act**, 17 U.S.C. § 504–505;
  - 42 U.S.C. § 1981, and applicable civil rights statutes.
2. Pre-judgment and post-judgment interest, attorneys' fees, expert costs, and any other relief the Court deems just and equitable under the circumstances.

## VII. JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff **Primous Fountain** hereby **demand a trial by jury** on all issues so triable in this action, including but not limited to claims of breach of contract, racial discrimination under 42 U.S.C. § 1981, false advertising, copyright infringement, and all related claims for damages and equitable relief.

Respectfully Submitted,

  
Primous Fountain  
*Pro Se*

Dated:

October 14, 2025

### Certificate of Service

**I hereby certify** that all counsel or parties of record served a true and correct copy of the foregoing on the Service List below.

**Primous Fountain:** \_\_\_\_\_

# Annexure A

**Michael Tilson Thomas conducts entire orchestra concert exclusively of the music of Primous Fountain**

Saturday, April 16, 2022 at 7:30 PM  
**PRIMOUS FOUNTAIN: AN AMERICAN ORIGINAL**  
Michael Tilson Thomas, conductor  
Program to be announced

---

**Michael Tilson Thomas and New World Symphony Orchestra announces 2021-2022 Season**



Michael Tilson Thomas



Primous Fountain

**This season also includes a focus on the work of Primous Fountain, with whom MTT has a long relationship.**

**The series (*Sounds of the Times*) wraps with a concert of works by composer Primous Fountain led by MTT (April 16).**

*Program for this special event to be announced.*

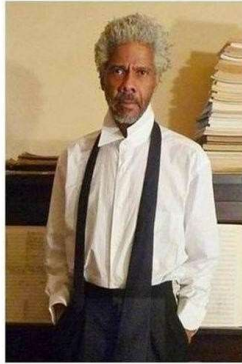


New World Symphony

*Michael Tilson Thomas has been music director of the San Francisco Symphony for 25 years, conductor laureate of the London Symphony Orchestra; founder and music director for 30 years of the New World Symphony.*


## Events & Tickets

Concert Hall and Music School in Miami / Events & Tickets / Concerts / Sounds of the Times: Primous Fountain – An American Original



Orchestra Concert

### Sounds of the Times: Primous Fountain – An American Original

 ADD TO CALENDAR

New World Center

Saturday, April 16, 2022 at 7:30 PM  
Michael Tilson Thomas, conductor

- About
- Tickets
- Program
- Artists

#### Michael Tilson Thomas, conductor

Michael Tilson Thomas is Co-Founder and Artistic Director of the New World Symphony, America's Orchestral Academy, Music Director Laureate of the San Francisco Symphony, and Conductor Laureate of the London Symphony Orchestra. In addition to these posts, he maintains an active presence guest conducting with the major orchestras of Europe and the United States.

Born in Los Angeles, Mr. Tilson Thomas is the third generation of his family to follow an artistic career. His grandparents, Boris and Bessie Thomashefsky, were founding members of the Yiddish Theater in America. His father, Ted Thomas, was a producer in the Mercury Theater Company in New York before moving to Los Angeles where he worked in films and television. His mother, Roberta Thomas, was the head of research for Columbia Pictures.

Mr. Tilson Thomas began his formal studies at the University of Southern California, where he studied piano with John Crown, and conducting and composition with Ingolf Dahl. At age 19 he was named Music Director of the Young Musicians Foundation Debut Orchestra. During this same period, he was the pianist and conductor in master classes of Gregor Piatigorsky and Jascha Heifetz and worked with Stravinsky, Boulez, Stockhausen and Copland on premieres of their compositions at Los Angeles' Monday Evening Concerts.

In 1969, after winning the Koussevitzky Prize at Tanglewood, he was appointed Assistant Conductor of the Boston Symphony Orchestra. That year he also made his New York debut with the Boston Symphony and gained international recognition after replacing Music Director William Steinberg in mid-concert. He was later appointed Principal Guest Conductor of the Boston Symphony Orchestra where he remained until 1974. He was Music Director of the Buffalo Philharmonic from 1971 to 1979 and a Principal Guest Conductor of the Los Angeles Philharmonic from 1981 to 1985. His guest conducting includes appearances with the major orchestras of Europe and the United States.

Mr. Tilson Thomas is a two-time Carnegie Hall Perspectives artist, curating and conducting series at the hall from 2003 to 2005 and from 2018 to 2019. In the most recent series, he led Carnegie Hall's National Youth Orchestra of the United States of America both at the hall and on tour in Asia, opened the Carnegie Hall season over two evenings with the San Francisco Symphony, conducted two programs with the Vienna Philharmonic and finished with a pair of concerts leading the New World Symphony.

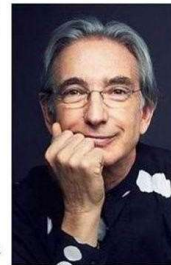
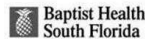


Photo by Spencer Lowell

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# Annexure C



Primous Fountain <primousfountain@gmail.com>

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## Thoughts and Prayers

3 messages

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Primous Fountain <primousfountain@gmail.com>  
To: Martin Sher <Martin.Sher@nws.edu>

Wed, Mar 2, 2022 at 4:47 PM

Martin


First of all, my thoughts and prayers are with Michael and his family at this time.

Michael invested a lot of time and energy into this project. I am quite sure that he would like to see the plans for the concert to continue. Michael contacted me because he felt it is important to have my work presented to the world in a concert entirely of my music. He would like to see our shared dream come to fruition. Michael has always been my strong preference. However under the circumstances I would be open to Chad Goodman to conduct the program. Additionally I would like to suggest the music director for twenty five years of the National Symphony Orchestra of "Teleradio - Moldova", Gheorghe Mustea, to conduct with him or all by himself. He has conducted a number of my works. He has also premiered my Seventh Symphony in its entirety and the performance was superb in spite of being handicapped by the limited resources of Moldova he was still able to excel as a conductor. With an orchestra of the caliber of the New World Symphony he could do wonders to my works. With his knowledge of my work the concert could go on as scheduled.

When you speak to Michael please express to him my appreciation for the confidence he has shown in me as a person and for my work and I will be eternally grateful for his friendship.

Primous

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 Primous Fountain World Tour Booklet.pdf  
1434K

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Martin Sher <Martin.Sher@nws.edu>  
To: Primous Fountain <primousfountain@gmail.com>

Thu, Mar 3, 2022 at 11:36 AM

Primous,

MTT would really like to take this on himself if at all possible, so whereas I totally understand where you are coming from, I think it best that we postpone for now until MTT is able to take this on. I hope that can work for you.

**Martin Sher**

---

**Senior Vice President for Artistic Planning and Programs**  
**New World Symphony, America's Orchestral Academy**

# Annexure D

 **New World Symphony**  
Kennedy Orchestra Academy  
Michael Tilson Thomas, Artistic Director Laureate

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## 2022-23 Season Highlights

### MICHAEL TILSON THOMAS

As New World Symphony Artistic Director Laureate, **Michael Tilson Thomas leads the NWS in three concerts during the 2022-23 season.** On October 22, MTT opens the New World Symphony's series at the Adrienne Arsht Center with pianist **Yefim Bronfman** in an all-Rachmaninoff program. He returns to the Arsht stage on November 4 and 5 leading **The Cleveland Orchestra** and New World Symphony side-by-side in works by Debussy and Mahler. Taking the podium at the New World Center on May 6 and 7, MTT leads an evening of music and dance with the NWS and **Miami City Ballet**.



MTT • Rachmaninoff at the Arsht Center on October 22.

# Annexure D1

Only some of the concerts conducted by Thomas showing he had been conducting all along and continued to conduct

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MTT SCHEDULE

2022

Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec

**AUGUST 27, 2022**  
**TANGLEWOOD MUSIC FESTIVAL**  
 LENOX, MA

**MICHAEL TILSON THOMAS CONDUCTS RIMSKY-KORSAKOV, RACHMANINOFF, AND COPLAND FEATURING ALEXANDER MALOFEEV, PIANO**

RIMSKY-KORSAKOV: Dubushka  
 RACHMANINOFF: Piano Concerto No. 3  
 COPLAND: Symphony No. 3

**AUGUST 28, 2022**  
**TANGLEWOOD MUSIC FESTIVAL**  
 LENOX, MA

**MICHAEL TILSON THOMAS CONDUCTS BEETHOVEN SYMPHONY NO. 9**

BEETHOVEN: Symphony No. 9  
 Vocal soloists to include  
 Daphne Burton, mezzo-soprano  
 Tanglewood Festival Chorus, James Burton, conductor

**OCTOBER 22, 2022**  
**NEW WORLD SYMPHONY**  
 MIAMI BEACH, FL

**MTT CONDUCTS RACHMANINOFF**

RACHMANINOFF: "Vocalist"  
 RACHMANINOFF: Piano Concerto No. 3  
 RACHMANINOFF: Symphony No. 2  
 Yefim Bronfman, piano

**NOVEMBER 4 & 5, 2022**  
**NEW WORLD SYMPHONY**  
 MIAMI BEACH, FL

**MTT CONDUCTS DEBUSSY AND MAHLER**

DEBUSSY: Jeux  
 DEBUSSY: Fantaisie for Piano and Orchestra (TCO only)  
 MAHLER: Symphony No. 1  
 George Li, piano

**NOVEMBER 17-19, 2022**  
**SAN FRANCISCO SYMPHONY**  
 SAN FRANCISCO, CALIFORNIA

**MTT & EMANUEL AX**

BRAMMES: Serenade No. 1 in D major  
 BRAHMS: Piano Concerto No. 1  
 San Francisco Symphony

**JANUARY 26-28, 2023**  
**SAN FRANCISCO SYMPHONY**  
 SAN FRANCISCO, CALIFORNIA

**MTT & JEAN-YVES THIBAUDET**

DEBUSSY: Prélude à l'Après-midi d'un faune  
 MESSIAEN: Trois petites liturgies de la Présence  
 Fauré  
 DEBUSSY: Fantaisie for Piano and Orchestra  
 VILLA LOBOS: Choros No. 10

**MARCH 9-12, 2023**  
**NEW YORK PHILHARMONIC**  
 NEW YORK, NEW YORK

**MICHAEL TILSON THOMAS AND SCHUBERT**

THOMAS: Meditations on Bible  
 SCHUBERT: Symphony No. 9, Great

**MARCH 30, 2023**  
**SAN FRANCISCO SYMPHONY**  
 SAN FRANCISCO, CALIFORNIA

**MTT CONDUCTS MAHLER 6- OPEN REHEARSAL**

MAHLER: Symphony No. 6

**MARCH 30- APRIL 1, 2023**  
**SAN FRANCISCO SYMPHONY**  
 SAN FRANCISCO, CALIFORNIA

**MTT CONDUCTS MAHLER 6**

MAHLER: Symphony No. 6

**MAY 6 & 7, 2023**  
**NEW WORLD SYMPHONY**  
 MIAMI BEACH, FL

**SEASON FINALE: MTT AND MIAMI CITY BALLET**

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MTT SCHEDULE

2024

Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec

**JANUARY 25-27, 2024**  
**SAN FRANCISCO SYMPHONY**  
 SAN FRANCISCO, CA

**MTT CONDUCTS MAHLER 5**

MAHLER: Symphony No. 5

**MARCH 9 & 10, 2024**  
**NEW WORLD SYMPHONY**  
 MIAMI BEACH, FL

**MTT AND EMANUEL AX**

DEBUSSY: Prélude à l'Après-midi d'un faune  
 BEETHOVEN: Piano Concerto No. 3  
 COPLAND: Symphony No. 1  
 Emanuel Ax, piano

**MARCH 16, 2024**  
**NEW WORLD SYMPHONY**  
 MIAMI, FL

**MTT CONDUCTS TCHAIKOVSKY 4**

TCHAIKOVSKY: Allegro  
 COPLAND: 9th American Ballet  
 TCHAIKOVSKY: Symphony No. 4  
 Daphne Burton, baritone

**MARCH 23 & 24, 2024**  
**SAN DIEGO SYMPHONY**  
 SAN DIEGO, CA

**MICHAEL TILSON THOMAS AND SIBELIUS**

SIBELIUS: Symphony No. 4 in D minor  
 MICHAEL TILSON THOMAS: Selections from Meditations  
 Daphne Burton, baritone

**MARCH 23 & 24, 2024**  
**SAN DIEGO SYMPHONY**  
 SAN DIEGO, CA

**MICHAEL TILSON THOMAS AND SIBELIUS**

SIBELIUS: Symphony No. 3 in D minor  
 MICHAEL TILSON THOMAS: Selections from Meditations  
 an Overture  
 MICHAEL TILSON THOMAS: Silver Ring  
 SIBELIUS: Symphony No. 7 in C Major  
 Daphne Burton, baritone

**MARCH 28-30, 2024**  
**LOS ANGELES PHILHARMONIC**  
 LOS ANGELES, CA

**MICHAEL TILSON THOMAS LEADS TCHAIKOVSKY**

TCHAIKOVSKY: Tchaikovsky  
 TCHAIKOVSKY: Symphony No. 4

**MARCH 28-30, 2024**  
**LOS ANGELES PHILHARMONIC**  
 LOS ANGELES, CA

**MICHAEL TILSON THOMAS LEADS TCHAIKOVSKY**

TCHAIKOVSKY: Anisette  
 TCHAIKOVSKY: Symphony No. 4

**APRIL 27, 2024**  
**NEW WORLD SYMPHONY**  
 MIAMI BEACH, FL

**SIDE-BY-SIDE CONCERT**

Young instrumentalists perform alongside the New World Symphony Artists.

**MAY 4 & 5, 2024**  
**NEW WORLD SYMPHONY**  
 MIAMI BEACH, FL

**MTT AND JEAN-YVES THIBAUDET**

TCHAIKOVSKY: Serenade and Julian Fantasy Overture  
 ANIL: Pancha Corona  
 SHOSTAKOVICH: Symphony No. 15  
 Jean-Yves Thibautet, piano

**MAY 12 & 16, 2024**  
**LONDON SYMPHONY ORCHESTRA**  
 LONDON, UK

**THE BEGINNING OF SUMMER - MAHLER'S THIRD SYMPHONY**

MAHLER: Symphony No. 3  
 Alan Cook, mezzo-soprano  
 London Symphony Chorus  
 Tilly Bejo, Choir

**MAY 30 & JUNE 1, 2024**  
**DANISH NATIONAL SYMPHONY ORCHESTRA**  
 COPENHAGEN, DENMARK

**MICHAEL TILSON THOMAS AND MAHLER 3**

MAHLER: Symphony No. 3  
 Alan Cook, mezzo-soprano  
 DR Koncertselskab  
 Kåre Hennings, Organist

**SEPTEMBER 8, 2024**  
**TONKÜNSTLER ORCHESTER**  
 GRAFENEGG, AUSTRIA

**FROM THE DIARY OF ANNE FRANK**

BARBER: Adagio from String Quartet, Op. 11 (arranged for string orchestra)  
 MICHAEL TILSON THOMAS: "From the Diary of Anne Frank"  
 BEETHOVEN: Symphony No. 8, Op. 93  
 Ruth Brown-Klein, soprano  
 Laurence Foster, conductor

**SEPTEMBER 12, 13 & 15, 2024**  
**NEW YORK PHILHARMONIC**  
 NEW YORK, NY

**EMANUEL AX AND MICHAEL TILSON THOMAS**

DEBUSSY: Prélude à l'Après-midi d'un faune  
 MAHLER: Symphony No. 5  
 Emanuel Ax, piano

**OCTOBER 20 & 23**  
**LONDON SYMPHONY ORCHESTRA & CHORUS**  
 LONDON, UK

**MAHLER 9, 'RESURRECTION'**

MAHLER: Symphony No. 9, (Resurrection)

**NOVEMBER 14, 2024**  
**HOUSTON SYMPHONY ORCHESTRA & CHORUS**  
 HOUSTON, TX

**MTT CONDUCTS BEETHOVEN 9**

BEETHOVEN: Symphony No. 9

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Back Home

# Annexure E



Primous Fountain <primousfountain@gmail.com>

---

## Update on the program at New World

3 messages

---

**Martin Sher** <Martin.Sher@nws.edu>  
To: Primous Fountain <primousfountain@gmail.com>  
Cc: William Hunt <William.Hunt@nws.edu>

Fri, Jul 23, 2021 at 9:34 AM

Primous,

I hope this note finds you well. In my last conversation with MTT, we feel a really great program would include Ritual Dances of the Amak, Piano Solo and the 1<sup>st</sup> movement of your 7<sup>th</sup> Symphony. We feel this would present a wide variety of your music and give audiences a sense of the scope of your compositions and artistry. The concert will be a mix of music and conversation with archival material in support. Let me know your thoughts!

We are continuing to be in touch with Dance Theater of Harlem to see if they can find video of Manifestations, which we'd want to include of course.

In the meantime, I'm copying Will Hunt who is part of the artistic team at New World. He will be helping pull together images, and other archival material you feel would be of interest. You had previously sent a couple of photos of you and MTT, I'm wondering if there are other materials you'd like to pass along?

We're so thrilled for this concert and to be working with you. Let me know if you have any questions or would like to discuss buy phone. Thank you!

Martin

### **MARTIN SHER**

**Senior Vice President for Artistic Planning and Programs**

**New World Symphony, America's Orchestral Academy**

t: 305.428.6710 | m: 303.269.1551

500 17th Street, Miami Beach, FL 33139

Find NWS on: [www.nws.edu](http://www.nws.edu) | [Facebook](#) | [Instagram](#) | [Twitter](#)

# Annexure F



September 8, 1986

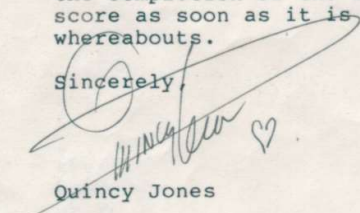
Primous Fountain III  
c/o 8125 S. Huston  
Chicago, Illinois 60617

Dear Primous:

This is a formal agreement for my commissioning you to compose your Second Symphony for me. It is projected that you will complete the work within a year to a year-and-a-half. Should at a later time you see that the composing of the Symphony will take longer you will notify me of a new projected date of completion.

It is your obligation to complete the Symphony and notify me of the completion of the Symphony, send me a copy of the completed score as soon as it is completed and also keep me informed of your whereabouts.

Sincerely,



Quincy Jones

QJ/bt

cc: Knule MwAnga  
Page Jenkins

7250 BEVERLY BOULEVARD, LOS ANGELES, CALIFORNIA 90036 • (213) 934-4711

# Annexure G

---

## Re String Orchestra

---

Martha Levine <Martha.Levine@nws.edu>  
To: Primous Fountain <primousfountain@gmail.com>

Wed, Jun 9, 2021 at 1:55 PM

Hi Primous,

What a story.... And I'm sorry you are still waiting for this work to be performed. Perhaps we can be the organization to do it.

Please do tell me you didn't send him the only copy of this score.

The orchestra, us, will need time to get things ready... i.e., not sure that whatever we end up deciding on has parts already printed, or need to be extracted. We may need to hire an outside contractor to do this as I do understand there often is a lot of formatting of individual parts when they go through this procedure.

One final thing, did you send the score to me here at NWS, or did you shop it to him in California?

Thank you for your time and hundreds of hours you have spent for this project, not to mention cost...

I think today will be the last day it's necessary for me to be in the office to get everything done for MTT, so, I am happy to be done with this project for MAW, and happy that I can relax and stop worrying about it.

Be well!!

Thanks.

Martha

**Martha Levine**  
**Director, Music Library**  
**New World Symphony, America's Orchestral Academy**

# Annexure H

---

Primous Fountain <primousfountain@gmail.com>

Wed, Mar 9, 2022 at 5:46 PM

To: mtt@mttmusic.net

Cc: Martin Sher <Martin.Sher@nws.edu>, Howard Herring <howard.herring@nws.edu>, Ana Maria Estévez <Ana.Estevez@nws.edu>, william.m.osborne@new.edu, Martha Levine <Martha.Levine@nws.edu>

Dear Michael

After seeing announcements that you will be conducting Mahler I could not help wondering why you cancel my concert then going on to conduct Mahler when one less performance of Mahler or Tchaikovsky would not make a difference? nor would it matter to those composers. Whereas the one concert performance of my work would change, contribute immensely and have an effect on history, and the consciousness of people at this time.

As you know there has been no performance of my music in the USA for over forty years. I can suspect that without this concert of my work there will be an attempt to be no performances of my works in the USA during my (remaining) lifetime. Even with the notoriety of performance of the concert of my work there would remain resistance to performing my work, for reasons you are intelligent and aware enough to know. But with what would be a historic concert would make it difficult and obvious as to the biases and hypocrisy, and there would be top quality video to testify to the merits of the works.

From the Chicago Symphony to Los Angeles Philharmonic music directors' Muti and Dudamel respectively and others have ignorantly, and I will add with a touch of racism, tried to not recognize the greatness of my works. When the story is told your legacy will have that you cancelled never conducting this concert going on to conduct other concerts, or that you conducted such a concert. Because it is a matter of time that my work will be recognized as some of the greatest work in the entire repertoire of music.

A test of a person's true character is how they act under pressure.

I suggest you revive my concert and carry on with it as planned this season.

Primous

---

Martin Sher <Martin.Sher@nws.edu>

Mon, May 9, 2022 at 10:31 AM

To: Primous Fountain <primousfountain@gmail.com>

Primous,

Thanks for your note. We've just wrapped our season and now both MTT and I are off for the next month on various travels. I hope you'll be pleased to know that we are confirmed to perform 'Ritual Dances' this coming season. Though we had to step away from a fully dedicated concert to your music, we felt it important that we present at least one of your works in honor of our ongoing conversations. We'll perform it twice: on Dec 9 and 10, 2022.

All future projects are on hold pending further discussions with MTT this summer when his travels have been completed - I expect we'll pick up those discussions in July and August, so there won't be much of an update until then.


In the meantime, your work will be a part of the upcoming - and extensive - PR efforts associated with the launch of our upcoming season, so we're excited to get the word out about 'Amak'. I kindly ask you not to post anything to social media until our official release goes out, which is imminent. Thank you as always Primous!

I'll keep you updated as things evolve later in the summer.

---

Martin

# Annexure I




**New World Symphony**  
America's Orchestral Academy  
Michael Tilson Thomas, Artistic Director

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**SPANISH DANCES**  
Saturday, December 10, 2022 at 7:30 PM  
**Carlos Miguel Prieto**, conductor  
**Chad Goodman**, Conducting Fellow  
**Primous Fountain**, *Ritual Dances of the Aniak*  
Carlos Chavez: *Symphony No. 2: "Sinfonia India"*  
Gabriela Criz: *Téenek — Inveniones de Territorio*  
Manuel de Falla: *The Three-Cornered Hat*  
José Pablo Moncayo: *Huapango*

**ABSOLUTE JEST**  
Saturday, February 18, 2023 at 7:30 PM  
**Nicholas Collon**, conductor  
**Randall Goosby**, violin  
**Chad Goodman**, Conducting Fellow  
**New York Philharmonic String Principals**  
Gabriela Criz: *Andropolis*  
Pyotr Ilych Tchaikovsky: *Violin Concerto*  
John Adams: *Absolute Jest*



**ARSHT CENTER SERIES**  
*NWS Fellows take the stage at the Adrienne Arsht Center—downtown Miami's grand concert hall. This series of one-night-only events is your ticket to the stars.*  
*Los Fellows de la New World Symphony se presentan en el escenario del Arsht Center, la gran sala de conciertos del centro de Miami. Esta serie de conciertos de una sola noche es su ticket a las estrellas.*


[MORE INFO](#)

**Subscriptions: \$399, \$270, \$204, \$141, \$66, \$38**  
**Adrienne Arsht Center for the Performing Arts**

**MTT + RACHMANINOFF**  
Saturday, October 22, 2022 at 8:00 PM  
**Michael Tilson Thomas**, conductor  
*John Rasmussen*, organ  
**Chad Goodman**, Conducting Fellow  
All-Rachmaninoff program:  
"Vocalise"  
Piano Concerto No. 3  
Symphony No. 2

*Ticket exchanges not permitted into this performance.*

# Annexure J




**New World Symphony**  
America's Orchestral Academy  
Michael Tilson Thomas, Artistic Director Laureate

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## Events & Tickets

Concert Hall and Music School in Miami / Events & Tickets / Concerts / Enigma Variations



**Orchestra Concert**  
**Enigma Variations**  
New World Center, Michael Tilson Thomas Performance Hall

Friday, April 14, 2023 at 7:30 PM  
Saturday, April 15, 2023 at 8:00 PM  
Peter Oundjian, conductor  
Chad Goodman, conductor

**Program**  
Tower : *Duets*  
Thompson : *To Awaken the Sleeper*  
Fountain : *Mvt. I from Ritual Dances of the Amak*  
Elgar : *Enigma Variations*

[Buy Tickets](#)

[ADD TO CALENDAR](#)

[About](#) [Tickets](#) [Program](#) [Artists](#)

Conductor Emeritus of the Toronto Symphony and frequent NWS guest Peter Oundjian explores the power of friendship and unity alongside NWS Fellows. Elgar pays homage to those he knew and loved in his *Enigma Variations*, a heartwarming and heartbreaking array of tributes—including the famous *Nimrod*—that Elgar felt accurately revealed his “friends pictured within.” Fueled by the social and political unrest of 2020, Joel Thompson creates a provocative meditation for symphony and narrator using words by James Baldwin. Instruments pairs go toe-to-toe in Joan Tower’s *Duets*, while Primous Fountain—longtime friend and collaborator of MTT—takes off where Stravinsky finished” (*Buffalo Courier-Express*).

---

This concert is part of the Friday Evening and Saturday Evening Two series. With either of these series, you'll enjoy phenomenal artists like Randall Goosby, Jeannette Sorrell, Carlos Miguel Prieto and orchestral master works like Elgar’s *Enigma Variations*, Tchaikovsky’s *Violin Concerto*, two works by Gabriela Ortiz and selections from Handel’s *Water Music*. Subscriptions for the Friday Series (3 concerts) begin at \$90 (\$30/concert). Subscriptions to the Saturday Evening Two Series (4 concerts) begin at \$132 (\$33/concert). [Click to explore the full subscriptions!](#)








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Want to try a little of everything? Customize your own subscription of three or more concerts to exercise full creative freedom while enjoying all the flexibility and perks of being a New World Symphony subscriber. [Click here to build your CYO subscription](#) or call the Box Office at 305.673.3331 to compose your series today.

**SUBSCRIBERS ENJOY THE BEST OF NWS!**

As an NWS Subscriber, you receive amazing benefits to enjoy throughout the season, including the best seats for the lowest prices and access to our incredibly talented Fellows. [Click here to learn more!](#)

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**New World Symphony**  
America's Orchestral Academy  
Michael Tilson Thomas, Artistic Director Laureate

500 17th Street  
Miami Beach, FL  
33139

305.673.3330  
800.597.3331

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# Annexure K

On 2021-03-22 05:21, [isabelle@qwest.tv](mailto:isabelle@qwest.tv) wrote:

Dear Ray

Thanks for your feedback.

Yes I know, I've discussed with New World Symphony team (John Kieser), to build a strong project around MTT / QJ and PF.

That could be wonderful.

But we need to find sponsors, that's the reason why I'm discussing with them.

I'd be very happy to discuss with Mr Fountain, but maybe we should wait for NWS's feedback ?

What do you think ?

Warm regards

Isabelle

-----Message d'origine-----

De : Ray Davis <[info@primousfountain.com](mailto:info@primousfountain.com)> Envoyé : dimanche 21 mars 2021 22:25 À : [isabelle@qwest.tv](mailto:isabelle@qwest.tv) Objet : Re: Qwest Tv by quincy Jones and Primous Fountain

Isabelle Pasquesoone  
Chief Revenue Officer  
Qwest TV

Phone (+33) 1-49-25-01-37 [7]  
Email [isabelle@qwest.tv](mailto:isabelle@qwest.tv)  
Website [www.qwest.tv](http://www.qwest.tv) [8]  
Address 135, rue du Mont Cenis - 75018 Paris - France [9]

RE: Qwest Tv by quincy Jones and Primous Fountain

Message 15 of 89



From [isabelle@qwest.tv](mailto:isabelle@qwest.tv)  
To 'Ray Davis'  
Date 2021-03-31 12:31

Dear Ray

Just to update you : we're moving forward with MTT and New world, and Quincy of course on our side to make something big around this project. The key thing will be the budget, but we've a call in the upcoming weeks to discuss all this and I'll keep you in the loop...

Warm regards

Isabelle

# Annexure L



**facebook** साइन अप करें ईमेल या मोबाइल

**New World Symphony** ✓  
4 फ़रवरी · 🌐

We are excited to partner with Qwest TV, co-founded by music industry mogul Quincy Jones to present a live broadcast of *Victory Stride: The Orchestral Legacy of the Harlem Renaissance* tomorrow night at 7:30pm! In our commitment to make music accessible to all, partnerships like these make our mission all the more possible 🤝

Visit our website to learn how you can watch Qwest TV's live broadcast right from your living room!

***I Dream a World*** *The Harlem Renaissance & Beyond*

*The music of the Harlem Renaissance is rooted in jazz... In this landmark era, Black and white musicians began to merge all kinds of music, including classical composition. This aspect of the time is rarely performed and highlighted, so that's why it makes my soul smile to see my beloved Qwest TV partner with the New World Symphony to illuminate this unique cultural moment.*

*Quincy Jones*

16 3 कमेंट 11 शेयर

🔗 शेयर करें

The 2022-2023 season marks the first New World Symphony concerts in the Michael Tilson Thomas Concert Hall, named for the celebrated NWS co-founder, who assumed the role of Artistic Director Laureate in June 2022. The season features celebrated classical artists including cellist Alisa Weilerstein, violinist Randall Goosby, and pianist Yefim Bronfman alongside artists making their NWS debuts including pianist Isata Kennah-Mason, and sopranos Jeanine De Bique and Heidi Melton.

As Artistic Director Laureate, Michael Tilson Thomas (MTT) takes the podium to lead the New World Symphony in three concerts this season. Other conductors featured include Jeannette Sorrell, Carlos Miguel Prieto, William Eddins, David Robertson, Domingo Hindoyan, Nicholas Collon, Matthias Pintscher, and Gemma New.

Season highlights include a multi-day, multi-disciplinary festival in February celebrating the work of Black artists; a season-long exploration of the work of Mexican composer Gabriela Ortiz; a multi-media Wagnerian evening; and a return of the much-loved Late Night at New World Symphony concert. The 2022-2023 season is marked by collaborations and partnerships with leading-edge arts ensembles from Miami and around the world.

The New World Symphony redoubles its commitment to accessibility with streaming concerts presented by partners including Quincy Jones's Qwest TV as well as a digital membership program for patrons unable to come to the New World Center. Additionally, twelve season concerts will be presented as free WALLCAST® Concerts and streamed onto the New World Center's iconic 7,000-square-foot projection wall. NWS will unveil a new Mobile Wall in Fall 2022. This 23x13 foot projection wall and a state-of-the-art sound system will extend the viewing areas in SoundScape Park during WALLCAST® concerts and will serve neighborhoods across Miami with WALLCAST® content and Fellows as ambassadors.

### ABBA Voyage



### Dea Matrona



### NEWSLETTER



### LATEST NEWS

**Mortenissimo's debut single 'Clair de Lune [Extended]' offers a fresh take on**



# Annexure M

Primous Fountain <primousfountain@gmail.com>

Wed, Mar 9, 2022 at 5:46 PM

To: mtt@mttmusic.net

Cc: Martin Sher <Martin.Sher@nws.edu>, Howard Herring <howard.herring@nws.edu>, Ana Maria Estévez <Ana.Estevez@nws.edu>, william.m.osborne@new.edu, Martha Levine <Martha.Levine@nws.edu>

Dear Michael

After seeing announcements that you will be conducting Mahler I could not help wondering why you cancel my concert then going on to conduct Mahler when one less performance of Mahler or Tchaikovsky would not make a difference? nor would it matter to those composers. Whereas the one concert performance of my work would change, contribute immensely and have an effect on history, and the consciousness of people at this time.

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From the Chicago Symphony to Los Angeles Philharmonic music directors' Muti and Dudamel respectively and others have ignorantly, and I will add with a touch of racism, tried to not recognize the greatness of my works. When the story is told your legacy will have that you cancelled never conducting this concert going on to conduct other concerts, or that you conducted such a concert. Because it is a matter of time that my work will be recognized as some of the greatest work in the entire repertoire of music.

A test of a person's true character is how they act under pressure.

I suggest you revive my concert and carry on with it as planned this season.

Primous

---

Martin Sher <Martin.Sher@nws.edu>

Mon, May 9, 2022 at 10:31 AM

To: Primous Fountain <primousfountain@gmail.com>

Primous,

Thanks for your note. We've just wrapped our season and now both MTT and I are off for the next month on various travels. I hope you'll be pleased to know that we are confirmed to perform 'Ritual Dances' this coming season. Though we had to step away from a fully dedicated concert to your music, we felt it important that we present at least one of your works in honor of our ongoing conversations. We'll perform it twice: on Dec 9 and 10, 2022.

All future projects are on hold pending further discussions with MTT this summer when his travels have been completed - I expect we'll pick up those discussions in July and August, so there won't be much of an update until then.

In the meantime, your work will be a part of the upcoming - and extensive - PR efforts associated with the launch of our upcoming season, so we're excited to get the word out about 'Amak'. I kindly ask you not to post anything to social media until our official release goes out, which is imminent. Thank you as always Primous!

I'll keep you updated as things evolve later in the summer.

---

Martin

# Annexure N

Concert Agreement

Concert music attempted placed on

**Primous Fountain: An American Original**  
*entirely Fountain's music*

**Spanish Dances** *(title of concert)*  
*w. 4 composers in concert from South America*

**Ritual Dances** Movements

**Ritual Dances** Movement

1

1 *(only of 3)*

2

3

**Symphony No. 7**

Movement 1 (20 minutes)

**Piano Solo**

**Film of Fountain's ballet Manifestations**

Dance Theatre of Harlem to be shown *if found*

Showing video of Michael Tilson Thomas and  
Fountain in discussion together.

There was to be a complete week of the orchestra  
rehearsing only my music.

Entire concert was to be recorded and video recorded  
at top level recording.

It would have been the first high level professional  
recording and video of my music.

Quincy Jones was planning to have the concert broad-  
casted on his Qwest TV.

# Annexure O

Here are the names of people at the New World Symphony that the Legal Notice Demand Letter were both emailed to and sent hard copies to by certified mail

Michael Tilson Thomas

William M. Osborne III - Chairman of the board

Adam Carlin - Vice Chairman

Dorothy Terrell - Vice Chairman/Secretary

Howard Herring - President

Beth Garcia-Boleyn - Assistant Vice President and Board Liaison

Martin Sher - Senior Vice President for Artistic Planning and Programs

David J. Phillips - Executive Vice President and Chief Financial Officer

Ashley Skinner - Senior Vice President for Institutional Culture and Inclusion

William C. Hunt - Manager of Artistic Programs and Special Projects

Ana María Estévez - Artist Services Manager and Assistant to the Artistic Director

Martha Levine - Director, Music Library

Kathleen Drohan - Vice President of Communications and Public Relations

Second Demand Letter dated May 6, 2024 was sent by certified mail to and received by the following. None of them responded back:

Michael Tilson Thomas

Martin Sher

Howard Herring - President

William M. Osborne - Chairman of the board

Stephane Deneve - new Music Director of the New World Symphony

Beth Gracia - Assistant vice president

# Annexure P

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## Corrected- Re. Case New World Symphony, MTT

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Primous Fountain <primousfountain@gmail.com>

Thu, Sep 22, 2022 at 11:36 PM

To: Martin Sher <Martin.Sher@nws.edu>

Cc: mtt@mttmusic.net, Martha Levine <Martha.Levine@nws.edu>, Howard Herring <howard.herring@nws.edu>, Ana Maria Estévez <Ana.Estevez@nws.edu>, william.osborne@nws.edu, karen.bechtel@carlyle.com, adam.e.carlin@ms.com, William.Hunt@nws.edu, dorothy.terrell@nws.edu, beth.boleyn@nws.edu, Kathleen.drohan@nws.edu, Ashley.skinner@nws.edu, Adam.E.Carlin@morganstanleypwm.com, adam.carlin@nws.edu, Rohaan Fayaz <adv.rohaan@icloud.com>, Johanna Sparrow <JohannaSparrow44@gmail.com>

Martin Sher

I will only accept the full concert exclusively of my music as was agreed. The New World Symphony does not have permission to perform any work of mine in whole or part, other than in the concert exclusively of my music as we agreed upon, as laid out in the demand letter dated August 8, 2022. As copyright owner of my Ritual Dance Of The Amaks, and of all my works, I have not given and do not give permission for the NWS to include this work nor any work of mine in the NWS's December 9 and 10, 2022 concerts entitled "Spanish Dances" or concerts in April 2023, as you stated in your August 17, 2022 email to me. See attached. My work will only be available to the NWS for the 2022-23 season for the agreed upon concert devoted entirely of my music.


The demand letter which you all have already received states clearly the demand. This is only reiterating what is included within it. Refer back to it.

Primous Fountain

Attached:

Martin Sher email April 17..2022

---

 Martin Sher Email April 17, 2022.pdf  
18K

# Annexure Q

## Symphony Orchestra Event Budget Breakdown: Planning and Financial Analysis for a Classical Concert in Miami

EXPENSES

TOTAL EXPENSES		Estimated	Actual
		\$695,878.00	Estimated ± 15%

Musician's Fee	Estimated	Days
Daily fee during Rehearsal Week	\$400.00	x 7
Event Day fee	\$1,150.00	x 1
Daily Accommodation	\$82.00	x 8
TA/DA	\$105.00	x 8
<b>Total</b>	<b>\$5,446.01</b>	
<b>Total for 96 Musicians</b>	<b>\$522,815.00</b>	

Musical Instruments (Rent)	Estimated	Quantity
String Instruments	\$0.00	-
Woodwind Instruments	\$0.00	-
Brass Instruments	\$0.00	-
Percussion Instruments	\$1,680	4
Miscellaneous (English Horn etc)	\$0.00	-
<b>Total</b>	<b>\$1,680</b>	

Stage & Audio-Visual Equipment (Rent)	Estimated Rent	Days
Chairs x96	\$384.00	x 8
Music Stand x96	\$288.00	x 8
Podium x1	\$10.00	x 8
MicroPhone x15	\$330.00	x 2
Speaker x6	\$480.00	x 2
Projector x2	\$470.00	x 2
<b>Total</b>	<b>\$7,716.00</b>	

All Services	Estimated
Accountant	\$1,200.00
Conductor (Rehearsal+Event)	\$16,700.00
Stage Management	\$1,705.00
General Manager	\$1,540.00
Assistant Manager (2)	\$711.00
PR Services	\$3,200.00
Light Technician	\$300.00
Sound Technician	\$300.00
Advertising	\$1,100.00
Contracts and Legal Fees	\$2,070.00
Security and Crowd Control	\$1,559.00
Visual Media Services	\$3,500.00
Publicist	\$2,200.00
<b>Total</b>	<b>\$36,085.00</b>

Airfare	Estimated	Tickets
International Round-Trip	\$1,220.00	31
Domestic Round-Trip	\$450.00	55
<b>Total</b>	<b>\$62,570.00</b>	<b>86</b>

Others	Estimated
Contingency Fund	\$38,967.00
Administrative Costs	\$11,470.00
Taxes and Fees	Already Included in all fees and costs
Helper's fee	\$950.00
<b>Total</b>	<b>\$51,387.00</b>

Event Site Expenditures	Estimated
Hall Rent (Only Event Day)	\$1,420.00
Cleaning (Including Post Clean)	\$435.00
Green Room and VIP Hospitality	\$5,170.00
Rehearsal Hall 1-Week Rent	\$6,600.00
<b>Total</b>	<b>\$13,625.00</b>

## Demand Letter sent to all the defendants



1. Demand letter to  
MTT-NWS signed.p

### DEMAND LETTER FOR THE ENFORCEMENT OF AGREEMENT

#### FACTS

A legally binding agreement was entered into between my client, PRIMOUS FOUNTAIN, and the orchestra NEW WORLD SYMPHONY (NWS) through MICHAEL TILSON THOMAS who is also the founder of the NWS. The orchestra, with this agreement, intended to celebrate the music of my client in a concert devoted exclusively of my client's work. This concert had been scheduled and publicly announced by the NWS for their 2021-22 season [See **Annexure A – Public announcement of the concert** (*All annexures are attached at the end of the document*)].

In early 2020 conductor Michael Tilson Thomas phoned my client - excitedly telling my client over and over again how original his music is - and he offered to my client to conduct a concert with the NWS exclusively of my client's music [See **Annexure B – Proof of Agreement**].

The barter contract was established between us, with the mutual consideration of the service of the NWS playing and performing my music and Thomas conducting, and furthermore, with the consideration of my providing my music and allowing them to perform it at the concert exclusively of my music [See **Annexure B**].

In addition to my being present for conversation at the concert, as well as allowing at the concert the showing of a film of the ballet "Manifestations", which Arthur Mitchell choreographed to my orchestral work for his Dance Theatre of Harlem, if it could be located.

In 2021 the orchestra made public announcements that the special concert of my music was scheduled for April 16, 2022 [See **Annexure C – Announcement of concert of social media**].

However, Martin Sher, on behalf of the NWS and MTT sent an email saying that both he and Thomas: "Though we had to step away from a fully dedicated concert to your music". [See **Annexure G**]

Upon questioning from the press, NWS's iterated that the concert was still planned.

However, despite the announcement, the NWS tried to contrive this excusing that due to health reasons the concert was to be 'postponed'[See **Annexure D – Proof of MTT's illness public post**]. This was not true because he was continuing conducting orchestra concerts all along [See **Annexure F – Proof of multiple concerts conducted**]. When asked to let a substitute conductor take his place instead of postpone, my client was told that the conductor wants to handle the concert himself and was asked to have the concert next season. My client agreed to the next season postponement.

Henceforth, dissatisfied from the highly unprofessional and unwarranted behavior, we are writing this letter to purport our intentions.

## LEGALLY BINDING AGREEMENT

As per the **41 U.S. Code 6500-6511**:

“A legally enforceable contract requires the following elements:

1. An Offer.
2. An Acceptance.
3. Mutual Consideration.
4. Legal Parties.
5. Legal Purpose.

The offer was made to my client that client’s music will be used by the orchestra in a concert. The acceptance was purported by my client. Mutual consideration was the orchestra conducting my client’s music. The legal parties have already been stated and the legal purpose was for both the parties to benefit from it.

Henceforth, the contract was legally binding. [See **Annexure A**]

## GROUNDS

There are several grounds on which the NWS and Michael Tilson Thomas have breached the legally binding agreement with my client. They are as follows;

- (1) Breach of the main term of the contract. A material breach of contract is a breach that substantially defeats the benefit that the other party expected to receive from the contract.

The term required NWS to celebrate the music of my client in a concert devoted exclusively of my client’s work. This concert had been scheduled and publicly announced by the NWS for their 2021-22 season [**Annexure A and C**].

That, as per **41 U.S. Code 6502-3**:

“one party's failure to fulfill any of its contractual obligations is known as a “breach” of the contract. Depending on the specifics, a breach can occur when a party fails to perform on time, does not perform in accordance with the terms of the agreement, or does not perform at all.”

Moreover, in the case of **Kel Kim Corp v. Central Markets 519 N.E.2d 295, 296 (N.Y. 1987)** it was stated:

“once a party to a contract has made a promise, that party must perform or respond in damages for its failure, even when unforeseen circumstances make performance burdensome”.

Based on the case law precedent above, it is evident that the orchestra is bound to fulfill the agreement where they were bound to hold a concert of solely the music of my client. Furthermore, the law stated that a contract must be completed even in unforeseen circumstances;

“Where performance can be had, without contravening the laws of war, the existence of the contract is not imperiled, and even if performance is impossible, the contract may still, when partly executed, be preserved by ingrafting necessary qualifications upon it, or suspending its impossible provisions [i.e., physical impossibility to cancel timely] If the contract . . . can be saved while the war lasts, it should be. “ (**Mutual Benefit Life Ins. Co. vs Hillyard 37 N.J.L. 444, 468-469.**

- (2) The orchestra tried to contrive the fact that they had to postpone the concert, that they were legally bound to continue with, excusing that due to health reasons the concert was to be 'postponed' [**Do**].

This is a mere misrepresentation under the law. **Rule 9(b) of the Federal Rules of Civil Procedure** states:

“In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally”.

As per **Nazareth International, Inc. Vs J.C. Penney Corporation, Inc., § F/K/A J.C. Penney Company, Inc., 3:04-Cv-1265-M** that the accused

will have misrepresented if he:

“either knew his statement was false or made it recklessly without knowledge of its veracity”.

Moreover, case law precedent such as **Hollywood Casino Corp. v. Simmons**, No. 3:02-CV-0325-M, 2002 U.S. Dist. LEXIS 13182, at \*5 (N.D. Tex. July 18, 2002), **Benchmark Elecs., Inc. v. J.M. Huber Corp.**, 343 F.3d 719, 723 (5th Cir. 2003); **Williams**, 112 F.3d at 177; **Shushany v. Allwaste, Inc.**, 992 F.2d 517, 520 n. 5 (5th Cir. 1993) are proposition for fact that with the set of facts in the current scenario, misrepresentation will be made out;

The fraud was constituted here was because the orchestra was continuing conducting orchestra despite announcing that their music director could not conduct concerts due to health reasons (when it came to conducting the concert that was agreed between the orchestra and my client) [See **Annexure A and C**].

When asked to let a substitute conductor take his place instead of postpone, my client, in writing was told by Martin Sher, a representative authorized to converse with me on behalf of the NWS, that the conductor wants to handle the concert himself and was asked to have the concert implying the next season [**Annexure E – Email purporting postponement of concert**]. My client agreed to postponing the concert to the next seasons postponement.

- (3) A defamation claim arises as per *Stratton Oakmont, Inc. v. Prodigy Services Co.*, 1995 N.Y. Misc. Lexis 229 (N.Y. Sup. Ct. May 24, 1995) and Wisconsin Statutes, § 942.01:

“Whoever with intent to defame communicates any defamatory matter to a 3rd person without the consent of the person defamed is guilty of a Class A misdemeanor”.

The cancelling or the 'appearance of the cancelling' of the concert, that was agreed with my client, had led to the public assuming that the concert was cancelled as a result of some fault of my client and it was something my client did negative to lead to the cancellation of the concert.

The intent element of the offence is made out because the orchestra was reckless in communicating with my client before making the announcement. Moreover, the defamatory act has tarnished my client's image and has ultimately damaged his reputation.

(4) Breach of implied duty of good faith. The **Uniform Commercial Code** provides:

"Every contract or duty within the UCC imposes an obligation of good faith in its performance and enforcement." **UCC § 1-304 and United States v. Leon, 468 U.S. 897 (1984).**

The fact that the concert was postponed was never announced publicly and the information of the concert was removed from their website which goes to show the malafide intentions of the NWS.

Moreover, the orchestra has exploited the agreement as it was only because of the contract for the performance of my client's work in the concert of my client's that allowed the orchestra to benefit by securing a partnership with Quest TV.

The orchestra has non-performed the concert with malafide intention as the NWS continued to conduct other concerts and when it came to the performance of my client's work, NWS excused by misrepresenting health reasons. This is despite of the NWS publishing on their website that the date of my client's concert would be digitally broadcasted on a 'limited concert broadcast series'. [See **Annexure H**].

## **RELIEF SOUGHT**

Having established the legal grounds, it is humbly prayed that my client be catered to. The evidence will show that my client has faced a great deal of problems i.e., mental stress and defamed. Had the orchestra not violated the terms of the contract, this would not be the case. **Thus,**

### **It is humbly prayed that the NWS and Michael Tilson Thomas merely**

- (1) see to it that the agreement my client has with them is upheld, that the original contract is abided by and that the concert is conducted this coming season by Michael Tilson Thomas.
- (2) Make public statements to clarify and remove any damage to my client's image and reputation that the appearance of the cancelling of the concert has caused.

Provided that the above-mentioned prayer is accepted, no legal action will be taken against either the NWS nor Michael Tilson Thomas.

Primous Fountain

August 8, 2022

## Second Demand Letter sent to all the defendants



### 2. OFFICIAL DEMAND LETTER WITH ADDRES

#### **OFFICIAL DEMAND LETTER** **Breach of Contract Notice**

Primous Fountain  
[primousfountain@gmail.com](mailto:primousfountain@gmail.com)

To:

Michael Tilson Thomas  
William M. Osborne III - Chairman of the board  
Adam Carlin - Vice Chairman  
Dorothy Terrell - Vice Chairman/Secretary  
Howard Herring - President  
Beth Garcia-Boleyn - Assistant Vice President and Board Liaison  
Martin Sher - Senior Vice President for Artistic Planning and Programs  
David J. Phillips - Executive Vice President and Chief Financial Officer  
Ashley Skinner - Senior Vice President for Institutional Culture and Inclusion  
William C. Hunt - Manager of Artistic Programs and Special Projects  
Kathleen Drohan - Vice President of Communications and Public Relations

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Dear Michael Tilson Thomas, New World Symphony et al,

I, Primous Fountain, am making one final attempt at settling this matter with the parties addressed. Demand for the relief stated are for breach of contract, racial discrimination, fraud and misrepresentation, and copyright infringement. If there is no response after 30 days legal action WILL be taken to the fullest extent possible against ALL listed parties.

#### **STATEMENT OF FACTS**

Michael Tilson Thomas and I had a binding agreement to which I agreed to let the New World Symphony perform a concert exclusively and entirely of my music. This agreement was made in early 2020 on a phone call between Michael Tilson Thomas and I, Primous Fountain. Thomas wanted to dedicate a concert exclusively of my work because he recognized, as he continued to mention over and over on the phone, how original my work (music) is. The concert was to be titled 'Primous Fountain: An American Original', which shows how much he recognized myself as an original composer and American treasure. The agreement was made under the condition that the concert was to celebrate and only feature the music of Primous Fountain. The concert was announced publicly by the NWS for the 2021-2022 Season and is still on the NWS website until this day. The link to the announcement can be found here: <https://www.nws.edu/news/2021/nws-announces-2021-22-season/>. Also there were full pages dedicated to this concert on the NWS site, one of which is included in Exhibit A at the end of this letter.

A contract was created as per United States Law which requires 5 elements: 1. Offer 2. Acceptance 3. Mutual Consideration. 4. Legal Parties 5. Legal Purpose.

1. The Offer was made on a phone call from Thomas to Primous to which Thomas was very enthusiastic. After much praise of Fountain's music Thomas made the offer to give a concert entirely of Fountain's music performed by the NWS.
2. I, Primous Fountain, accepted his offer of the concert to be performed entirely of my music by the NWS with him conducting.
3. The consideration was Thomas conducting and the orchestra performing the concert in exchange for the orchestra being granted the use of my Intellectual Property (music). Also the revenue earned from such a concert would be consideration as well.
4. Both parties were legally able to enter into a contract.
5. The purpose was a concert exclusively dedicated to the music of Primous Fountain, the orchestra to generate revenue, and a concert of notoriety.

Henceforth, the contract was legally binding. Michael Tilson Thomas breached this contract in multiple ways. Also while breaching the contract the parties participated in what could appear to be racial discrimination in not giving the concert. Also copyright infringement could have occurred if they performed my music without my expressed permission.

#### **Breach of Contract**

The NWS orchestra never performed the concert solely dedicated to the music of Primous Fountain as was originally agreed to. As per 41 U.S. Code 6502-3: "One party's failure to fulfill any of its contractual obligations is known as a "breach" of the contract. Depending on the specifics, a breach can occur when a party fails to perform on time, does not perform in accordance with the terms of the agreement, or does not perform at all."

For over 2 years the parties have either come up with excuses for not doing the concert and also have not responded to inquiries. They used language in emails such as "pulling back on a full concert of your work." (Sher, Exhibit C). However no exact reason was given for why the concert did not go on. At one point it was stated that Michael Tilson Thomas was sick on a public facebook post but he was still conducting at that time and continues to conduct to this day.

#### **Racial Discrimination**

It is a known fact that Blacks make up only .5% of the symphonic industry. When Thomas did not conduct the work of Fountain, he instead went on to do a performance of Mahler, a European composer. Giving an Black American composer his own concert would have been a historic event, but also that might not be received well to a majority white customer base. That same season the vast majority of works performed were by other white composers.

The defendants also scheduled Primous Fountain's music to be performed within a Spanish composers' showcase and only be one-fifth of the show. The slot would only feature one-third of the work (Amak). This was insulting as the original concert was supposed to be only of my music and that I, Primous, am not of Spanish descent. Also the fact that I was referred to as "An American Original" in the original concert plans and then to be included with four South American Spanish composers for a Spanish theme show showed malicious intent. Also they intentionally misrepresented my brand to the public. These are racial discrimination claims to be pursued under 42 U.S. Code § 1981.

#### **Fraud and Misrepresentation**

After the parties were notified that I did not consent to my music being performed without a full dedication concert I was still then publicized on the website as a "friend and collaborator of MTT" and one of my works was still scheduled to be performed. (Exhibit D) This concert was supposed to have happened April 14th-15th, 2023. However in the email that I sent to Martin Sher, Senior Vice President for Artistic Planning and Programs, et al dated September 22nd, 2022 I clearly stated that I did not consent to my music being performed outside of a full dedication concert. (Exhibit E) This is fraud on behalf of the parties to showcase this advertisement.

#### **Copyright Infringement**

If any performances have taken place featuring the work of Primous Fountain outside of a full dedication concert this constitutes copyright infringement. I, Primous Fountain, am the intellectual copyright owner of all of my music. The parties were notified of this and I only gave permission for the music to be played if the concert was a full dedication to my music. It seems as if the NWS has maybe performed parts of my work with other works as it was shown on the website. (Exhibit D) If these performances occurred the defendants violated 17 U.S. Code § 501 in defiance of me telling them not to do the work.

### Demand for Relief

The complainant demands that the agreed upon concert that includes Thomas conducting the entire concert go on as originally agreed upon with the terms stated below:

1. A concert entirely of my music with MTT conducting. Also because of their further neglect and ignoring of the first demand letter, a two day concert exclusively of my music instead of the one day originally agreed upon.
2. Or, money to hire and cover the cost for my putting together musicians for a comparable symphony orchestra as theirs for the purpose to give the concert exclusively of my music as originally planned. (Included in such settlement is the cost for hiring conductor, renting concert hall, rehearsal space, food and lodging for musicians (as the NWS have musicians from all over the world so I should be about to hire musician national and international as well), video recording, publicity agent, assistant fees, etc.)
3. In addition to either of #1 or #2 above -

Damages for the way I have been treated throughout this whole ordeal. MTT and NWS conspired together to deceive me, misuse me, caused suffering emotionally and psychologically, tarnished my reputation, and used my name in publicly announcing there would be a performance of a work of mine (Ritual Dances Of The Amaks), whereas I had already given the orchestra written notice that no music of mine could be performed other than on a concert exclusively of my music. On top of this they had the audacity to publicize with that announcement "Primous Fountain – longtime friend and collaborator of MTT" - , under the circumstance of the breach and having received the first demand letter. The complainant demands \$15 million for pain and suffering, punitive damages, humiliation, and tarnishing my reputation.

Failure to respond to this letter within 30 days will result in legal action to the fullest extent.

Primous Fountain  
1893 E Washington Ave

May 6, 2024

Madison, WI 53704  
primousfountain@gmail.com