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9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 TERRANCE HAYES, an individual,

13 Plaintiff,

14 v.

15
16 KENDRICK LAMAR DUCKWORTH
17 p/k/a KENDRICK LAMAR, an individual;
18 TERRACE JAMAHL MARTIN, an
19 individual; JOSEF LEIMBERG, an
20 individual; TOP DAWG
21 ENTERTAINMENT, LLC, a Delaware
Limited Liability Company; and DOES 1 –

22 Defendants.
23

Case No.:

PLAINTIFF’S COMPLAINT FOR:

**(1) DIRECT COPYRIGHT
INFRINGEMENT; AND**

**(2) SECONDARY COPYRIGHT
INFRINGEMENT;**

JURY TRIAL DEMANDED

24
25 Plaintiff, Terrance Hayes, by and through his undersigned attorneys, hereby
26 prays to this honorable Court for relief based on the following:

27 //

1 **INTRODUCTION**

2 “Loyalty” is a hit song by Kendrick Lamar Duckworth, from his fourth studio
3 album *Damn*, released on April 14, 2017. It was co-written and produced by Terrace
4 Martin, a musician and record producer who closely collaborated with Josef
5 Leimberg with whom Plaintiff Terrance Hayes had an ongoing working relationship
6 and who had access to Hayes’ work. “Loyalty” bears similarities so striking to
7 Hayes’ pre-existing work as to preclude the possibility that it was independently
8 created. Yet Defendants did not credit Hayes as a writer of “Loyalty,” seek or obtain
9 his consent for their use of his original material, or offer him any compensation for
10 that use. This action seeks redress for Defendants’ violations of the Copyright Act.

11 **PARTIES**

12 1. At all times mentioned herein, Terrance Hayes (“Hayes”) was an
13 individual residing in Los Angeles, California.

14 2. Plaintiff is informed and believes and thereon alleges that Kendrick
15 Lamar Duckworth, p/k/a Kendrick Lamar (“Lamar”) is an individual residing in Los
16 Angeles, California.

17 3. Plaintiff is informed and believes and thereon alleges that Terrace Jamahl
18 Martin (“Martin”), is an individual residing in Los Angeles, California.

19 4. Plaintiff is informed and believes and thereon alleges that Josef Leimberg
20 (“Leimberg”), is an individual residing in Los Angeles, California.

21 5. Plaintiff is informed and believes and thereon alleges that Top Dawg
22 Entertainment, LLC (“TDE”), is a Delaware limited liability company with its
23 principal place of business at 335 E. Albertoni Street #200-649, Carson, California,
24 duly authorized to do and doing business in and with the residents of California and
25 this District.

26 6. Defendants Does 1 through 10, inclusive, are other parties not yet
27 identified who have infringed Plaintiff’ copyrights, have contributed to the

GENERAL FACTUAL ALLEGATIONS

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11. In 2011 Hayes composed the track entitled “Loyalty” (“Subject Track”). Hayes holds the exclusive copyright in the Subject Track and has registered the same with the U.S. Copyright Office.

12. In 2011 Hayes together with Leimberg recorded the Subject Track at Ironworx Creative Recordings studio.

13. Hayes and Leimberg had a history of working together and have collaborated and recorded music together for over eight (8) years. Hayes kept his music catalogue and all of his recording sessions at Leimberg’s studio on Leimberg’s computer.

14. In 2014 Leimberg collaborated with Martin on Lamar’s Grammy Award-winning album *To Pimp a Butterfly* and received producer credit for the album under their joint alias LoveDragon.

15. Hayes met Martin through Leimberg at Leimberg’s studio and Martin was familiar with Hayes’ work.

16. Martin is a Grammy Award-winning producer of Lamar’s albums *To Pimp a Butterfly* and *Damn*.

17. Martin had access to the Subject Track through his close working relationship with Leimberg.

18. In 2016 Hayes created a remix of Subject Track (“Remix”). Both Leimberg and Martin had access to Hayes’ music folder containing his recordings that was stored on Leimberg’s computer and had access to both the Subject Track and the Remix on the drive during his listening sessions.

19. On April 14, 2017, TDE released the song “Loyalty (“Infringing Song”) as part of Lamar’s fourth studio album *Damn*. The Infringing Song features singer Rhianna on vocals together with Lamar, and credits Lamar and Martin, among others as co-songwriters. Martin is also credited as a co-producer of the Infringing Song.

1 20. Plaintiff believes and herein alleges that Martin had access to the Subject
 2 Track through Leimberg, who was his close music collaborator. Subsequently Martin
 3 and Doe Defendants copied the entire composition, including title, melody, harmony
 4 and rhythm from the Subject Track into the Infringing Song, and slowed it down
 5 through a synthesizer and combined it with another sample to disguise the copying.

6 21. The Infringing Song copies substantial qualitative and quantitative
 7 portions of the Subject Track, including the same song title, similar subject matter,
 8 substantially similar note combinations and structures, melodies, themes, rhythm, and
 9 kick and snare patterns.

10 22. Both the Subject Track and the Infringing Song both songs use the same
 11 chord progressions, melodies and other aspects throughout, and neither song features
 12 any changes in the musical elements as the recordings progress toward their
 13 conclusions.

14 23. The melody of the Infringing Song is identical to the Subject Track with
 15 a few minor variations, which can be seen by juxtaposing both melodies.

16 24. The transcript below shows how similar these melodies are:

The image shows a musical transcript comparing two melodies. The top staff is labeled 'Hayes' Loyalty' and the bottom staff is labeled 'Lamar's Loyalty'. Both are in 4/4 time with a tempo of 112. The notation is divided into four measures (M.1 to M.4). Chord progressions are indicated below the notes. In M.1, both melodies have the note sequence E D E D C D E. In M.2, Hayes' has G and Lamar's has G. In M.3, Hayes' has E D C D A and Lamar's has E D E G A. In M.4, Hayes' has E D E G and Lamar's has E D D F G. The two melodies are nearly identical in their note sequences.

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1 25. The progression of the principal tones in the Infringing Song is identical
 2 to the same upwardly reaching arc that is found in the Subject Track. The transcript
 3 below shows how similar these tone progressions are:

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5 *The ascendance of the principal tones in Hayes' Loyalty*

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8 *The ascendance of the principal tones in Lamar's Loyalty*

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12 26. The chord progressions in the Infringing Song and Subject Track are also
 13 similar. The chord progression of the Infringing Song is identical to the Subject Track
 14 progression, with one exception: In measure 3, the Infringing Song progression
 15 returns to Am for 3 beats before ascending to Em in an upper octave. The transcript
 16 below shows the similarities in the chord progressions:

17

18 *chord progression of Hayes' Royalty*

19

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21 *chord progression of Lamar's Royalty*


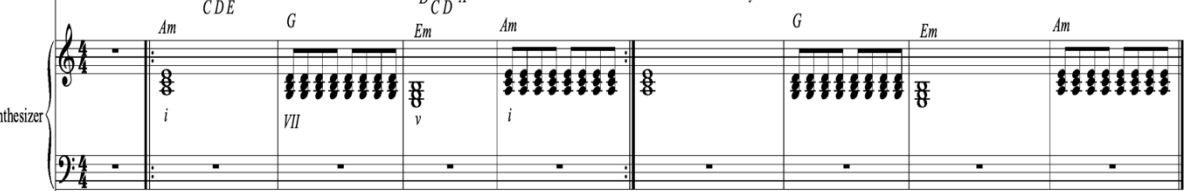
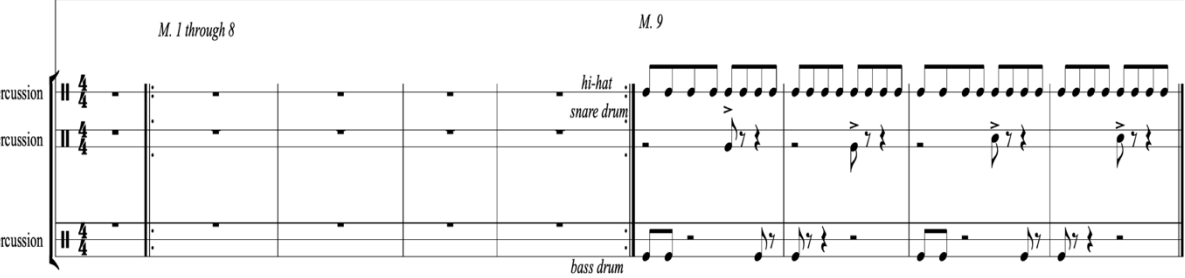
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25 27. The musical arrangements of both the Infringing Song and the Subject
 26 Track are identical, employing the same instruments played with the same timbre. In
 27 both recordings the drums enter at exactly the same time. In both arrangements, the

1 drums enter at measure 9 and continue to play in the same rhythm throughout the rest
 2 of the recordings. The transcript below depicts the similarity in the arrangement of
 3 the recordings:

4
 5 $\text{♩} = 112$
 6 *Hayes' Loyalty*
 melody 
 7 
 8 Synthesizer
 9 
 10 M. 1 through 8 M. 9

11
 12 $\text{♩} = 112$
 13 *Lamar's Loyalty*
 14 melody 
 15 
 16 Synthesizer
 17 
 18 M. 1 M. 9

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 26 28. The recordings of both songs feature the rhythm being provided by
 27 electronic drum tracks, which mimic the instruments in a typical drum set. The same
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1 three percussion instruments are used in the two recordings: bass drum, snare drum,
2 and hi-hat. The bass drum plays two 8th notes on beat 1 and one 8th note on beat 4 in
3 both recordings. The snare drum on both recordings plays an 8th note on beat 3. The
4 hi-hat in both records plays steady 8th notes. Both drum set parts are identical as
5 illustrated in the transcript below:

6 Drum track to Hayes' *Loyalty*

7

8 *hi-hat*

9

10 *snare drum*

11 *beat 3*

12

13

14 *bass drum*

15 *beat 1* *beat 4*

16 Drum track to Lamar's *Loyalty*

17

18 *hi-hat*

19

20 *snare drum*

21 *beat 3*

22

23

24 *bass drum* *beat 1* *beat 4*

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1 29. The vocal arrangement of the female vocal presence on the hook as an
2 answer to the male dominated verses in the Subject Song’s mirrors the arrangement
3 of the Infringing Track.

4 30. Likewise, the messaging of the Subject Song and the Infringing Track are
5 very similar. Both recordings share the same title “Loyalty,” and address devotion of
6 both parties (the female/male vocalists) to one another and the challenges of said
7 devotion.

8 31. On information and belief, Plaintiff alleges that the Defendants
9 developed and distributed the Infringing Song for the benefit of themselves and
10 others. Plaintiff also alleges that the Defendants recorded, distributed and publicly
11 performed the Infringing Song. The Infringing Work has been repeatedly played on
12 the radio, streaming services, and other media in this District and elsewhere in the
13 United States and the rest of the world.

14 32. On information and belief, Plaintiff alleges that Lamar has performed and
15 continues to perform the Infringing Song and reap the benefits of the Infringing Song,
16 including through the receipt and/or collection of royalties and licensing fees
17 therefrom.

18 33. Defendants continue to exploit and receive monies from their infringing
19 single in violation of Plaintiff’s rights in his proprietary Subject Track.

20 **FIRST CLAIM FOR RELIEF**

21 (For Direct Copyright Infringement – Against all Defendants, and Each of
22 Them)

23 34. Plaintiff repeats, re-alleges, and incorporates herein by reference as
24 though fully set forth, the allegations contained in the preceding paragraphs of this
25 Complaint.
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1 35. Plaintiff is the sole and exclusive owner of the Subject Track’s
2 composition and sound recording, which has been registered with the U.S. Copyright
3 Office.

4 36. The Infringing Song is an unauthorized reproduction and copy of the
5 Subject Track, and/or is an unlawful derivative thereof.

6 37. Defendants’ unauthorized distribution, public performance, display, and
7 creation of a derivative work of the Subject Track infringes Plaintiff’s exclusive
8 and/or beneficial rights in the Subject Track in violation of the Copyright Act, 17
9 U.S.C. § 101 *et seq.*

10 38. Defendants’ conduct has at all times been, and continues to be, knowing,
11 willful, and with complete disregard to Plaintiff’s rights.

12 39. During the three years before the date of the filing of the initial complaint
13 in this action, and to date, Defendants, and each, have infringed Plaintiff’s copyright
14 interest in the Subject Track by, without limitation: (a) authorizing the live
15 performance, reproduction, distribution and sale of the records and digital downloads
16 through the execution of licenses, and/or actually selling, manufacturing, and/or
17 distributing physical or digital or electronic copies of the Infringing Song as a single
18 and/or as part of Lamar’s studio album *Damn*, and/or in the soundtrack to the music
19 video, through various physical and online sources, without limitation, Spotify,
20 YouTube, Apple Music, Amazon, Pandora; (b) publicly performing the Infringing
21 Song at live productions and performances; (c) participating in and furthering the
22 aforementioned infringing acts, and/or sharing in the proceeds therefrom, all through
23 substantial use of the Subject Track in and as part of the infringing work Infringing
24 Song packaged in a variety of configurations and digital downloads, mixes and
25 versions, and performed in a variety of ways including, but not limited to, audio and
26 video.

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1 40. Due to Defendants', and each of their, acts of infringement, Plaintiff has
2 suffered actual, general and special damages in an amount to be established at trial,
3 including but not limited to a reasonable license fee for Defendants' use of the
4 sample.

5 41. Due to Defendants' acts of copyright infringement as alleged herein,
6 Defendants, and each of them, have obtained direct and indirect profits they would
7 not otherwise have realized but for their infringement of Plaintiff's rights in
8 Plaintiff's copyrighted sound recordings. As such, Plaintiff is entitled to
9 disgorgement of Defendants' profits directly and indirectly attributable to
10 Defendants' infringements of their rights in the sound recordings in an amount to be
11 established at trial.

12 42. Defendants' conduct is causing and, unless enjoined by this Court, will
13 continue to cause Plaintiff irreparable injury that cannot be fully compensated or
14 measured in monetary terms. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a
15 permanent injunction prohibiting the reproduction, distribution, sale, public
16 performance or other use or exploitation of the Subject Track including the infringing
17 song Infringing Song.

18 **SECOND CLAIM FOR RELIEF**

19 (For Vicarious and/or Contributory Copyright Infringement—

20 Against all Defendants, and Each)

21 43. Plaintiff repeats, re-alleges, and incorporates by reference all preceding
22 paragraphs of this Complaint.

23 44. Plaintiff is informed and believes and now alleges that within three years
24 before the filing of Plaintiff's complaint in this Action, Defendants knowingly
25 induced, participated in, aided and abetted in and profited from the illegal
26 reproduction, distribution, and publication of the Infringing Song as alleged above.
27 Specifically, the Defendants underwrote, facilitated, and participated in illegal
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1 copying during the creation of the Infringing Track. Defendants, and each of them,
2 realized profits through their respective obtainment, distribution, and publication of
3 the Infringing Track.

4 45. Plaintiff is informed and believes and now alleges that within three years
5 before the filing of Plaintiff's complaint in this Action, Defendants, and each of
6 them, are vicariously liable for the infringement alleged herein because they had the
7 right and ability to supervise the infringing conduct and because they had a direct
8 financial interest in the infringing conduct. Specifically, each Defendant involved in
9 the infringement had the ability to oversee the publication and distribution of the
10 Infringing Song. Furthermore, Defendants and each of them, had the right and ability
11 to preclude or put a stop to the unauthorized exploitation of the Subject Track and the
12 creation and monetization of the Infringing Song, and failed to exercise those rights.
13 And, Defendants, and each of them, realized profits through their respective
14 obtainment, distribution, and publication of the Infringing Song featuring the
15 appropriated sample.

16 46. By reason of Defendants', and each of their, acts of contributory and
17 vicarious infringement as alleged above, Plaintiff has suffered and will continue to
18 suffer substantial damages in an amount to be established at trial, as well as
19 additional actual, general and special damages in an amount to be established at trial.

20 47. Due to Defendants' acts of copyright infringement as alleged herein,
21 Defendants, and each of them, have obtained direct and indirect profits they would
22 not otherwise have realized but for their infringement of Plaintiff's rights. As such,
23 Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly
24 attributable to Defendants' infringement of Plaintiff's rights in their copyrighted
25 sound recordings in an amount to be established at trial.

26 48. Plaintiff is informed and believe and now alleges that Defendants, and
27 each of their, conduct as alleged herein was willful, reckless, and/or with knowledge,
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1 subjecting Defendants, and each of them, to preclusion from deducting certain costs
2 when calculating disgorgeable profits.

3 **PRAYER FOR RELIEF**

4 (Against All Defendants)

5 With Respect to Each Claim for Relief, Plaintiffs demand judgment against
6 Defendants as follows:

- 7 a. That Defendants, their affiliates, agents, and employees be enjoined from
8 infringing Plaintiff's copyrights in and to Plaintiff's copyrighted sound
9 recordings;
- 10 b. Granting an injunction permanently restraining and enjoining Defendants,
11 their officers, agents, employees, and attorneys, and all those persons or
12 entities in active concert or participation with them, or any of them, from
13 further infringing Plaintiff's copyrights in and to Plaintiff's copyrighted
14 sound recordings;
- 15 c. For a constructive trust to be entered over any recordings, videos
16 reproductions, files, online programs, and other material in connection with
17 the Infringing Song and all revenues resulting from the exploitation of
18 same, for the benefit of Plaintiffs;
- 19 d. That Plaintiff be awarded all profits of Defendants, and each, plus all losses
20 of Plaintiff, plus any other monetary advantage gained by the Defendants
21 through their infringement, the exact sum to be proven at the time of trial;
- 22 e. That Defendants pay damages equal to Plaintiff's actual damages and lost
23 profits;
- 24 f. That Plaintiff be awarded pre-judgment interest as allowed by law;
- 25 g. That Plaintiff be awarded the costs of this action; and
- 26 h. That Plaintiff be awarded such further legal and equitable relief as the Court
27 deems proper.

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Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P. 38 and the 7th Amendment to the United States Constitution.

Respectfully submitted,

Dated: August 21, 2020

/s/ Stephen M Doniger
Stephen M. Doniger, Esq.
Elina E. Kharit, Esq.
Attorneys for Plaintiff