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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 JAMAH MARTIN, an
19 individual; JOSEF LEIMBERG, an
20 individual; TOP DAWG
21 ENTERTAINMENT, LLC, a Delaware
22 Limited Liability Company; and DOES 1 –
23 10,

24 Defendants.

Case No.:

PLAINTIFF'S COMPLAINT FOR:

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

**(2) SECONDARY COPYRIGHT
INFRINGEMENT;**

JURY TRIAL DEMANDED

25 Plaintiff, Terrance Hayes, by and through his undersigned attorneys, hereby
26 prays to this honorable Court for relief based on the following:
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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
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1 infringement of Plaintiff' copyrights, or have engaged in one or more of the wrongful
2 practices alleged herein. The true names, whether corporate, individual or otherwise,
3 of Defendants 1 through 10, inclusive, are presently unknown to Plaintiff, which
4 therefore sue said Defendants by such fictitious names, and will seek leave to amend
5 this Complaint to show their true names and capacities when same have been
6 ascertained.

7 7. Plaintiff is informed and believes and thereon alleges that at all times
8 relevant hereto each of the Defendants was the agent, affiliate, officer, director,
9 manager, principal, alter-ego, and/or employee of the remaining Defendants and was
10 at all times acting within the scope of such agency, affiliation, alter-ego relationship
11 and/or employment; and actively participated in or subsequently ratified and adopted,
12 or both, each and all of the acts or conduct alleged, with full knowledge of all the
13 facts and circumstances, including, but not limited to, full knowledge of each and
14 every violation of Plaintiff' rights and the damages to Plaintiff proximately caused
15 thereby.

16 **JURISDICTION AND VENUE**

17 8. This action arises under the Copyright Act of 1976, Title 17 U.S.C., §
18 101 *et seq.*

19 9. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and
20 1338 (a) and (b), and 1367(a).

21 10. This Court has personal jurisdiction over each and every one of the
22 Defendants. Venue in this Court is proper under 28 U.S.C. § 1391(c) and 1400(a)
23 because one or more Defendants reside and/or carry on business here, and the
24 wrongful acts of Defendants took place, in whole or in part, in this District.

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GENERAL FACTUAL ALLEGATIONS

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.

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

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

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

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

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

The musical notation compares two melodies, 'Hayes' Loyalty' and 'Lamar's Loyalty', both in 4/4 time with a tempo of 112. The notation shows measures 1 through 4 for each piece, with notes and chords labeled below the staff. The melodies are nearly identical, with only minor variations in the final measure of measure 4.

Hayes' Loyalty:

- M.1: E D E D C D E
- M.2: G
- M.3: E D C D A
- M.4: A

Lamar's Loyalty:

- M.1: E D E D C D E
- M.2: G
- M.3: E D E G A
- M.4: E D D F G

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

The image displays two musical staves in 4/4 time, both with a tempo marking of ♩ = 112. The top staff, labeled 'The ascendance of the principal tones in Hayes' Loyalty', shows a melodic line with notes E, G, A, and E across measures 1, 2, 3, and 4, respectively. The bottom staff, labeled 'The ascendance of the principal tones in Lamar's Loyalty', shows a similar melodic line with notes E, G, A, and E across measures 1, 2, 3, and 4. Brackets and labels (M.1, M.2, M.3, M.4) indicate the correspondence between the measures of the two tracks.

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

The image displays two musical staves in 4/4 time, showing chord progressions. The top staff, labeled 'chord progression of Hayes' Royalty', shows chords Am, G, Em, and Am across measures 1, 2, 3, and 4. The bottom staff, labeled 'chord progression of Lamar's Royalty', shows chords Am, G, Am, and Am across measures 1, 2, 3, and 4. The notation includes chord symbols (Am, G, Em) and Roman numerals (i, VII, v) to indicate the harmonic structure.

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

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

Hayes' Loyalty

♩ = 112

melody

Am CDE G G EDCD A A E D E G melody

Synthesizer

i VII v i

M. 1 through 8 M. 9

Percussion

hi-hat

snare drum

bass drum

Lamar's Loyalty

♩ = 112

melody

E Am DE DCDE G G Am A Am Am G Am Em Am

Synthesizer

M.1 M.9

Percussion

hi-hat

snare drum

bass drum

28. The recordings of both songs feature the rhythm being provided by electronic drum tracks, which mimic the instruments in a typical drum set. The same

three percussion instruments are used in the two recordings: bass drum, snare drum, and hi-hat. The bass drum plays two 8th notes on beat 1 and one 8th note on beat 4 in both recordings. The snare drum on both recordings plays an 8th note on beat 3. The hi-hat in both records plays steady 8th notes. Both drum set parts are identical as illustrated in the transcript below:

Drum track to Hayes' *Loyalty*

hi-hat

snare drum

beat 3

bass drum

beat 1

beat 4

Drum track to Lamar's *Loyalty*

hi-hat

snare drum

beat 3

bass drum

beat 1

beat 4

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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.

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.

1 Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P.
2 38 and the 7th Amendment to the United States Constitution.

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4 Respectfully submitted,

5 Dated: August 21, 2020

6 /s/ Stephen M Doniger
7 Stephen M. Doniger, Esq.
8 Elina E. Kharit, Esq.
9 Attorneys for Plaintiff
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