

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Brandon Lee, p/k/a “Don Lee,” an individual;
and Glen Keith DeMeritt III, an individual,

Plaintiffs,

- against -

Montero Lamar Hill p/k/a “Lil’ Nas X,” an individual; Belcalis Marlenis Almánzar p/k/a “Cardi B,” an individual; David Charles Marshall Biral, p/k/a “Take a Daytrip,” an individual; Denzel Michael-Akil Baptiste p/k/a “Take a Daytrip,” an individual; Rosario Peter Lenzo IV, an individual; Klenord Raphael, an individual; Russell James Hill Jr., an individual; Alex Facio, an individual Unzque, an individual; Sony Music Entertainment, a New York company, individually, and doing business as “Columbia Records”; Sony Music Holdings, Inc., a New York corporation; Songs of Universal, Inc., a Chicago corporation, and DOES 1-10,

Defendants.

Case No. 1:19-CV-09220-JMF

DEFENDANT MONTERO LAMAR HILL’S ANSWER AND DEFENSES

Defendant Montero Lamar Hill (“Hill”), by and through his attorneys, Davis Wright Tremaine LLP, hereby submits his answer and affirmative defenses to the Complaint and Demand for Jury Trial filed by Brandon Lee and Glen Keith DeMeritt III (“Plaintiffs”) on October 4, 2019 (the “Complaint”) in the above-captioned litigation.

For the avoidance of doubt, Hill denies any and all statements in the Complaint’s section headings or otherwise made outside the numbered paragraphs therein. As to the allegations contained in the numbered paragraphs of the Complaint, Hill hereby answers and responds as follows:

JURISDICTION AND VENUE

1. Hill admits that the Complaint purports to assert a claim for copyright infringement and for violation of California state law.

2. Paragraph 2 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent that allegations require a response, Hill denies them.

3. Paragraph 3 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent that allegations require a response, Hill admits that venue is proper, but denies that this litigation has been transferred to the Central District of California.

PARTIES

4. Hill denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 4 of the Complaint.

5. Hill denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 5 of the Complaint.

6. Hill admits that he is an individual conducting business in New York.

7. Hill denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 7 of the Complaint.

8. Hill denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 8 of the Complaint.

9. Hill denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 9 of the Complaint.

10. Hill denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 10 of the Complaint, except denies any responsibility for Plaintiffs' claimed damages.

11. Hill denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 11 of the Complaint, except admits that plaintiff purports to refer to all Defendants, named and “Doe” Defendants, as “Defendants.”

12. Hill denies the allegations in paragraph 12 of the Complaint.

FACTUAL STATEMENT

13. Hill denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 13 of the Complaint.

14. Hill denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 14 of the Complaint.

15. Hill objects that paragraph 15 of the Complaint alleges supposed expert opinion which is premature under Federal Rule of Civil Procedure 26, and to the extent lay opinion, inappropriate, and Hill denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 15 of the Complaint.

16. Hill denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 16 of the Complaint.

17. Hill denies accessing and copying the work, gwenXdonlee4-142, and denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 17 of the Complaint.

18. Hill denies copying the work, gwenXdonlee4-142, and denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 18 of the Complaint.

19. Hill denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 19 of the Complaint.

20. Hill denies the allegations in paragraph 20 of the Complaint.

21. Hill objects that paragraph 21 of the Complaint alleges supposed expert opinion which is premature under Federal Rule of Civil Procedure 26, and to the extent lay opinion, inappropriate. Hill denies substantial similarity between the works at issue, denies infringing the claimed copyright, and denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 21 of the Complaint.

22. Hill objects that paragraph 22 of the Complaint alleges supposed expert opinion which is premature under Federal Rule of Civil Procedure 26, and to the extent lay opinion, inappropriate. Hill denies the allegations in paragraph 22 of the Complaint.

23. Hill admits that the work, *Rodeo* is publicly available, but denies the allegations in paragraph 23 of the Complaint that it is an infringing work or otherwise violates Plaintiffs' claimed rights, and denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 23 of the Complaint.

FIRST CLAIM FOR RELIEF
DIRECT, CONTRIBUTORY, AND VICARIOUS COPYRIGHT INFRINGEMENT
(Against all Defendants and Each)

24. Hill repeats and realleges his responses set forth above in paragraphs 1 through 23 as if fully set forth herein.

25. Hill denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 25 of the Complaint.

26. Hill denies the allegations in paragraph 26 of the Complaint.

27. Hill denies the allegations in paragraph 27 of the Complaint.

28. Hill denies copying the work, gwenXdonlee4-142, or infringing the claimed copyright and denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 28 of the Complaint.

29. Paragraph 29 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent the allegations require a response, Hill denies the allegations in paragraph 29 of the Complaint.

30. Hill admits that he did not receive consent from Plaintiffs to exploit the work, *Rodeo*, but denies the allegations contained in paragraph 30 of the Complaint to the extent those allegations assume that Hill required permission from Plaintiffs in order to exploit the work, *Rodeo*. Hill otherwise denies the allegations in paragraph 30 of the Complaint.

31. Hill admits that he did not receive consent from Plaintiffs to use the work, *Rodeo*, but denies the allegations contained in paragraph 31 of the Complaint to the extent those allegations assume that Hill required permission from Plaintiffs in order to publish the work, *Rodeo*. Hill otherwise denies the allegations in paragraph 31 of the Complaint.

32. Hill denies the allegations in paragraph 32 of the Complaint.

33. Hill denies the allegations in paragraph 33 of the Complaint.

34. Paragraph 34 of the Complaint contains allegations of law, not fact to which no response is required. To the extent the allegations require a response, Hill denies the allegations in paragraph 34 of the Complaint.

35. Hill denies the allegations in paragraph 35 of the Complaint.

36. Hill denies the allegations in paragraph 36 of the Complaint.

37. Hill denies the allegations in paragraph 37 of the Complaint.

38. Hill denies the allegations contained in paragraph 38 of the Complaint, except admits that the Complaint purports to seek to recover damages in the form “direct and indirect revenues and profits.”

39. Paragraph 39 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent the allegations require a response, Hill denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 39 of the Complaint.

SECOND CLAIM FOR RELIEF
FOR DECLARATORY RELIEF
(Against all Defendants and Each)

40. Hill repeats and realleges his responses set forth above in paragraphs 1 through 39 as if fully set forth herein.

41. Paragraph 41 of the Complaint does not require a response because it does not contain allegations of fact. To the extent paragraph 41 of the Complaint requires a response, Hill admits that the Complaint purports to seek a declaration of rights pursuant to 28 U.S.C. § 2201(a) and otherwise denies the allegations contained therein.

42. Hill denies the allegations in paragraph 42 of the Complaint.

PRAYER FOR RELIEF

With respect to the Prayer for Relief in the Complaint, Hill denies all allegations made therein and denies that Plaintiffs are entitled to any of the relief they seek.

Each and every allegation contained in the Complaint not specifically admitted herein is denied.

AFFIRMATIVE AND OTHER DEFENSES

To the extent it is Plaintiffs’ burden to prove any of the issues raised in the affirmative defenses set forth below, Hill hereby preserves, and do not waive, his legal position that Plaintiffs

maintain the burden of proof on those issues. Moreover, the Complaint may not describe the claims or facts with sufficient particularity to permit Hill to identify all defenses that may exist. Hill reserves the right to amend in order to allege further defenses that may become apparent in the course of discovery or this litigation. Notwithstanding the foregoing, Hill alleges the following defenses:

FIRST DEFENSE

The Complaint, and each purported claim for relief therein, fails to state a claim upon which relief may be granted.

SECOND DEFENSE

The work, *Rodeo*, was created independently from and without knowledge of the allegedly infringed work.

THIRD DEFENSE

The Complaint, and each purported claim for relief alleged in it, fails because the musical elements from gwenXdonlee4-142 supposedly used in *Rodeo* are neither original to Plaintiffs nor copyrightable subject matter.

FOURTH DEFENSE

Any alleged use in *Rodeo* of any musical elements from gwenXdonlee4-142, which is denied, is fair use and not actionable as a matter of law.

FIFTH DEFENSE

The Complaint, and each purported claim for relief alleged in it, is barred, in whole or in part, by the applicable statute of limitations.

SIXTH DEFENSE

Plaintiffs' alleged damages, if any, are the sole and direct result of forces, acts and omissions independent of Hill, and were not proximately caused by the alleged use of gwenXdonlee4-142.

SEVENTH DEFENSE

Without in any way admitting any infringement, which is denied, Plaintiffs' damages, if any, are limited because the alleged infringement was innocent.

EIGHTH DEFENSE

Plaintiffs' prayer for declaratory relief is barred because they have an adequate remedy at law, and because the declaratory relief sought is preempted by the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.*, including but not limited to 17 U.S.C. § 301(a).

NINTH DEFENSE

Plaintiffs' claims and/or remedies plaintiffs seek are barred by the failure to comply, or failure to timely comply, with the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.*, including but not limited to 17 U.S.C. §§ 401, 402, and 407 through 412, and each of them.

TENTH DEFENSE

Without admitting the use of any copyrighted material allegedly owned by Plaintiffs, the conduct of which they complain was impliedly and/or expressly licensed.

ELEVENTH DEFENSE

The Complaint is barred because any alleged use was *de minimis*.

TWELFTH DEFENSE

Plaintiffs' claims are barred in whole or in part to the extent they arise from alleged infringement taking place outside the United States, as the Copyright Act does not apply extraterritorially.

THIRTEENTH DEFENSE

Plaintiffs' claims for contributory infringement is barred, in whole or in part, because Hill neither had knowledge of any infringement nor induced, caused or materially contributed to any infringing activity.

FOURTEENTH DEFENSE

Plaintiffs' claims for vicarious liability are barred, in whole or in part, because Hill did not have the right or ability to supervise or control any allegedly infringing activity and/or did not financially benefit from the alleged infringement.

RELIEF REQUESTED

WHEREFORE, Hill respectfully requests the following relief:

1. A judgment in favor of Hill denying Plaintiffs all relief requested in the Complaint and dismissing the Complaint with prejudice;
2. That Hill be awarded its costs of suit, including reasonable attorney's fees; and

3. That the Court award Hill such other and further relief as the Court deems just and proper.

Dated: February 3, 2020

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

/s/ Adam I. Rich

Adam I. Rich
1251 Avenue of the Americas, 21st Floor
New York, NY 10020-1104
Phone: (212) 489-8230
Fax: (212) 489-8340
Email: adamrich@dwt.com

Peter Anderson
Admitted Pro Hac Vice
865 South Figueroa Street, 24th Floor
Los Angeles, California 90017-2566
Telephone: (213) 633-6800
Fax: (213) 633-6899
Email: peteranderson@dwt.com

Attorneys for Defendant Montero Lamar Hill