

1 MICHAEL R. SHAPIRO, ESQ. (SBN 37011)
2 LAW OFFICES OF MICHAEL R. SHAPIRO,
3 11500 W. OLYMPIC BLVD. SUITE 400
4 Los Angeles, CA 90064
5 Tel.: (310) 472-8900
6 Fax: (310) 472-4600
7 Email: mickeyimc@aol.com

5 Attorney for Plaintiff THE MUSIC FORCE, LLC

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

12 | THE MUSIC FORCE, LLC

Case No.: 2:19-CV-06430-FMO

Plaintiff.

V.

SONY MUSIC ENTERTAINMENT,
A Delaware General Partnership;
MONTERO LAMAR HILL, aka LIL
NAS X, (“X”); JEFFERY
MAXWELL NEWLIN, aka
WYNTERBEATS, (“BEATS”) and
Does 1-10, Inclusive.

**SECOND AMENDED COMPLAINT
FOR DAMAGES AND
INJUNCTIVE RELIEF**

1. Copyright Infringement
2. Declaratory Relief
3. Accounting
4. Unjust enrichment

DEMAND FOR JURY TRIAL

JUDGE: The Honorable Fernando M.
Olguin
COURT: Courtroom 6D

Defendants.

25 Plaintiff THE MUSIC FORCE, LLC (hereinafter "TMF" or "Plaintiff")
26 submits this Complaint and alleges, upon information and belief, as follows:

JURISDICTION AND VENUE

1. This action arises under the United States Copyright Act, 17 U.S.C. Section 101 et seq.
2. This Court has exclusive jurisdiction over this action under 28 U.S.C. Sections 1331 and 1338 in that this action involves claims arising under the Copyright Act.
3. The Court has personal jurisdiction over the Defendants, and each of them as they regularly transact and solicit business in the State of California.
4. Venue in this District is proper under 28 U.S.C. Section 1391 because Defendants are subject to personal jurisdiction in this District.

PARTIES

5. Plaintiff TMF is a Tennessee LLC with its principal place of business being 4747 Purdue Street, Culver City within Los Angeles County.
6. Defendant X regularly conducts business in Los Angeles County including filming promotional music videos in Los Angeles, California.
7. Defendant SONY MUSIC ENTERTAINMENT (“SONY”) conducts business within the County of Los Angeles, within the jurisdiction of this Court and District.
8. Defendant BEATS was named to the original complaint as a defendant to each cause of action. Plaintiff has since settled its claims against BEATS and

1 pursuant to such settlement has stipulated with BEATS to dismiss this
2 Defendant from this action.
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4 **9.** Plaintiff TMF does not know the identity of other responsible parties in this
5 action identified herein as Does 1-10 inclusive and therefore sues these
6 Defendants by their fictitious names. Plaintiff will seek leave of Court to amend
7 the Complaint to reflect the true names and capacities of said Does 1-10,
8 inclusive when these have been ascertained. Plaintiff is informed and believes
9 that said fictitiously named Defendants, and each of them, were responsible in
10 some manner for the harm sustained by Plaintiff as set forth herein.
11

12 **10.** Plaintiff TMF alleges that each Defendant was the agent, principal and/or
13 employee of each other in the acts, conduct and omissions alleged herein and
14 therefore incurred liability to Plaintiff TMF for all such acts and/or omissions.
15 Plaintiff further alleges that all such Defendants were acting within the course
16 and scope of their employment and/or said agency.
17

18 **FACTS COMMON TO ALL COUNTS**
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20 **11.** TMF owns all rights of a composition entitled CARRY ON written by
21 recording artist Bobby Caldwell. Attached as EXHIBIT "A" to the original
22 Complaint in this action filed July 24, 2019 is a true and accurate copy of both
23 the CERTIFICATE OF COPYRIGHT REGISTRATION dated January 19,
24 1982 and the CERTIFICATE OF SUPPLEMENTAL COPYRIGHT
25 REGISTRATION dated December 19, 1983 evidencing these rights.
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12. Without consent, license or approval as required by the COPYRIGHT Law, defendants X and Does 1-10 appropriated parts of CARRY ON in the creation of a new song/recording entitled "CARRY ON".

13. Motivated by greed and malicious intent, said Defendant X posted this recording of “CARRY ON” containing the intellectual property of TMF on various platforms including YOUTUBE with 3,892,783 views as of July 2, 2019 and on streaming platforms such as Spotify and SoundCloud. Another version posted on YOUTUBE from THE SIMPSONS also contained the infringed version of TMF's copyright protected version of CARRY ON and garnered 133,170 views. Research indicates that as of July 2019, there are over 85 new illegal versions of the song on YOUTUBE.

14. SONY in or about June 2019 acquired all rights to services of and recordings of X. Plaintiff is informed and believes, and based thereon alleges, that SONY signed a contract with X whereby SONY acquired control over the publication of X's music as well as a financial interest in X's music. Plaintiff has requested on several occasions the contract(s) or agreement(s) between SONY and X that will confirm, alter or refute the allegations herein regarding SONY'S financial interest in the exploitation of CARRY ON.

15. As SONY so acquired these rights and the services of X, SONY knew or should have known (through normal due diligence) to make sure that all elements of CARRY ON had been cleared. Recognizing that the trajectory

1 of this artist's, X, public acceptance was on a pathway to becoming a huge
2 global star performer, SONY failed to take adequate action to abate the
3 mounting damages to TMF as the value of CARRY ON was being dissipated
4 by this unauthorized, infringing use. SONY never requested, or failed to
5 sufficiently request, that the song be removed from websites such as
6 YOUTUBE based on copyright infringement and Plaintiff is informed and
7 believes, and based thereon alleges, that had SONY made such a request
8 YOUTUBE and other online media publishers would have removed the song
9 from their servers and websites. YOUTUBE provides a website detailing the
10 procedure to file a request for removal of content based on Copyright
11 infringement.
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14 **16.** Furthermore, Plaintiff is informed and believes, and based thereon alleges,
15 that Defendant X still has the infringing song CARRY ON published on his
16 Twitter promotional account and SONY by its acts and omissions has
17 facilitated said posting and vicariously infringed Plaintiff's copyright as well.
18 On information and belief SONY has a financial interest in publication of
19 CARRY ON websites such YOUTUBE, where it's still available. In like
20 manner, the infringing video is still available on Spotify and SoundCloud and
21 Plaintiff is informed and believes that X and SONY have a financial interest in
22 these other offending publications too and therefore neither X nor SONY
23 have acted to remove the postings of CARRY ON on alternate YOUTUBE
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1 channels, X's promotional Twitter account, Spotify or SoundCloud.
2

3 **17.** Pursuant to its contractual relationship with X, SONY apparently had the right
4 and the ability to supervise the distribution and publishing of X's music,
5 including the infringing version of CARRY ON, from the date that SONY
6 signed the artist and continuing to the present. SONY, having been asked by
7 Plaintiff's representatives to do so, elected not to take adequate action to stop
8 this illegal, unauthorized infringement as it was far more important to SONY
9 to preserve its opportunity to enjoy millions of dollars of revenues from the
10 success of the career of X. Indeed, SONY had a direct financial interest in
11 X's infringing activity involving TMF's rights to CARRY ON which is still
12 being published online to this day.
13

14 **18.** To complicate the matter even further, and resulting in continuing damages to
15 TMF, was the fact that others had and are retweeting or posting other versions
16 of CARRY ON containing the unauthorized use of TMF's property derived
17 from X's infringing version of CARRY ON which SONY has allowed to
18 remain available for viewing on YOUTUBE and other websites and platforms
19 enjoying millions of regular visitors. Plaintiff is informed and believes, and
20 based thereon alleges, that SONY has failed to take adequate steps to halt all
21 such infringing behavior, even with full knowledge that it is occurring, because
22 SONY seemingly has a direct financial interest in the infringing activity.
23
24 Indeed, it was apparently to SONY'S advantage to leave the infringing version
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1 of CARRY ON posted online as long as possible (it remains available online to
2 this day, including on YOUTUBE) so that fans of X would continue to share
3 the song generating increased fan buzz and ultimately revenue for Defendants.
4

5 It was SONY'S goal to achieve the number one record for X and "CARRY
6 ON" was the second most popular song on X's album.
7

8 **FIRST CAUSE OF ACTION**

9 **COPYRIGHT INFRINGEMENT**

10 **19.** Plaintiff re-alleges herein by this reference each and every allegation contained
11 in paragraphs 1 through 18, inclusive, as though fully set forth herein.
12

13 **20.** TMF is the exclusive owner of the copyright in the CARRY ON composition
14 and as such, has the exclusive rights under the Copyright Act, among other
15 things, to reproduce, distribute, prepare derivative works from and otherwise
16 exploit CARRY ON, and to allow or not allow third parties to exercise such
17 rights.
18

20 **21.** TMF never authorized X nor Does 1-10 or anyone working for them to use
21 CARRY ON in any manner. Despite the foregoing, X and DOES 1-10 prepared
22 an unauthorized recording of CARRY ON using TMF's CARRY ON thereby
23 infringing on the rights of TMF. The enormous popularity of the infringing copy
24 of CARRY ON has resulted in a diminution in the value of TMF'S ownership
25 interest in the original recording of the song and has caused TMF to miss out on
26 its proper share of commissions and revenue generated from the publication and
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1 distribution of the infringing copy.
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3 **22.**Pursuant to its contractual relationship with X, SONY had the right and the
4 ability to control X's infringing activity, namely the distribution and publishing
5 of X's music, including the infringing version of CARRY ON, from the date
6 that SONY signed the artist and continuing to the present. SONY elected to not
7 take adequate action to stop this illegal, unauthorized infringement, even when
8 put on notice of the infringement, as it was far more important to SONY to
9 preserve its opportunity to enjoy millions of dollars of revenues from the success
10 of the career of X. SONY could have but did not demand that YOUTUBE, for
11 example, remove all audio and video files of the song from its servers and
12 website. Plaintiff is informed and believes that YOUTUBE routinely removes
13 copyright infringing material from its website upon reasonable request. Indeed,
14 SONY had a direct financial interest in X's infringing activity involving TMF's
15 rights to CARRY ON and therefore declined to request the removal of the song
16 from online media publishers. As such SONY is vicariously liable for infringing
17 TMF'S copyrights by failing to take steps to prevent continued infringement
18 after it acquired the legal right to do so pursuant to its contract with X.
19

20 **23.**X and Does 1-10's infringement and the subsequent infringement by SONY in
21 violation of the Copyright Act was deliberate and willful.
22

23 **24.**By reason of Defendants X, SONY and Does 1-10, TMF has sustained
24 substantial injury, losses and damages in an amount to be determined at trial,
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1 and upon information and belief, said Defendants have derived income and
2 profits to which said Defendants were and are not entitled.
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5 **SECOND CAUSE OF ACTION**

6 **DECLARARATION OF AUTHORSHIP/OWNERSHIP**

7 **25.** Plaintiff incorporates by this reference and realleges all preceding paragraphs of
8 this Complaint.

9 **26.** As delineated in this Complaint by all of said Defendants' unauthorized use of
10 TMF's CARRY ON in the creating of X's version of CARRY ON, Plaintiff asks
11 this Court to determine that X's version of "CARRY ON" is a joint work owned
12 by said Defendant and TMF.

13 **27.** Plaintiff hereby also requests that this Court declare that X's version is a
14 derivative work in which Plaintiff has an ownership interest.

15 **28.** Plaintiff requests that all monies, commissions, royalties and/or credit that has
16 thus far been denied to TMF, and the future profits realized as a result of this
17 unauthorized use of TMF's Copyright protected property, be awarded to Plaintiff.

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19 **THIRD CAUSE OF ACTION**

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21 **ACCOUNTING**

22 **29.** Plaintiff incorporates by reference and realleges the preceding paragraphs of
23 this Complaint.

24 **30.** Because Defendants X, SONY and does 1-10 are currently in constructive and

1 apparent possession of Plaintiff's intellectual property and monies, they owe a
2 fiduciary duty to Plaintiff.
3

4 **31.** Therefore Plaintiff demands an accounting of all monies all Defendants have
5 received and which Plaintiff is due but have not been paid as a result of the
6 unauthorized use of Plaintiff's aforementioned copyrighted work, CARRY ON.
7

8 **FOURTH CAUSE OF ACTION**

9 **UNJUST ENRICHMENT**

10 **32.** Plaintiff incorporates by reference and re-alleges the preceding paragraphs of
11 this Complaint.
12

13 **33.** All Defendants have profited from the use of TMF's property CARRY ON
14 without providing any credit, compensation, or obtaining authorization to exploit
15 Plaintiff's property.
16

17 **34.** Under the circumstances it would be unjust for Defendants, and each of them,
18 to retain the monies, commissions, royalties or other compensation they have
19 earned from the recording, publication and/or distribution of the infringing
20 version of "CARRY ON." As such, Plaintiff demands and requests a judgment
21 requiring all Defendants to pay to Plaintiff all monies they have been unjustly
22 enriched by.
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25 **PRAYER FOR RELIEF**
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27 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
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1 follows:

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1. For monetary damages, in an amount to be proven at trial, believed to be not less than \$10,000,000.00, inclusive of damages suffered due to the ill-gotten profits, earnings, revenues or other monies by Defendants based on their direct and/or vicarious copyright infringement and the confusion in the marketplace with two songs with the same title with the net effect of destroying completely the value of TMF's property.
2. For prejudgment interest at the maximum legal rate;
3. For restitution and accounting of all gains, profits and advantages obtained by Defendants, and each of them, as a result of their wrongful and unlawful conduct, in an amount to be proven at trial;
4. For a declaration that Plaintiff has an ownership interest in the infringed and infringing versions of CARRY ON.
5. For costs and expenses, including attorneys' fees;
6. For pre-judgment interest and post-judgment interest; and
7. For such other and further relief as this Court deems proper.

LAW OFFICES OF MICHAEL R.
SHAPIRO

DATED: February 4, 2020 By: /s/ Michael R. Shapiro
MICHAEL R. SHAPIRO, ESQ.
Attorney for Plaintiff
THE MUSIC FORCE, LLC

DEMAND FOR JURY TRIAL:

Plaintiff demands a jury trial for all issues so triable.

LAW OFFICES OF MICHAEL R.
SHAPIRO

DATED: February 4, 2020 By: /s/ Michael R. Shapiro
MICHAEL R. SHAPIRO, ESQ.
Attorney for Plaintiff
THE MUSIC FORCE, LLC