

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

Attorney for Plaintiff THE MUSIC FORCE, LLC

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

THE MUSIC FORCE, LLC

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.

Defendants.

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

**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

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

**JURISDICTION AND VENUE**

1. This action arises under the Unites 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 is 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

pursuant to such settlement has stipulated with BEATS to dismiss this Defendant from this action.

9. Plaintiff TMF does not know the identity of other responsible parties in this action identified herein as Does 1-10 inclusive and therefore sues these Defendants by their fictitious names. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of said Does 1-10, inclusive when these have been ascertained. Plaintiff is informed and believes that said fictitiously named Defendants, and each of them, were responsible in some manner for the harm sustained by Plaintiff as set forth herein.

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

### **FACTS COMMON TO ALL COUNTS**

11. TMF owns all rights of a composition entitled CARRY ON written by recording artist Bobby Caldwell. Attached as EXHIBIT "A" to the original Complaint in this action filed July 24, 2019 is a true and accurate copy of both the CERTIFICATE OF COPYRIGHT REGISTRATION dated January 19, 1982 and the CERTIFICATE OF SUPPLEMENTAL COPYRIGHT REGISTRATION dated December 19, 1983 evidencing these rights.

1 **12.** Without consent, license or approval as required by the COPYRIGHT Law,  
2 defendants X and Does 1-10 appropriated parts of CARRY ON in the creation  
3 of a new song/recording entitled “CARRY ON”.  
4

5 **13.** Motivated by greed and malicious intent, said Defendant X posted this  
6 recording of “CARRY ON” containing the intellectual property of TMF on  
7 various platforms including YOUTUBE with 3,892,783 views as of July 2,  
8 2019 and on streaming platforms such as Spotify and SoundCloud. Another  
9 version posted on YOUTUBE from THE SIMPSONS also contained the  
10 infringed version of TMF's copyright protected version of CARRY ON and  
11 garnered 133,170 views. Research indicates that as of July 2019, there are  
12 over 85 new illegal versions of the song on YOUTUBE.  
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16 **14.** SONY in or about June 2019 acquired all rights to services of and recordings  
17 of X. Plaintiff is informed and believes, and based thereon alleges, that  
18 SONY signed a contract with X whereby SONY acquired control over the  
19 publication of X's music as well as a financial interest in X's music. Plaintiff  
20 has requested on several occasions the contract(s) or agreement(s) between  
21 SONY and X that will confirm, alter or refute the allegations herein regarding  
22 SONY'S financial interest in the exploitation of CARRY ON.  
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25 **15.** As SONY so acquired these rights and the services of X, SONY knew or  
26 should have known (through normal due diligence) to make sure that all  
27 elements of CARRY ON had been cleared. Recognizing that the trajectory  
28

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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16 **16.** Furthermore, Plaintiff is informed and believes, and based thereon alleges,  
17 that Defendant X still has the infringing song CARRY ON published on his  
18 Twitter promotional account and SONY by its acts and omissions has  
19 facilitated said posting and vicariously infringed Plaintiff's copyright as well.  
20 On information and belief SONY has a financial interest in publication of  
21 CARRY ON websites such YOUTUBE, where it's still available. In like  
22 manner, the infringing video is still available on Spotify and SoundCloud and  
23 Plaintiff is informed and believes that X and SONY have a financial interest in  
24 these other offending publications too and therefore neither X nor SONY  
25 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.

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16 **18.** To complicate the matter even further, and resulting in continuing damages to  
17 TMF, was the fact that others had and are retweeting or posting other versions  
18 of CARRY ON containing the unauthorized use of TMF's property derived  
19 from X's infringing version of CARRY ON which SONY has allowed to  
20 remain available for viewing on YOUTUBE and other websites and platforms  
21 enjoying millions of regular visitors. Plaintiff is informed and believes, and  
22 based thereon alleges, that SONY has failed to take adequate steps to halt all  
23 such infringing behavior, even with full knowledge that it is occurring, because  
24 SONY seemingly has a direct financial interest in the infringing activity.  
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28 Indeed, it was apparently to SONY'S advantage to leave the infringing version

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

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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.

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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.  
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19  
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.  
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21 **23.**X and Does 1-10's infringement and the subsequent infringement by SONY in  
22 violation of the Copyright Act was deliberate and willful.  
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25 **24.**By reason of Defendants X, SONY and Does 1-10, TMF has sustained  
26 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 **DECLARATION OF AUTHORSHIP/OWNERSHIP**

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

10 **26.** As delineated in this Complaint by all of said Defendants' unauthorized use of  
11 TMF's CARRY ON in the creating of X's version of CARRY ON, Plaintiff asks  
12 this Court to determine that X's version of "CARRY ON" is a joint work owned  
13 by said Defendant and TMF.  
14

15  
16 **27.** Plaintiff hereby also requests that this Court declare that X's version is a  
17 derivative work in which Plaintiff has an ownership interest.  
18

19 **28.** Plaintiff requests that all monies, commissions, royalties and/or credit that has  
20 thus far been denied to TMF, and the future profits realized as a result of this  
21 unauthorized use of TMF's Copyright protected property, be awarded to Plaintiff.  
22

23 **THIRD CAUSE OF ACTION**

24 **ACCOUNTING**

25 **29.** Plaintiff incorporates by reference and realleges the preceding paragraphs of  
26 this Complaint.  
27

28 **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.

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8                                    **FOURTH CAUSE OF ACTION**

9                                    **UNJUST ENRICHMENT**

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

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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.

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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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26                                    **PRAYER FOR RELIEF**

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28        WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as

1 follows:

- 2 1. For monetary damages, in an amount to be proven at trial, believed to be not  
3 less than \$10,000,000.00, inclusive of damages suffered due to the ill-gotten  
4 profits, earnings, revenues or other monies by Defendants based on their direct  
5 and/or vicarious copyright infringement and the confusion in the marketplace  
6 with two songs with the same title with the net effect of destroying completely  
7 the value of TMF's property.  
8
- 9 2. For prejudgment interest at the maximum legal rate;  
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- 11 3. For restitution and accounting of all gains, profits and advantages obtained by  
12 Defendants, and each of them, as a result of their wrongful and unlawful  
13 conduct, in an amount to be proven at trial;  
14
- 15 4. For a declaration that Plaintiff has an ownership interest in the infringed and  
16 infringing versions of CARRY ON.  
17
- 18 5. For costs and expenses, including attorneys' fees;  
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- 20 6. For pre-judgment interest and post-judgment interest; and  
21
- 22 7. For such other and further relief as this Court deems proper.  
23

24 LAW OFFICES OF MICHAEL R.  
25 SHAPIRO

26 DATED: February 4, 2020 By: /s/ Michael R. Shapiro  
27 MICHAEL R. SHAPIRO, ESQ.  
28 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