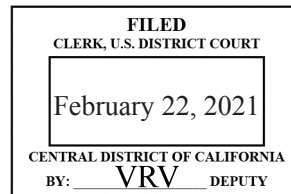


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Michele Ronk  
micheleronk@gmail.com



503-804-7437

Plaintiff, in Pro Per

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

MICHELE RONK

Plaintiff,

v.

KATHERYN ELIZABETH HUDSON p/k/a "KATY PERRY";  
BRITTANY HAZZARD p/k/a "STARRAH"; FERRAS ALQAISI;  
OLIVER GOLDSTEIN p/k/a "OLIGEE"; JOSH ABRAHAM;  
ROBERT MANDELL p/k/a "G KOOP"; CAPITOL RECORDS,  
LLC; UNIVERSAL MUSIC GROUP, INC.;

Defendants.

Civil Action No.  
2:20-CV-09843-FLA-AS(x)

Amended Complaint for Copyright  
Infringement

DEMAND FOR JURY TRIAL

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**COMPLAINT FOR COPYRIGHT INFRINGEMENT**

This is an action by MICHELE RONK, Plaintiff, appearing Pro Se, to recover damages arising from infringement of MICHELE RONK’s copyright of her creative work by Defendants KATHERYN ELIZABETH HUDSON p/k/a “Katy Perry”, BRITTANY HAZZARD p/k/a “STARRAH”, FERRAS ALQAISI, OLIVER GOLDSTEIN p/k/a “OLIGEE”, JOSH ABRAHAM, ROBERT MANDELL p/k/a “G KOOP”, CAPITOL RECORDS, LLC. and UNIVERSAL MUSIC GROUP, INC.

**PARTIES**

1. At all times mentioned, Plaintiff, MICHELE RONK, (hereinafter “Plaintiff” or “Mrs. Ronk”) is a citizen of Oregon, and is a singer/songwriter, and currently resides at 13356 SW Macbeth Dr., Tigard, OR 97224.

2. At all times mentioned, Defendant KATHERYN ELIZABETH HUDSON, p/k/a “KATY PERRY” (hereinafter “Ms. Perry”), is a citizen of California, and currently resides at 900 Knollwood Dr., Montecito, CA 93108.

3. At all times mentioned, Defendant BRITTANY HAZZARD, p/k/a “STARRAH” (hereinafter “Ms. Hazzard”), is a citizen of California, and currently resides at 17904 Erwin St., Encino, CA 91316.

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4. At all times mentioned, Defendant FERRAS ALQAISI (hereinafter “Mr. Alqaisi”), is a citizen of California, and currently resides at 17450 Burbank Blvd. Apt 218, Encino, CA 91316.

5. At all times mentioned, Defendant OLIVER GOLDSTEIN, p/k/a “OLIGEE” (hereinafter “Mr. Goldstein”), is a citizen of California, whose principal place of business is located at 2840 Rowena Ave., Los Angeles, CA 90039.

6. At all times mentioned, Defendant JOSH ABRAHAM (hereinafter “Mr. Abraham”), is a citizen of California, whose principal place of business is located at 2840 Rowena Ave., Los Angeles, CA 90039.

7. At all times mentioned, Defendant ROBERT MANDELL, p/k/a “G KOOP” (hereinafter “Mr. Mandell”), is a citizen of California, whose principal place of business is located at 1815 89th Ave., Oakland, CA 94621.

8. At all times mentioned, Defendant CAPITOL RECORDS, LLC, (hereinafter “Capitol Records”), has offices/headquarters located at 1750 North Vine Street Los Angeles, CA 90028.

9. At all times mentioned, Defendant UNIVERSAL MUSIC GROUP INC, (hereinafter “UMG”), has offices/headquarters located at 2220 Colorado Avenue, Santa Monica, CA 90404.

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**JURISDICTION AND VENUE**

10. This is a civil action seeking damages and injunctive relief for copyright infringement under the Copyright Act of the United States, 17 U.S.C. § 101, et eq.

11. This Court has subject matter jurisdiction herein pursuant to 28 U.S.C. § 1331 and 1388(a) because of this Court’s exclusive jurisdiction over copyright cases.

12. This Court has personal jurisdiction over Defendants because, among other things, Defendants are doing business in the State of California and in this judicial district.

13. Venue is proper in this district pursuant to 28 U.S.C. § 1400(a) because the Defendants reside or may be found within this district and personal jurisdiction may be properly obtained over the Defendants.

**FACTUAL ALLEGATIONS**

**Plaintiff**

14. Plaintiff is a singer/songwriter, who has been creating musical compositions for more than a decade, with a passion for advocating for mental illness support and stigma awareness.

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15. Plaintiff takes her musical career, and investment into it, very seriously and expects a flourishing career in the music industry and a return on her creative investment.

16. Plaintiff builds her musical and artistic brand through social media, website blog, events, networking and more, and from time to time shares works in progress of her copyrighted musical works, as part of building her fan base and marketing herself.

17. Plaintiff is a mom first to three children, and has physical scars from her eating disorder from over 17 years ago, that has set her back with her timing of releasing her music to the world, so she has not yet launched her brand to record labels, A&R scouts or publishers, as such, she has not yet officially begun to sell and make money from her completed musical compositions. She is in the finishing stages to proceed with that launch within the next year. Furthermore, Plaintiff will now face irreparable damage in the music industry when she does begin to shop labels, because of having to fight for her copyright rights against one of the “Big Three” music labels.

**Upgraded 2.0**

18. Plaintiff created the unique and creative musical composition titled *Upgraded 2.0* in 2014, in the genre of Pop, based on her own life experiences and close friendships and told a heartfelt story of enduring a dark and hard beginning, learning lessons, and triumphantly and thankfully becoming a new person through the help of Jesus.

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19. Plaintiff established a copyright for her work by fixing it in a tangible medium in 2014.

20. Plaintiff shared her copyrighted work, in the form of lyrics to the song *Upgraded 2.0*, to her Facebook on September 23rd 2014. See Figure A.

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**Your Posts**

**Michele Ronk updated her status.**

Upgraded(2.0)  
Copyright Michele Ronk 2014

Ever really looked deep down inside,  
We feel like were in jeopardy  
Left with major third degree  
Like we were in a plane crash like Barker, feeling misplaced  
The heartbreak that's faced  
Things like being replaced

Never knowing how to trust  
Only strength is by a mans lust  
Without a guide along the way,slowly turning into rust  
Some get through it but most will fall apart  
Cause we need a good start  
Dirty laundry piles up when someone's not doing their part

<Chorus>  
I've been upgraded(2.0)  
The old me faded  
My review is in, I've been reinstated  
In awe of how I'm rated  
Cause I've been upgraded(2.0)

A Shepard to the defective  
Restored on the shelf again, now disinfected  
Cause I messed up all over the place  
Not knowing myself behind this face  
My glass half empty,living in fear of rejection

< chorus>

A road deep in sin until it all clicked,  
And I really understood God, I kicked  
Off a new start, chatted with a friend  
Licked my lips trying to keep tears in hearing about Jenn  
It didn't have to be a story with a sad end, again  
Jesus,without you, it's me it could of been,Thank You! Amen!

< chorus>

Sep 23, 2014, 1:23 PM

Happy Monday!!! Back to the grinds!! be the best you can be!!

Sep 22, 2014, 10:04 AM

Generated by Michele Ronk on Sunday, August 16, 2020 at 2:17 PM UTC-07:00  
Contains data from September 20, 2014 to September 25, 2014

[Figure A - 2014 Facebook Post]

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3 **PLAINTIFF’S WIDESPREAD PUBLIC DISSEMINATION**

4 21. Plaintiff has a public website, micheleronk.com, online since  
5 2016, showcasing Mrs. Ronk as a Singer, Songwriter and Mental Illness  
6 Advocate, about her burden for Hollywood, and describes how her mission  
7 is to “help people hurting from mental illnesses and the stigma  
8 surrounding them, pointing them to the hope they need, which is through  
9 Jesus Christ. She wants to be on the front lines talking about how we all  
10 need to break the stigma about mental illness”.

11 22. On Plaintiff’s website from 2016 through at least May 2019,  
12 *Upgraded 2.0*, was listed as one of the songs on Plaintiff’s upcoming album,  
13 *Be Love*, which is actively being worked on.

14 23. Plaintiff has been in touch with leaders in the Christian and  
15 Mental Illness public outreach sphere, including Clayton Jennings, a  
16 celebrity Christian Evangelist and poet, Kay Warren, Mental Illness  
17 advocate and speaker and wife of Rick Warren, head pastor of Saddleback  
18 Church, 20,000 weekly attendees, (7th largest church in US) and Carlos  
19 Whittaker (Mental Illness Advocate and Speaker), National Eating  
20 Disorders Association (“NEDA”), and more.

21 24. In 2016, Plaintiff partnered with Clayton Jennings, a celebrity  
22 Christian Evangelist and poet with, at the time of the event, half a million  
23 followers on multiple social media platforms, and hired him to speak,  
24 preach and headline at Plaintiff's public event, #TellOregon. Mr. Jennings  
25 advertised the event on his website, it was advertised on NEDA’s events  
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2 page, was shared across social media, and it was advertised on 70+  
3 roadside signs (See Figures B below) across multiple counties surrounding  
4 the venue in Portland, OR. metropolitan area with over 2 million area  
5 residents, as well as in Los Angeles/Beverly Hills Area (See Figure C) with  
6 well over 4 million area residents, that Plaintiff travels to multiple times  
7 per year and has a heart for Hollywood, and is why she put the signs there,  
8 to reach that audience. The event was free and unticketed, and saw several  
9 hundred in attendance. Plaintiff opened for the event, with a speech and  
10 performance of her song, *Be Love*, her first live performance ever.

11  
12 **#TellOregon** 



13  
14 **Clayton**  
15 **Jennings**

16  
17 **June 8th 2016**  
18 **6:00 PM**

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20 **Lewis &**  
21 **Clark College**

22 **with**  
23 **Michele Ronk**

24 **ClaytonTellOregon.com**

25 [Figure B - Street sign design]

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[Figure C - Picture taken March, 24, 2016, of Street sign posted at Sunset Blvd & Foothill Rd, Beverly Hills, CA. <sup>1</sup>]

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<sup>1</sup>  
[https://www.google.com/maps/@34.0860255,-118.4066917,3a,75y,75.06h,69.82t/data=!3m6!1e1!3m4!1sH2\\_B2idMt12BggYISO5INA!2e0!7i16384!8i8192](https://www.google.com/maps/@34.0860255,-118.4066917,3a,75y,75.06h,69.82t/data=!3m6!1e1!3m4!1sH2_B2idMt12BggYISO5INA!2e0!7i16384!8i8192)

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3 25. Plaintiff, additionally, was in negotiations with other industry  
4 celebrities such as Kay Warren and Carlos Whittaker, as potential speakers  
5 for that event.

6 26. Plaintiff invested nearly \$10,000 of her own money, to organize  
7 and hold this event, as she is building up her brand and ministry without  
8 the help of a record label.

9 27. Plaintiff represents herself and brand on her website and many  
10 social media platforms, including Facebook, Instagram, and Twitter.  
11 Plaintiff represents herself in her publicly available bios and social media  
12 profiles, in varying forms, as a "Songwriter", "Musician", "Mental Illness  
13 Advocate", "Recording Artist", and "Christian", as well as "Wife" and  
14 "Mother" etc.

15 28. As a vocal public advocate for Mental Illness, Plaintiff has been  
16 found and contacted through her public online presence on social media,  
17 by many, including well known industry professionals such as, Mental  
18 Illness Treatment Centers, and, for example, Ashely Bratcher, a Christian  
19 Actress who starred several movies, including in the 2019 Christian major  
20 motion picture *Unplanned*, who became friends with Plaintiff for years over  
21 their shared experience with Christianity and Mental Illness.

22 29. Plaintiff, in February 2020, wrote and shared on multiple social  
23 media platforms a raw emotional blog post "Thankful for Jesus"<sup>2</sup>,  
24 expressing, with lots of repetition, about being so "thankful", for Jesus.

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25 <sup>2</sup> <https://micheleronk.com/2020/02/thankful-for-jesus/>

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3 Interestingly, there is evidence this blog post, amongst other pages and  
4 posts on Plaintiff's website, was scraped by a spider, on March 13, 2020.

5 30. This "Thankful for Jesus" blog post was suddenly swarmed  
6 with visits, from visitors located exactly where Defendants live, when the  
7 original complaint in this case was served to defendants, specifically  
8 around November 23-25. The flurry of visitors all of a sudden zeroed in  
9 and were sharing and showing each other the direct link to this exact blog  
10 post, they must have been talking about something they all knew about it.

### 11 DEFENDANTS INFRINGEMENT

12  
13 31. Defendant Katy Perry is a Pop Star, under the recording label  
14 Defendant Capitol Records, LLC, which is owned by Defendant Universal  
15 Music Group "UMG", and has recorded numerous hit songs and released  
16 numerous albums.

17 32. Ms. Perry's albums historically have been multi-platinum  
18 records. For example, her second album "*Teenage Dream*", generated five  
19 "#1" singles in the U.S. which tied with Michael Jackson's Album "*Bad*",  
20 and was certified Platinum eight times and earned Ms. Perry seven  
21 Grammy award nominations.

22 33. Ms. Perry's last album "*Witness*", which was her last album  
23 prior to *Smile*, by contrast, sold only 162,000 albums, far less than any  
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2 previous album of hers, and was widely considered one of the biggest flops  
3 of the year.

4 34. Fans did not take to this album's change from the Katy Perry  
5 they knew, in message and delivery, from her prior albums. "Fans may  
6 have bought the album. But they didn't buy the message: Perry faced  
7 considerable backlash for over-selling the purpose of her new music."<sup>3</sup> As  
8 Vox explained:

9 "This disconnect between Perry's perception of her career and album  
10 – or at least how she chose to hype them – and those of fans and  
11 critics seems to be at the root of the Perry backlash. Katy Perry  
12 proclaimed herself a warrior for [Democratic] political change and  
13 purposeful social action, but then didn't deliver on that."<sup>4</sup>

14 This was one of many more examples of Ms. Perry's unsuccessful attempts  
15 to win over fans during this time.<sup>5</sup>

16 35. Another reason "Witness" had done far worse than any prior  
17 album, Ms. Perry drastically changed her look, as well as attitude, ditching  
18 her long hair in black or girly pink or purple, to a sleek boyish blond

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20 <sup>3</sup> *Here's Why Fans Turned on Katy Perry, Showbiz Cheatsheet, May 23, 2018,*  
21 [https://www.cheatsheet.com/entertainment/heres-why-fans-turned-on-katy-perry.h](https://www.cheatsheet.com/entertainment/heres-why-fans-turned-on-katy-perry.html/)  
22 [tml/](https://www.cheatsheet.com/entertainment/heres-why-fans-turned-on-katy-perry.html/)

23 <sup>4</sup> *Why Katy Perry's new brand of "purposeful pop" has sparked such backlash,*  
24 *Vox, July 10, 2017,*  
25 <https://www.vox.com/culture/2017/7/10/15847350/katy-perry-witness-backlash>

26 <sup>5</sup> *Why Katy Perry needs to stop trying so hard, Metro, May 26, 2017*  
27 [http://metro.co.uk/2017/05/26/why-katy-perry-needs-to-stop-trying-so-hard-66644](http://metro.co.uk/2017/05/26/why-katy-perry-needs-to-stop-trying-so-hard-6664420/)  
28 [20/](http://metro.co.uk/2017/05/26/why-katy-perry-needs-to-stop-trying-so-hard-6664420/)

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2 hair-do. She self described her departure from her old image, that this was  
3 an “evolution [she] needed to take”<sup>6</sup>, that this change was a departure to  
4 the “old Katy Perry”.

5 36. After reflecting on that album’s performance, Ms. Perry had  
6 tough conversations with her Record Label, Defendant Capitol Records,  
7 and as reported in January 2018, together Defendant Capitol Records CEO,  
8 Steve Barnett, and Ms. Perry figured out a “Plan” for Ms. Perry.<sup>7</sup>

9 37. After the “Witness” album failure, Ms. Perry explained in  
10 interviews how much she had fallen into deep, clinical depression, at times  
11 where she was even suicidal. Her plan for this new album *Smile* was for it’s  
12 songs to talk about how she got through that depression and needed songs  
13 to fit that narrative. This album theme, is part of the “Plan” Ms. Perry and  
14 her Record Label had come up with.

15 38. Ms. Perry explained in interviews the details that her Clinical  
16 Depression was catalysed in major part from her *Witness* album failure in  
17 mid-2017, and that things were “really difficult [with her Depression]” in  
18 the early 2018 to early 2019 time period.

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21 <sup>6</sup> *Katy Perry on changing her image for the ‘Witness’ era: ‘I dont con people’,*  
22 *Blasting News, Jun. 15, 2017,*  
23 <https://us.blastingnews.com/showbiz-tv/2017/06/katy-perry-on-changing-her-image-for-the-witness-era-i-didnt-con-people-001776915.html>

24 <sup>7</sup> *Capitol’s Steve Barnett on Five Years at the Tower, ‘Plan’ for Katy Perry,*  
25 *‘Beloved’ Niall Horan, Variety, Jan. 12, 2018,*  
26 <https://variety.com/2018/music/news/steve-barnett-capitol-interview-katy-perry-niall-horan-1202660297/>

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3 39. Ms. Perry’s Counsel, Jay Cooper of Greenberg Traurig, LLP,  
4 has alleged that “the original version of *Smile* was originally written in  
5 early 2018 and the final version recorded by Ms. Perry in early 2019”.

6 40. Ms. Perry’s Counsel, Vincent Chieffo of Greenberg Traurig,  
7 LLP, has alleged that “Smile[] was inspired by Ms. Perry’s own struggle to  
8 deal with, and ultimately overcome, depression”.

9 41. On July 10th, 2020 Ms. Perry released the song titled *Smile*, the  
10 title song of her current album, available initially as a single, available  
11 everywhere music is sold.

12 42. On July 11th, 2020 Ms. Perry posted an Instagram post of a  
13 picture of a computer screen showing some of the lyrics from *Smile*, and  
14 Plaintiff, who is a follower of Ms. Perry on Instagram, was immediately  
15 struck with the striking similarity to Plaintiff’s song *Upgraded 2.0*.

16 **COPYING IN FACT**

17  
18 **ACCESS**

19 43. Consistent with Defendant’s “Plan”<sup>8</sup>, Defendant needed songs  
20 whose content and story helped contribute to a believable “Come Back”  
21 story for Defendant Ms. Perry, that Defendant needed in order to rebrand  
22

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23 <sup>8</sup> *Capitol’s Steve Barnett on Five Years at the Tower, ‘Plan’ for Katy Perry,*  
24 *‘Beloved’ Niall Horan, Variety, Jan. 12, 2018,*  
25 <https://variety.com/2018/music/news/steve-barnett-capitol-interview-katy-perry-ni-all-horan-1202660297/>

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2 and recover from the previous album's lack of success. Defendant needed  
3 to portray, through her music, a depression filled period followed by  
4 lessons learned, and resulting in a happy and thankful new person, to be  
5 able to market the song and album titled *Smile*. These business goals,  
6 comprising the "plan", would be achieved by the Defendants, as explained  
7 herein, by searching for sources to spark new creativity, which Ms. Perry  
8 admitted to be suffering from lack of <sup>9</sup>, and Defendants proceeded to  
9 deeply search for creative original work of others to meet the content needs  
10 for her album's song's needed messages. This included searching for,  
11 sourcing and using Plaintiff's original work, *Upgraded 2.0*, as Plaintiff is a  
12 songwriter who had lived through actual mental illness herself, battled  
13 anxiety and depression, and almost died from an eating disorder while in  
14 high school, the very life experiences that contribute to Plaintiff's creative  
15 and original lyrics and storytelling being heartfelt, real, and believable.

16 44. Universal Music Group ("UMG"), entered into an  
17 "unprecedented" partnership with Facebook in December 2017 <sup>10</sup>,  
18 described by UMG Executive Vice President of Digital Strategy with the  
19 open explanation that one of its goals is "to advance the interests of  
20 recording artists and songwriters", and again speaking about how it

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22 <sup>9</sup> *Katy Perry Smile*, Apple Music Editor,  
<https://music.apple.com/us/album/smile/1522811732>

23 <sup>10</sup> FACEBOOK AND UNIVERSAL MUSIC GROUP STRIKE  
24 UNPRECEDENTED GLOBAL AGREEMENT, *Universal Music*, Dec 21, 2017,  
25 <https://www.universalmusic.com/facebook-universal-music-group-strike-unprecedented-global-agreement/>



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2 benefits “innovation ... for music creators.” Also, vaguely mentions  
3 “Facebook and UMG are creating a dynamic new model for collaboration  
4 between music companies and social platforms”, while later mentioning  
5 “fair compensation for music creators”, leaving plenty of room, even on its  
6 face, for the compensation to include financial and potentially non-financial  
7 compensation, like valuable user data access for use in A & R, marketing,  
8 inspiration or whatever else they want to do with it. Facebook, acting in  
9 accordance with it’s habits/routine, leveraged the value of their user data  
10 just like they did with nearly all of their other large corporate partnerships,  
11 known by Facebook as “Strategic Partners” <sup>11</sup>.

12 45. This isn’t even the only similar partnership UMG has with a  
13 major social media company that includes user data access <sup>12</sup> in addition to  
14 standard licensing agreement and financial compensation, as UMG and  
15 TikTok just announced this partnership on February 8th, 2021 <sup>13</sup>. This, like  
16 their partnership with Facebook, is a deal with yet another major social

17  
18 <sup>11</sup> *Mark Zuckerberg leveraged Facebook user data to fight rivals and help friends,*  
19 *leaked documents show, NBC News, Apr 16, 2019,*  
20 [https://www.nbcnews.com/tech/social-media/mark-zuckerberg-leveraged-facebook-](https://www.nbcnews.com/tech/social-media/mark-zuckerberg-leveraged-facebook-user-data-fight-rivals-help-friends-n994706)  
21 [user-data-fight-rivals-help-friends-n994706](https://www.nbcnews.com/tech/social-media/mark-zuckerberg-leveraged-facebook-user-data-fight-rivals-help-friends-n994706)

22 <sup>12</sup> *Universal Music Group Partners With TikTok for Artist Collabs, Data & More,*  
23 *Billboard, Feb 08, 2021,*  
24 [https://www.billboard.com/articles/business/digital-and-mobile/952326](https://www.billboard.com/articles/business/digital-and-mobile/9523263/universal-music-tiktok-partner-artist-collabs-data/)  
25 [3/universal-music-tiktok-partner-artist-collabs-data/](https://www.billboard.com/articles/business/digital-and-mobile/9523263/universal-music-tiktok-partner-artist-collabs-data/)

26 <sup>13</sup> *TIKTOK AND UNIVERSAL MUSIC GROUP ANNOUNCE EXPANDED*  
27 *GLOBAL ALLIANCE, Universal Music Group, Feb 08, 2021,*  
28 [https://www.universalmusic.com/tiktok-and-universal-music-group-ann](https://www.universalmusic.com/tiktok-and-universal-music-group-announce-expanded-global-alliance/)  
[ounce-expanded-global-alliance/](https://www.universalmusic.com/tiktok-and-universal-music-group-announce-expanded-global-alliance/)

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3 media company, in yet another music licensing agreement that also  
4 includes user data access which is also being used to spot and surface  
5 potential hit songs and artists from TikTok's user data, as "Under the  
6 agreement, [TikTok] has pledged to work with the UMG to build new  
7 features including "A&R insights and models" that will presumably help to  
8 identify songs and artists poised to break out."<sup>14</sup>

9 46. As is true of other "Strategic Partners", or partnerships between  
10 Facebook and other large companies, Mark Zuckerberg, is known as the  
11 "master of leverage", who commonly leverages Facebook's user data in  
12 return for something of value from the partner to enrich Facebook's user  
13 experiences<sup>15</sup>. Michael Vernal, Director of Engineering at Facebook was  
14 quoted in a leaked internal document describing some of these deals,  
15 saying, "We gave a bunch of stuff 'for free' historically (data, distribution)  
16 and now we're making you 'pay' for it via reciprocal value...". "For years,  
17 Facebook gave some of the world's largest technology companies more  
18 intrusive access to users' personal data than it has disclosed, effectively  
19 exempting those business partners from its usual privacy rules, according  
20 to internal records and interviews."<sup>16</sup> In general, those documents showed

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21 <sup>14</sup> *TikTok Gets Rights to Universal Music Group's Catalog*, dot.la, Feb 08. 2021,  
22 <https://dot.la/tiktok-music-2650407336.html>

23 <sup>15</sup> *Id.*

24 <sup>16</sup> *As Facebook Raised a Privacy Wall, It Carved an Opening For Tech Giants*, NY  
25 *Times*, Dec 18, 2018,  
<https://www.nytimes.com/2018/12/18/technology/facebook-privacy.html?auth=link-dismiss-google1tap>

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2  
3 “several examples suggesting that [Facebook’s privacy] changes (that  
4 Facebook announced in 2014) were designed to cement Facebook’s power  
5 in the marketplace, not to protect users”. Some companies, for example,  
6 Netflix and Spotify, where Troy Carter was an executive from 2016 - 2018,  
7 were given the ability to read Facebook users’ private messages.<sup>17</sup> Amazon  
8 was given extended access to user data because it was spending money on  
9 Facebook advertising and partnering with the social network on the launch  
10 of its Fire smartphone.<sup>18</sup>

11 47. Due to the explosion of privacy breaches and public outcry and  
12 calls for transparency and oversight into Facebook’s dealings with other  
13 companies, Facebook was brought before the United States Congress, on or  
14 around June 29, 2018, to testify on many matters including regarding user  
15 privacy, but particularly about these controversial “Strategic Partners”,  
16 they list fifty two (52) companies, which is but a partial list of them, and  
17 described how even at that time they had ended thirty eight (38) of them  
18 already, with all but only three to continue to remain as they were very  
19 limited integrations with major web browsers.<sup>19</sup> Curiously, while Facebook  
20 did mention fifty two (52) large companies it had “strategic” partnerships

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21  
22 <sup>17</sup> *Id.*

23 <sup>18</sup> *Id.*

24 <sup>19</sup> *House Energy and Commerce Questions for the Record, Facebook, Jun 29, 1028,*  
25 *<https://web.archive.org/web/20180703161406/https://docs.house.gov/meetings/IF/I>*  
26 *F00/20180411/108090/HHRG-115-IF00-Wstate-ZuckerbergM-20180411-SD003.*  
27 *pdf?mod=article\_inline*

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2 with, including two of the three “Big Three” music companies<sup>20</sup> Sony,  
3 Warner Bros, and also major music company Spotify, they did not mention  
4 the partnership with Defendant UMG, which is especially important  
5 because they just had initiated the partnership only six (6) months earlier<sup>21</sup>,  
6 anywhere in the seven hundred and forty eight (748) page letter of answers  
7 to Congress’s questions.

8         48. Even non-“Strategic Partners” have had controversial access  
9 and privacy breach issues with user data and an example where Facebook  
10 has violated user’s privacy was through its “Graph API”, which allowed the  
11 makers of Apps and Games to access a slew of data from Facebook users,  
12 including their connections to friends, likes, locations, updates, photos and  
13 more. The problem was Developers had found ways to abuse this API and get  
14 more data out of Facebook than users, or Facebook, realized. In 2014,  
15 Facebook announced sweeping changes to it’s API to try to better protect user  
16 privacy, a move affecting as many as 40,000 apps.<sup>22</sup> The largest instance of  
17 Facebook user data privacy leakage, which occurred even after Facebook’s  
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19 <sup>20</sup> *Universal Music Group, Wikipedia,*

20 [https://en.wikipedia.org/wiki/Universal\\_Music\\_Group](https://en.wikipedia.org/wiki/Universal_Music_Group)

21 <sup>21</sup> *FACEBOOK AND UNIVERSAL MUSIC GROUP STRIKE*

22 *UNPRECEDENTED GLOBAL AGREEMENT, Universal Music, Dec 21, 2017,*

23 <https://www.universalmusic.com/facebook-universal-music-group-strike-unprecedented-global-agreement/>

24 <sup>22</sup> *Mark Zuckerberg leveraged Facebook user data to fight rivals and help friends,*  
25 *leaked documents show, NBC News, Apr 16, 2019,*

26 <https://www.nbcnews.com/tech/social-media/mark-zuckerberg-leveraged-facebook-user-data-fight-rivals-help-friends-n994706>

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3 2014 changes, affecting as many as fifty (50) million Facebook users, was  
4 from the Facebook–Cambridge Analytica data breach, which was a data  
5 leak in early 2018 whereby millions of Facebook users' personal data was  
6 harvested without consent by Cambridge Analytica and to date is the  
7 largest known, but not the only, leak in Facebook history<sup>23</sup>. In July 2019,  
8 Facebook was fined \$5 billion dollars by the United States Federal Trade  
9 Commission as a result of this leak<sup>24</sup>.

10 49. Defendant UMG had, and still has, an “unprecedented”<sup>25</sup>,  
11 vaguely described “innovative” partnership with Facebook, that, according  
12 to Facebook’s systemic disregard for user privacy and “strategic  
13 partnership” history of leveraging user data for gain, Facebook in acting in  
14 conformity with it’s habits/routine, included controversial user data access  
15 in exchange for UMG’s licensing of it’s music to Facebook as all, some or in  
16 addition to any aspect of “fair compensation”, and Defendants used that to  
17 access Plaintiff’s work.

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18 <sup>23</sup> *Facebook–Cambridge Analytica data scandal, Wikipedia,*  
19 [https://en.wikipedia.org/wiki/Facebook%E2%80%93Cambridge\\_Analytica\\_data\\_s](https://en.wikipedia.org/wiki/Facebook%E2%80%93Cambridge_Analytica_data_scandal#Data_characteristics)  
20 [candal#Data\\_characteristics](https://en.wikipedia.org/wiki/Facebook%E2%80%93Cambridge_Analytica_data_scandal#Data_characteristics)

21 <sup>24</sup> *Facebook to be fined \$5bn for Cambridge Analytica privacy violations – reports,*  
22 *Jul 12, 2019, The Guardian,*  
[https://www.theguardian.com/technology/2019/jul/12/facebook-fine-ftc-privacy-vio](https://www.theguardian.com/technology/2019/jul/12/facebook-fine-ftc-privacy-violations)  
23 [lations](https://www.theguardian.com/technology/2019/jul/12/facebook-fine-ftc-privacy-violations)

24 <sup>25</sup> *FACEBOOK AND UNIVERSAL MUSIC GROUP STRIKE*  
25 *UNPRECEDENTED GLOBAL AGREEMENT, Universal Music, Dec 21, 2017,*  
[https://www.universalmusic.com/facebook-universal-music-group-strike-unpreced](https://www.universalmusic.com/facebook-universal-music-group-strike-unprecedented-global-agreement/)  
26 [ented-global-agreement/](https://www.universalmusic.com/facebook-universal-music-group-strike-unprecedented-global-agreement/)

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50. Facebook uses MySQL, a SQL (Structured Query Language) Relational Database Engine software, as its database technology, that it uses to store all it's user and application data.

51. Facebook has significantly pushed the boundaries as to what can be accomplished with this database engine, at the scale of what Facebook is, with 2.8 billion active monthly users, by engineering new technology and software to enhance and improve MySQL's performance.

52. Facebook's success in efficiently and effectively managing data at the massive scale they have, is evident in even as simple of example as any regular user logging into Facebook and seeing a list of their friend's posts. That user logs in, and Facebook's code retrieves their list of friends, using an SQL Query, from the overall billions of users in the database, then retrieves just those specific friend's recent posts, using another SQL Query, from the overall billions of posts in the database, and returns that resultant list of posts to the user, neatly displayed in a mobile app or website page, all within a matter of seconds.

53. It is this very same database, with the billions of users and multi billions of posts and all other aspects of the user data, which has the same ability to write SQL queries against, that UMG was given access to.

54. UMG would easily have been able to write queries to obtain whatever they were looking for in that user data, whether it be data modeling, or trying to spot up and coming talent, or for inspiration, or anything else.

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3 55. For example, since Plaintiff is clearly listed in her Facebook bio  
4 as "Recording Artist", and as "Songwriter", (this bio is even publicly  
5 viewable). She would therefore be able to be targeted, with a structured  
6 SQL query, to, for example "get all users who are recording artists" or "get  
7 all users who have songwriter in their bio". Then Defendants would just  
8 need to query her posts, "get all posts from user id 12345" or "get all posts  
9 from user id 12345 which include '©', or "get all posts from any user who  
10 has songwriter in their bio and which include '©'", or virtually any other  
11 query to find what they are looking for.

12 56. Essentially, just like UMG is admittedly doing with TikTok's  
13 user data, they also have been doing it with Facebook's user data, and  
14 using it specifically to benefit their A&R talent scouting, marketing and  
15 creative needs.

16 57. Yet another way Defendants would have been able to discover  
17 Plaintiff, as a Songwriter and Mental Illness advocate, like so many others  
18 have, through Plaintiff's public dissemination through social media and  
19 her own website. In fact, *Upgraded 2.0*, has been listed as an upcoming song  
20 on Plaintiff's website since 2016, through 2019, covering well before the  
21 time period where Defendants' allegedly wrote *Smile*, and would have  
22 found *Upgraded 2.0*, and would then have been able to utilize their other  
23 tools, like their social media user data access and predictive analysis AI to  
24 find and analyze *Upgraded 2.0*'s lyrics.

25 58. Yet another way Defendants would have been able to discover  
26 Plaintiff, as a Songwriter and Mental Illness advocate, like so many others  
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2  
3 have, through Plaintiff's public dissemination through events, like her  
4 event #TellOregon, which was advertised in the Los Angeles Area, where  
5 all Defendants live and work, including UMG and Capitol Records who  
6 have A&R scouts, whose job is talent scouting, and would have seen the  
7 signs, and looked into "Michele Ronk", and been able to see she is a  
8 songwriter, mental illness advocate, and has a song titled *Upgraded 2.0*, and  
9 would then have been able to utilize their other tools, like their social  
10 media user data access and predictive analysis AI to find and analyze  
11 *Upgraded 2.0's* lyrics.

12 59. As if this instant access to the valuable user data isn't enough,  
13 that was such a valuable bargaining chip for both Facebook and TikTok to  
14 include to do business with UMG, additionally, Defendants Capitol and  
15 UMG have been partnered with Troy Carter since 2013, beginning with Mr.  
16 Carter's business, Atom Factory.

17 60. Since 2013 Mr. Carter, among other things including spending  
18 years working with Spotify, has begun to focus on innovative technologies  
19 and software solutions for the future of the music industry, and more  
20 specifically developing predictive analysis Artificial Intelligence software  
21 that helps identify and spot songs or artists that have "hit" potential <sup>26</sup>, one  
22 example being his "StreamRate" software.

23 61. Mr. Carter has drawn inspiration for this software and its  
24 ability to surface valuable individual data from large data sets, from

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25 <sup>26</sup> *Music Tech CEO Troy Carter on Predicting Hits and Music's Future*, dot.la,  
26 Dec 21, 2020, <https://dot.la/troy-carter-music-tech-future-2649597160.html>



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2 Facebook's use of their user data in partnerships, as well as, for example,  
3 how President Trump in 2016 was able to use Facebook's user data,  
4 through Cambridge Analytica, and wants to be able to apply that use of  
5 valuable user data to the music industry.

6         62. Mr. Carter's company behind this software, Q&A, employs  
7 executives from Facebook, like Marc Hemeon, from "Facebook AI where he  
8 worked to design and conceptualize emerging products and technologies"  
9 <sup>27</sup>, Spotify <sup>28</sup>, Amazon, UMG and more, all companies who had enjoyed  
10 access to and have experience with fully utilizing Facebook's user data <sup>29</sup>.

11         63. Capitol and UMG were able to use this Predictive Analysis AI  
12 software with their user data from Facebook, to surface potential hit songs  
13 posted to facebook, just like they are doing with their brand new  
14 partnership with TikTok. Even if Capitol and UMG had wanted to portray  
15 that this technology and use of user data is for legitimate purposes, there's  
16 more going on behind the scenes than what they are publicly portraying, in  
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19 <sup>27</sup> TROY CARTER'S Q&A HIRES SPOTIFY AND FACEBOOK VETERANS  
20 PHILLIP EUBANKS AND MARC HEMEON, Music Business Worldwide,  
21 May 22, 2019,

22 <https://www.musicbusinessworldwide.com/troy-carters-qa-hires-spotify-and-facebook-veterans-phillip-eubanks-and-marc-hemeon/>

23 <sup>28</sup> *Id.*

24 <sup>29</sup> As Facebook Raised a Privacy Wall, It Carved an Opening For Tech Giants, NY  
25 Times, Dec 18, 2018,

26 <https://www.nytimes.com/2018/12/18/technology/facebook-privacy.html?auth=link-dismiss-google1tap>

1  
2 the case of Plaintiff's song, *Upgraded 2.0*, Defendants' used the technology  
3 to infringe.  
4

5 **PROBATIVE EVIDENCE**

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7 64. The bright and cheery content and past tense lyrics of *Smile*,  
8 along with the timing of when they were allegedly written, do not match  
9 Ms. Perry's own account of her "clinical" depression, nor do they match the  
10 medical definition of symptoms of someone suffering with "clinical"  
11 depression.

12 65. Ms. Perry's counsel, said the song was written in "early 2018",  
13 and that it "was inspired by Ms. Perry's own struggle to deal with, and  
14 ultimately overcome, depression.", however, this is the time period where  
15 Ms. Perry admits to being in the middle of Depression, not even knowing if  
16 she was going to make it, therefore *Smile* could not possibly have been  
17 written from inspiration from Ms. Perry's past-tense overcoming, as it was  
18 still on-going, and in fact was "really difficult" during that time period.

19 66. Not to disrespect or diminish Ms. Perry's journey, but with  
20 clinical depression, you don't just snap out of it when things in your life get  
21 better again, like Ms. Perry "getting better" coincidentally when she got  
22 back together with Mr. Bloom at the end of 2018. With "clinical"  
23 depression, as opposed to "situational" depression, you could be depressed  
24 even when your life is perfect, or, in other words, your depression is  
25 independent of the situations the person is experiencing. With "clinical"  
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3 depression you can't get off antidepressants within a couple months after  
4 starting, as starting that medication there is a process of your body starting  
5 to get used to it, and then the same when you get off, it has to be slowly  
6 tapered off, a process that can't just all be complete within mere months,  
7 which Ms. Perry explained in interviews, that she was on then back off her  
8 prescribed medicine quickly. Further, even if she did feel ashamed, as she  
9 claimed, because there truly is stigma around mental illness (again, what  
10 Plaintiff advocates awareness of), Ms. Perry wouldn't (and shouldn't) have  
11 said such awful things about being on antidepressants, which millions of  
12 people with "clinical" depression rely on, because she would be thankful  
13 for and know how much it was needed for her, being that bad off, not think  
14 she is "above it" because she is a "Pop Star". Especially when many  
15 celebrities, even "Pop Stars" like Britney Spears for example, are still  
16 majorly dealing with their mental health issues, Ms. Perry is no better.  
17 These kinds of situations cause major interference in someone's life and  
18 their family's life, and all of a sudden getting so much better, coinciding  
19 with her album release, is suspect and contributes to her story not being  
20 genuine. As such, if her overcoming depression story was all of what she  
21 said it was, it would have been an inspirational story for many, but in  
22 reality, her story came off as not believable, because in part there are true  
23 holes in her story, because one can't just "heal" from clinical depression  
24 like that, like it's just for your album release. Also, saying you're having  
25 suicidal thoughts, as Ms. Perry has, the law requires if someone was that  
26 bad, to be admitted for a psychiatric evaluation, and that's very serious  
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3 stuff, but as stated in interviews, that's the time where Ms. Perry allegedly  
4 wrote *Smile*, and this doesn't match up. You can't write a song about being  
5 healed when you're at your worst. It physically can't come out of you if  
6 you're in such mental pain. The pain would come out in different words. In  
7 all, *Smile* was not wholly written from Ms. Perry's own overcoming  
8 depression, it's factually impossible from her own recounting of the events  
9 of her life during the alleged time period when it was written, and the  
10 more plausible explanation is that she, and the writers of *Smile*, actually  
11 drew the inspiration and lyrics and protected expression for *Smile* from  
12 Plaintiff's *Upgraded 2.0* instead.

13 67. Also, *Smile* lyrics refer to God, where she says "Rejection can be  
14 God's protection", however Ms. Perry is very vocal about walking away  
15 from her Christian upbringing, and even not wanting to raise her daughter  
16 the same way. Ms. Perry is very vocal about searching on her "spiritual"  
17 journey, looking for anything but God in fact, and references that it was the  
18 "Universe" that was in charge of things in her life<sup>30 31 32</sup>, not God, and then

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19 <sup>30</sup> *Katy Perry On Expanding And Reframing Herself On 'Smile'*, NPR, Aug 27,  
20 2020,  
21 [https://www.npr.org/2020/08/27/906431004/katy-perry-on-expanding-a  
nd-reframing-herself-on-smile](https://www.npr.org/2020/08/27/906431004/katy-perry-on-expanding-and-reframing-herself-on-smile)

22 <sup>31</sup> *Katy Perry discusses newest album 'Smile' releasing on Aug. 28*, Georgia State  
23 Signal, Aug 25, 2020  
24 [https://georgiastatesignal.com/katy-perry-discusses-newest-album-smile-  
releasing-on-aug-28/](https://georgiastatesignal.com/katy-perry-discusses-newest-album-smile-releasing-on-aug-28/)

25 <sup>32</sup> "The universe always has the last clap back.", Katy Perry, Oct 16, 2020,  
26 <https://twitter.com/katyperry/status/1316999972865208326>

1  
2 attempts to claim God protected her. This is highly probative evidence of  
3 Ms. Perry in fact copying from Plaintiff, when that is Plaintiff's relationship  
4 with God as "Shepherd" or "Jesus", in *Upgraded 2.0*. Although a  
5 relationship with Jesus/God is available to anyone (see John 3:16), not just  
6 Plaintiff, it is Ms. Perry who has chosen to reject God, publicly, and why  
7 her claiming protection from him doesn't match her actual life, and doesn't  
8 match that *Smile* "was inspired by Ms. Perry's own struggle to deal with,  
9 and ultimately overcome, depression."

10 68. Another piece of evidence probative of copying is, in breaking  
11 with routine, Defendants' registered only a specific performance of the  
12 song *Smile*, indeed an anomaly as this is the only one (1) of at least one  
13 hundred and twenty seven (127), or (.78%), copyright registrations of Ms.  
14 Perry's songs are registered like this, all the others are registrations of the  
15 entire work. Defendants have not registered the copyright for the song,  
16 *Smile*, itself as a whole work, as yet another example of probative evidence  
17 that something was different with this song, that Defendants were hesitant  
18 to register what they knew they infringed.

19 69. This is not the first time Ms. Perry has been accused of  
20 infringing another's copyrighted work. Defendant Ms. Perry and her team  
21 were accused and found guilty of "copying in fact" by the fact-finder, the  
22 jury, in a copyright infringement lawsuit brought by artist Flame, another  
23 Christian musician, and his 2008 song "Joyful Noise", where Defendant  
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3 Ms. Perry had infringed on, with her 2013 song “Dark Horse”<sup>33</sup>, even  
4 though the “improper appropriation” prong was later reversed by the  
5 judge in a post-trial motion.

6 70. Defendant Ms. Brittany Hazzard, p/k/a “Starrah”, a  
7 songwriter on infringing song *Smile*, has enjoyed much success in her song  
8 writings in the last few years. Interestingly, from her own admission, she,  
9 as a child, had written down lyrics belonging to someone else and claimed  
10 they were hers. She is now a successful songwriter and coveted by many  
11 top musicians, yet still as an adult admits to keeping a low profile and  
12 “creeping on artists profiles”, and reworking other’s music into new songs  
13 of her own. No matter her success she has achieved, there is undoubtedly a  
14 common thread, that she, innocently or not, has preyed upon other  
15 musician’s works, and therefore may still find, write down, rewrite,  
16 remake or be inspired by other writer’s works.<sup>34 35</sup>

17 71. There is another song on Defendant's album *Smile*, titled  
18 “Never Really Over”, where Defendant also made a derivative work of  
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20 <sup>33</sup> *Marcus Gray v. Katy Perry*, 2014, (2:15-cv-05642) District Court, C.D.  
21 California

22 <sup>34</sup> *How Starrah Went From Working Retail to Writing For Madonna*, *Billboard*,  
23 Jun 13, 2019,  
<https://www.billboard.com/articles/columns/pop/8515687/starrah-billboard-cover-story-2019>

24 <sup>35</sup> *Why Every Pop Star Wants a Piece of Starrah*, *NY Times*, Dec 28, 2017,  
25 <https://www.nytimes.com/2017/12/28/arts/music/starrah-songwriter-rihanna-drake-maroon-5.html>

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2 another musician, “Dagny”<sup>36</sup>, with Republic Records, from Dagny’s song  
3 “Love you Like That”, which was a song from 2017, which reached as high  
4 as number thirty nine (39) in charts in Norway.<sup>37</sup> Defendants would have  
5 had to do quite extensive searching to even find this song, including  
6 looking years into the past, and even into music from an artist in another  
7 country, to find this song that wasn’t even “chart topping”. As such, If  
8 Dagny had to have raised a copyright infringement claim against  
9 Defendant Ms. Perry, Ms. Perry could have easily claimed there was no  
10 access, to a song years old, mid way on a chart in another country. This  
11 however does demonstrate that Defendants’ were searching for works of  
12 other musicians with which to derive new musical works based off of to  
13 accomplish the business goals and “plan” for the album *Smile*.

14 72. Defendant Ms. Perry made the decision to look for someone’s  
15 work to be inspired from and/or derive work off of, then searched very  
16 thoroughly for, then located, then made a derivative work from Ms.  
17 Dagny’s work, then only after Defendant derived the new work Defendant  
18 Perry’s team contacted that musician to let her know and offered to “give  
19 credit where credit’s due.”<sup>38</sup> Even though it was the right course of action,  
20 in the end, for Defendants’ to offer to give appropriate songwriting credit,  
21 (and the implied receiving of permission from the original work’s author),

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22 <sup>36</sup> *Katy Perry's new single Never Really Over sounds a lot like Love You Like That*  
23 *- a 2017 song by Norwegian singer Dagny., BBC, Jun 5 2019,*  
24 *<https://www.bbc.com/news/newsbeat-48500456>*

25 <sup>37</sup> *Id.*

26 <sup>38</sup> *Id.*

1  
2 Defendants have not done the same in the case of misappropriation of  
3 Plaintiff's work.

4       73. Defendants only were interested in securing permission from  
5 Dagny, because she is more widely known, but in the case of Plaintiff, they  
6 took advantage of the fact that she is not yet known to a wide fan base, as  
7 Defendants counsel sneered at Plaintiff's "Only 120 Instagram followers",  
8 this is precisely why they knew they could get away with infringing, little  
9 did they know Plaintiff has a much wider dissemination than simply  
10 counting social media followers.

11       74. Defendants had the motive, trying to recoup and recover from  
12 previous album failure and "feeling creatively lost", she had a "Plan", a PR  
13 stunt to capitalize on "depression" and hope fans would feel sorry for her<sup>39</sup>  
14 , Defendants had the resources, AI and algorithms and Facebook  
15 partnerships and its proven history of unethical leverage and sharing of  
16 user data, so she could "advance [her] interests" and tap into "innovation  
17 ... for music creators" for creativity and inspiration, Ms. Perry has a track  
18 record for deriving and/or infringing off of smaller musician's works, as  
19 with Mr. Gray and Ms. Dagny, and a songwriter that has admitted to  
20 taking other's lyrics as her own.

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23 <sup>39</sup> *Katy Perry barely elicits any real emotion – let alone a grin – with her new*  
24 *album 'Smile, Insider, Aug 28, 2020,*  
25 *<https://www.insider.com/katy-perry-smile-review-tracklist-breakdown-2020-8#final-grade-4610-13>*



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3 75. Defendants' *Smile* unlawfully copied, misappropriated, and/or  
4 is substantially similar to Plaintiff's original, unique and creative lyrical  
5 phraseology and story telling in order to, or in an attempt to, arrive at a  
6 deep, believable, and/or convincing story for Defendant's *Smile*. Plaintiff's  
7 original work was derived from her own creativity and drew from her own  
8 life experiences, mistakes, lessons, self reflection, remaking of oneself, and  
9 life saving redemption with God's help, and the resulting thankfulness.  
10 The entire theme of Defendant's *Smile* tells the same story of life  
11 experiences, mistakes, lessons, self reflection, remaking of oneself, and life  
12 saving redemption with God's help, and the resulting thankfulness.  
13 Defendant's *Smile* wholly relied upon the story told, how the story was  
14 told, the uniquely selected words and lyrics and lyrical phrases chosen by  
15 Plaintiff's copyrighted work.

#### 16 PROBATIVE SIMILARITIES

17 76. The probative similarities of the Defendant's lyrics, story  
18 elements, and selection and arrangement of certain of the many copied  
19 story elements, to the Plaintiff's original work, are so numerous and certain  
20 similarities so striking, that it inferred that Plaintiff's work was accessed.

21 77. Defendant copied from Plaintiff's copyrighted work twelve (12)  
22 similar story elements/lyrical phrases. Defendants chose different  
23 synonyms, or substituted imagery details, at times, to attempt to obscure  
24 the similarities in the copied lyrical phrases and selection of elements to the  
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3 story, however, the resulting quantity of probatively similar lyrical phrases,  
4 and story elements, even if slightly tweaked by changing synonyms, are  
5 “so striking as to preclude the possibility that Plaintiff and defendant  
6 independently arrived at the same result”.

7 78. The following are Probative Similarities (see Figures D and E),  
8 which are similarities between *Upgraded 2.0* and *Smile* that tend to prove  
9 copying in fact. These probative similarities can be of either unprotectable  
10 (i.e. ideas) or protectable elements (i.e. expression), and are not the same  
11 thing as “substantial similarity” in the “second prong” of “Substantial  
12 Similarity of Protectable Elements”, and as such Plaintiff does not claim  
13 copyright protection over the following copied ideas, but instead  
14 demonstrates, as follows, how the similarities are indeed probative of  
15 Defendants’ *Smile* in fact copying from Plaintiff’s *Upgraded 2.0*.

16 **Figure D - Probative Similarities**

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#	<i>Upgraded 2.0</i> Lyrics	<i>Smile</i> Lyrics	Probative Similarity
1	“I’ve been upgraded 2.0, the old me faded	“2.0, Remodeled, Used to be dull, now I sparkle”	a. Both share the same idea of “I’ve grown to a new and better version of myself”;

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	<p>... I've been reinstated"</p>		<p>b. Both expressed verbatim using "2.0", then followed by the same idea of "I was worse";</p> <p>c. Both expressed using "faded" vs "dull" which are synonymous, followed by the idea of "now im better";</p> <p>d. Both have substantially similar selection and arrangement of the same exact ideas, in the same exact order besides one in merely swapped order, and then their expressions are substantially similar, by saying the same thing but using only synonymous words or synonymous phrases.</p>
<p>2</p>	<p>"I messed up all over the place, Not knowing myself"</p>	<p>"Not myself, not my best"</p>	<p>a. Both share the same idea of "during self-reflection recognizing the current me is not the old me";</p> <p>b. Both expressed (Old me) as "I</p>

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			<p>messed up all over the place" vs "not my best";</p> <p>c. Both expressed (Self-recognition) nearly verbatim as "not knowing myself" vs. "not myself".</p>
3	"A road deep in sin"	"Long hard road"	<p>a. Both share the same idea of "long painful journey";</p> <p>b. Both expressed substantially similar as:</p> <p>i. (long) "deep" vs. "long", which are synonyms;</p> <p>ii. (painful) "in sin" vs. "hard";</p> <p>iii. (journey) "road" vs. "road", which are verbatim.</p>
4	"trying to keep tears in hearing"	"But every tear has been a"	<p>a. Both share the same idea of "Learning from experiences that"</p>

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	about Jenn, It didn't have to be a story with a sad end"	lesson"	made me cry";  b. Both expressed using "tear".
5	"it's me it could of been"	"That ego check Saved my life"	a. Both share the same idea of "a lesson learned that was in fact life saving"
6	"Thank You! Amen!"	"Yeah, I'm, thankful, Scratch that, baby, I'm grateful"	a. Both share the same idea of "feeling extremely thankful";  b. Both expressed using reiteration of the point on thankfulness, and doing the reiteration exactly one additional time.
7	"Left with third degree ... like Barker"	"Tryna stay alive just like i'm the Bee Gees"	a. Both share the same idea of "I'm inspired to persevere";  b. Both share the same idea of "Staying Alive", like Barker (Travis Barker), surviving (staying alive) compared to using a variation of song lyrics saying "stay alive";

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			c. Both expressed using the inspiration of a musician celebrity and surviving and thriving through dark circumstances.
8	“A Shepherd to the defective ... living in fear of rejection”	“rejection can be God's protection”	<p>a. Both songs share the same idea of “there's purpose to my pain”;</p> <p>b. Both expressed that “God”, (the “Shepard”), which are synonymous names of God, had a plan for my “rejection”.</p> <p>c. Defendants choice to use “God” does not match with Ms. Perry’s life, or alleged story of creation of <i>Smile</i>, when in reality she would have used “Universe”.</p>
9	“My review is in ... in awe of how I’m rated”	“failed the test”	a. Both songs share the same idea of “outcome of an intangible/ figurative test”;

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			b. Both songs express in detail the emotions one felt about the outcome of that test.
10	“without a guide along the way, slowly turning into rust”	“Every day, Groundhog day, Goin through the motions felt so fake”	a. Both songs share the same idea of “ineffectively proceeding through life”.
11	“Some get through it but most will fall apart, cause we need a good start, dirty laundry piles up when someone's not doing their part”	“Long hard road to get that redemption, but no shortcuts to a blessin'”	a. Both songs share the same idea of “life is hard if you don't do it right”.
12	“Reinstated”	“redemption”	a. Both songs share the same idea and the same thematic meaning of “vindication” or “restoration” and

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			the words are somewhat synonymous.
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### Upgraded 2.0

Verse 1:

Ever really looked deep down Inside,  
We feel like we're in jeopardy  
*Left with major third degree*  
*Like we were in a plane crash like Barker*, feeling misplaced  
The heartbreak that's faced  
Things like being replaced

Verse 2:

Never knowing how to trust  
Only strength is by a man's lust  
Without a guide along the way, slowly turning into rust  
Some get through it but most will fall apart  
Cause we need a good start  
Dirty laundry piles up when someone's not doing their part

Verse 3:

*A Shepard to the defective*  
Restored on the shelf again, now disinfected  
Cause *I messed up all over the place*  
*Not knowing myself* behind this face  
My glass half empty, living in fear of *rejection*

Verse 4:

A *road deep in sin* until it all clicked,  
And I really understood God, I kicked  
Off a new start, chatted with a friend  
*Licked my lips trying to keep tears in hearing about Jenn*  
*It didn't have to be a story with a sad end*, again  
Jesus, without you, *it's me it could of been*, **Thank You! Amen!**

Chorus:

*I've been upgraded (2.0)*  
*The old me faded*  
*My review is in*, I've been *reinstated*  
In awe of how *I'm rated*  
Cause I've been upgraded **(2.0)**

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### Smile

Verse 1:

Every day  
Groundhog Day  
Going through motions felt so fake  
**Not myself**  
**Not my best**  
Felt like I  
*Failed the test*

*But every tear has been a lesson*  
**Rejection can be God's protection**  
*Long hard road* to get that *redemption*  
But no shortcuts to a blessing'

Verse 2:

**2.0**  
*Remodeled*  
*Used to be dull*, now I sparkle  
Had a piece  
of humble pice  
*That ego check*  
*Saved my life*

Now I got a smile like Lionel Richie  
Big and bright, need shades just to see me  
*Tryna stay alive just like I'm the Bee-Gees*  
A Mona Lisa masterpiece

Chorus:

**Yeah, I'm, thankful**  
**Scratch that, baby, I'm grateful**  
Gotta say it's really been a while  
But now I got back that smile, smile

**I'm so thankful**  
**Scratch that, baby, I'm grateful**  
Now you see me shine for a mile  
Finally got back that smile, smile

© Katy Perry 2020

[Figure E]

**SUBSTANTIAL SIMILARITY**  
**OF PROTECTABLE ELEMENTS**

79. As for the second “prong”, Improper Appropriation, or legally actionable copying, or copying of protectable elements, Defendants *Smile* copies, misappropriates, takes and is substantially similar to Plaintiff’s unique and creative story elements, and the copying of the exact order of the story elements/lyrical phrases, from Plaintiff’s *Upgraded 2.0*.

80. The following dissects and compares the objective details of the two works, by dividing the unprotected ideas from the protected expression and individually compares those, as follows:

**Figure F - Objective Test - Unprotectable Ideas Analysis**

#	<i>Upgraded 2.0</i> Lyrics	<i>Smile</i> Lyrics	Substantial Similarity
1	“I’ve been upgraded 2.0”	“2.0, Remodeled”	a. Both share the same idea of “I’ve grown to a new and better version of myself”.
2	“the old me faded”	“Used to be dull”	a. Both share the same idea of “I was worse”.

3	"I've been reinstated"	"now I sparkle"	a. Both share the same idea of "now I'm better".
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81. As for the substantial similarities in the protectable expression between *Upgraded 2.0* and *Smile*, it is dissected and objectively compared below in Figure 1. *Smile* attempted to obscure the copying by using synonyms for the words taken from *Upgraded 2.0*. However, a synonym is by very definition "similar" to the original word or phrase.

Definition of "Synonym":

"A synonym is a word, morpheme, or phrase that means exactly or nearly the same as another word, morpheme, or phrase in the same language"<sup>40</sup>.

You can test for synonymy, by using the "substitution" test:

"The standard test for synonymy is substitution: one form can be replaced by another in a sentence without changing its meaning."<sup>41</sup>

Definition of "Similar":

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<sup>40</sup> Wikipedia, <https://en.wikipedia.org/wiki/Synonym>

<sup>41</sup> *Id.*

“resembling without being identical”<sup>42</sup>

or

“having a likeness or resemblance, especially in a general way”<sup>43</sup>

**Figure G - Objective Test - Protectable Expression Analysis**

#	<i>Upgraded 2.0</i> Lyrics	<i>Smile</i> Lyrics	Substantial Similarity
1	“I've been upgraded 2.0”	“2.0, Remodeled”	a. Both expressed as exactly, or verbatim as “2.0”.  b. Both expressed substantially similar, using a synonym “upgraded” vs. “remodeled”, both share a Sememe, of Denotational 1 type, therefore resulting in an exact same meaning for “Made Better”.  c. Both expressed with the selection of “2.0”, and “upgraded” vs.

<sup>42</sup> Apple Dictionary

<sup>43</sup> <https://www.dictionary.com/browse/similar>

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			<p>“remodeled”, and arranged them one after the other, but just in swapped order.</p>
2	<p>“the old me faded”</p>	<p>“Used to be dull”</p>	<p>a. Both expressed substantially similar, using a synonymous phrase “the old me” vs “[I] used to be”, both share a Sememe, of Denotational 1 type, therefore resulting in an exact same meaning for “former self”, or “taking place in the past but not continuing into the present”.</p> <p>b. Both expressed substantially similar, using a synonym “faded” vs “dull”, both share a Sememe, of Denotational 1 type, therefore resulting in an exact same meaning for “dark”, “lackluster”, “colorless” or “dim”.</p> <p>c. Both expressed with the selection of “the old me” vs. “Used</p>

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			to be” and “faded” vs. “dull” and arranged them in the same exact order.
3	“I’ve been reinstated”	“now I sparkle”	a. Both expressed with similarity as “i’ve been reinstated” vs. “now I sparkle”, both share a Sememe, of Connotational 3 type, therefore resulting in the same “evaluative” meaning for “improvement following a turning point”.
4	“I’ve been upgraded 2.0, the old me faded ... I’ve been reinstated”	“2.0, Remodeled, Used to be dull, now I sparkle”	a. The selection and arrangement of the elements, which are themselves synonymous, are nearly identical, with only one instance of two words occurring in just swapped order, but still right next to each other.

82. Substitution test for “upgraded” vs. “remodeled”,

demonstrating that the substitution retains the same meaning:

<i>Upgraded 2.0</i> (with substituted, substantially similar <i>Smile</i> lyrics in red)	<i>Smile</i> (with substituted, substantially similar <i>Upgraded 2.0</i> lyrics in red)
“I’ve been <b>remodeled</b> 2.0”	“2.0, <b>Upgraded</b> ”

83. Substitution test for “the old me” vs “used to be”,

demonstrating that the substitution retains the same meaning:

<i>Upgraded 2.0</i> (with substituted, substantially similar <i>Smile</i> lyrics in red)	<i>Smile</i> (with substituted, substantially similar <i>Upgraded 2.0</i> lyrics in red)
“ <b>Used to be</b> faded”	“ <b>the old me</b> dull”

84. Substitution test for “faded” vs “dull”, demonstrating that the

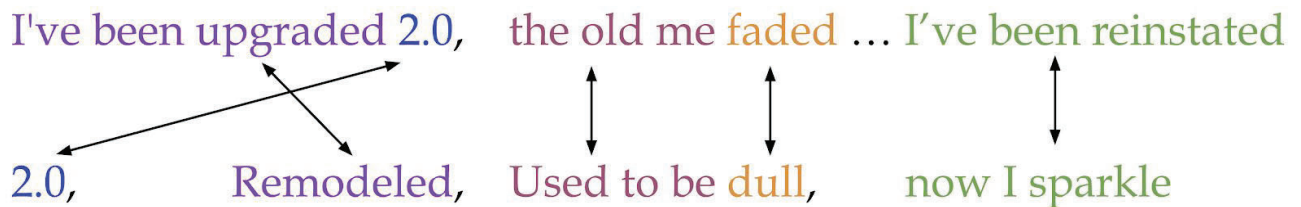
substitution retains the same meaning:

<i>Upgraded 2.0</i> (with substituted, substantially similar <i>Smile</i> lyrics in red)	<i>Smile</i> (with substituted, substantially similar <i>Upgraded 2.0</i> lyrics in red)
“the old me <b>dull</b> ”	“Used to be <b>faded</b> ”

85. Substitution test for “I’ve been reinstated” vs. “now I sparkle”, demonstrating that the substitution retains the same meaning:

<p><i>Upgraded 2.0</i> (with substituted, substantially similar <i>Smile</i> lyrics in red)</p>	<p><i>Smile</i> (with substituted, substantially similar <i>Upgraded 2.0</i> lyrics in red)</p>
<p>“I’ve been upgraded (2.0) The old me faded My review is in, <b>now I sparkle</b> In awe of how I’m rated Cause I’ve been upgraded (2.0)”</p>	<p>“2.0 Remodeled Used to be dull, now <b>I’ve been reinstated</b>”</p>

86. The original, protected, selection and arrangement of these elements are so similar, that an ordinary observer would absolutely detect the similarities, and would likely overlook the singular time when only the “2.0” occurred in swapped order:



[Figure H]



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**CLAIM FOR RELIEF**  
**Copyright Infringement**  
**Copyright Act, 17 U.S.C. §§ 106 and 501**  
**(Against All Defendants)**

87. Plaintiff repeats, reiterates, re-asserts, re-alleges and restates each and every allegation and factual allegation set forth in all preceding paragraphs of this Complaint.

88. Plaintiff is the sole owner of the original, creative, and unique composition *Upgraded 2.0* which contains copyrightable subject matter under the copyright laws of the United States.

89. Plaintiff is the owner of the copyright to *Upgraded 2.0* which is the subject of a valid Certificate of Copyright Registration issued by the Register of Copyrights, Registration Number: PAu 4-063-811.

90. Defendants have produced, reproduced, prepared derivative works based upon, distributed and publicly performed Plaintiff's protected work or derivatives of Plaintiff's protected work without her consent. Defendants' acts violate Plaintiff's exclusive rights under the Copyright Act, 17 U.S.C. §§ 106 and 501, including Plaintiff's exclusive rights to produce, reproduce and distribute copies of her work, to create derivative works, and to publicly perform her work.

91. Defendants have exploited and continue to exploit and profit from *Upgraded 2.0* in the U.S. and the entire international music market and

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2 the world by reproducing, preparing derivative works, copying,  
3 distributing, selling, signing, licensing, publicly performing and/or  
4 otherwise exploiting Defendants' *Smile*.

5 92. Defendants' infringement of Plaintiff's protected work/musical  
6 composition/lyrics is continuing, as *Smile* still continues to this day, to be  
7 sold, publicly performed, distributed and/or licensed by Defendants.

8 93. Infringing acts including, but are not limited to, unlawfully  
9 creating, recording, manufacturing, producing, selling, publicly  
10 performing, licensing, marketing, and or/distributing the musical  
11 composition of Defendant's *Smile* containing Plaintiff's protected  
12 work/musical composition/lyrics. Defendants infringement is unlawful  
13 appropriation of Plaintiff's copyrighted material including Plaintiff's  
14 original, creative, and unique lyrical phrases, and selection and  
15 arrangement of the story.

16 94. Defendants never sought advanced, or any, permission to use  
17 Plaintiff's lyrics, lyrical phrases, the selection and arrangement of the story  
18 elements, or to in any way produce derivative works.

19 95. Defendants' infringement has been undertaken knowingly, and  
20 with intent to financially gain from Plaintiff's protected copyrighted work.  
21 Defendants Capitol Records and UMG, who have creative control over Ms.  
22 Perry's music under their label, have failed to exercise their right and  
23 ability to supervise persons within their control, like the songwriters of  
24 *Smile*, to prevent infringement, and they do so with intent to further their  
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financial interest in the infringement of *Upgraded 2.0*. Accordingly, Defendants have directly infringed Plaintiff's copyrighted work.

96. Because of Defendants' infringing acts, Plaintiff is entitled to her actual damages and Defendants' profits attributable in an amount to be proven at trial or three million dollars, whichever is higher, and all other relief allowed under the Copyright Act.

97. Defendants' infringement has caused and is causing irreparable harm to Plaintiff, for which she has no adequate remedy at law. Unless this Court restrains Defendants from infringing Plaintiff's protected work, the harm will continue to occur in the future. For that reason, Plaintiff is entitled to a preliminary and permanent injunction, or proper songwriting credit plus three million dollars in damages, or in an amount to be proven at trial, whichever is higher.

**PRAYER FOR RELIEF**

With respect to the Claim for Relief, Plaintiff demands judgment against Defendants, and each Defendant, as follows:

- a. That Defendants, their affiliates, agents and employees be enjoined from infringing Plaintiff's copyrights and copyrighted musical compositions;
- b. Granting an injunction permanently restraining and enjoining Defendants, their officers, agents, employees, and attorneys, and all

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2 those persons or entities in active concert or participation with them,  
3 from further infringing Plaintiff's copyrights and copyrighted  
4 musical compositions;

- 5 c. For a constructive trust to be entered over any recordings, video  
6 reproductions, files, online programs, and any other material in  
7 connection with the infringing *Smile* and all revenues resulting from  
8 the exploitation of the same, for the benefit of Plaintiff;
- 9 d. That Plaintiff be awarded all profits of Defendants', plus all losses of  
10 Plaintiff, plus any other monetary advantage gained by the  
11 Defendants through their infringement, the exact sum to be proven at  
12 the time of trial;
- 13 e. That Plaintiff receives proper songwriter's credit on the infringing  
14 *Smile*, in the copyright, and any and all publishing or rights  
15 management platforms, and wherever *Smile* is or has been for sale.
- 16 f. That Defendants be ordered to pay Plaintiff all damages, including  
17 future damages and lost profits, that Plaintiff has sustained or will  
18 sustain as a result of the acts complained of herein.
- 19 g. That Defendants be ordered to pay Plaintiff punitive damages as a  
20 result of Defendants' deliberate and willful misconduct;
- 21 h. That Plaintiff be awarded pre-judgment and post-judgment interest  
22 as allowed by law;
- 23 i. That Plaintiff be awarded the costs of this action; and
- 24 j. That Plaintiff be awarded such further legal and equitable relief as  
25 the Court 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 7<sup>th</sup> Amendment to the United States Constitution.

Respectfully submitted,

Dated: February 22, 2021

Michele Ronk

Michele Ronk

Plaintiff, Pro Per