

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LINA IRIS VIKTOR, a/k/a NATASHA ELENA
COOPER,

Plaintiff,

-against-

KENDRICK LAMAR, a/k/a KENDRICK LAMAR
DUCKWORTH; SOLANA IMANI ROWE, a/k/a
SZA; TOP DAWG ENTERTAINMENT LLC;
INTERSCOPE RECORDS; UNIVERSAL MUSIC
GROUP RECORDINGS, INC. a/k/a UMG
RECORDINGS, INC.; RADICALMEDIA LLC;
DAVE MEYERS; DAVE FREE; FREENJOY, INC.;
BUF, INC.; and JOHN DOES 1-8,

Defendants.

Civil Action No.: 1:18-cv-01554 (KBF)

**ANSWER OF DEFENDANTS
KENDRICK LAMAR, SOLANA
IMANI ROWE, DAVID FRILEY,
AND TOP DAWG ENTERTAINMENT
LLC AND DEMAND FOR JURY TRIAL**

Defendants Kendrick Lamar Duckworth p/k/a Kendrick Lamar (“Lamar”), Solana Imani Rowe p/k/a SZA (“Rowe”), David Friley (incorrectly sued as “Dave Free”), and Top Dawg Entertainment LLC (“TDE”) (collectively, the “Top Dawg Defendants”), by and through their attorneys, Manatt, Phelps & Phillips, LLP, hereby submit their answer and affirmative defenses to the Amended Complaint and Demand for Jury Trial filed by plaintiff Lina Iris Viktor a/k/a Natasha Elena Cooper (“Plaintiff”) on February 26, 2018 (“Amended Complaint”) in the above-captioned litigation (the “Action”). For the avoidance of doubt, the Top Dawg Defendants deny any and all statements in the Amended Complaint’s section headings or otherwise made outside the numbered paragraphs therein. As to the allegations contained in the numbered paragraphs of the Amended Complaint, the Top Dawg Defendants hereby answer and respond as follows:

1. The Top Dawg Defendants deny the allegations in paragraph 1 of the Amended Complaint.

2. The Top Dawg Defendants deny the allegations in paragraph 2 of the Amended Complaint.

3. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in the first and second sentences of paragraph 3 of the Amended Complaint, and deny the allegations in the third sentence thereof.

4. The Top Dawg Defendants deny the allegations in paragraph 4 of the Amended Complaint.

5. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Amended Complaint.

6. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 6 of the Amended Complaint, and deny the allegations in the second sentence thereof.

7. The Top Dawg Defendants deny the allegations in paragraph 7 of the Amended Complaint.

8. The Top Dawg Defendants deny the allegations in paragraph 8 of the Amended Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations therein concerning purported statements attributed to “friends of the Artist” and “press and social media commentators”.

9. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in the first and second sentences of paragraph 9 of the Amended Complaint, and deny the allegations in the third sentence thereof.

10. The Top Dawg Defendants deny the allegations in paragraph 10 of the Amended Complaint, except admit that the Amended Complaint purports to seek damages and equitable

relief for direct, contributory, and vicarious copyright infringement.

11. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Amended Complaint.

12. Paragraph 12 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent the allegations require a response, the Top Dawg Defendants deny them, except admit that Lamar is an individual residing in California.

13. Paragraph 13 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent the allegations require a response, the Top Dawg Defendants deny them.

14. Paragraph 14 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent the allegations require a response, the Top Dawg Defendants deny them, except admit that TDE is a Delaware corporation with its principal place of business in Carson, California.

15. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of the Amended Complaint.

16. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Amended Complaint.

17. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 of the Amended Complaint.

18. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Amended Complaint.

19. Paragraph 19 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent the allegations require a response, the Top Dawg Defendants

deny them, except admit that Friley is an individual.

20. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Amended Complaint.

21. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 of the Amended Complaint.

22. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 of the Amended Complaint.

23. Paragraph 23 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent the allegations require a response, the Top Dawg Defendants deny them.

24. Paragraph 24 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent the allegations require a response, the Top Dawg Defendants deny them.

25. Paragraph 25 of the Complaint contains allegations of law, not fact, to which no response is required. To the extent the allegations require a response, the Top Dawg Defendants deny them.

26. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 of the Amended Complaint.

27. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 of the Amended Complaint.

28. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 of the Amended Complaint.

29. The Top Dawg Defendants deny knowledge or information sufficient to form a

belief as to the truth of the allegations in paragraph 29 of the Amended Complaint.

30. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 of the Amended Complaint.

31. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31 of the Amended Complaint.

32. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32 of the Amended Complaint.

33. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33 of the Amended Complaint.

34. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34 of the Amended Complaint.

35. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35 of the Amended Complaint.

36. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36 of the Amended Complaint.

37. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37 of the Amended Complaint.

38. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38 of the Amended Complaint.

39. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39 of the Amended Complaint.

40. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40 of the Amended Complaint.

41. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41 of the Amended Complaint, except admit that the music video for “All The Stars” (the “Video”) was released on or around February 6, 2018.

42. The Top Dawg Defendants deny the allegations in paragraph 42 of the Amended Complaint, except admit that the Video features Lamar and Rowe singing the song “All The Stars” (the “Song”); and that the Video is 3 minutes and 54 seconds long, and consists of a number of distinct scenes featuring different settings, costumes, and lighting.

43. The Top Dawg Defendants deny the allegations in paragraph 43 of the Amended Complaint.

44. The Top Dawg Defendants deny the allegations in paragraph 44 of the Amended Complaint, except admit that the Video’s opening credits list “DAVE MEYERS & the little homies”.

45. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 45 of the Amended Complaint, except admit that Friley is TDE’s president.

46. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46 of the Amended Complaint, except admit that Lamar is a recording artist signed to TDE.

47. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47 of the Amended Complaint, except admit that the album “Black Panther: The Album (Music From And Inspired By)” includes the Song.

48. The Top Dawg Defendants deny knowledge or information sufficient to form a

belief as to the truth of the allegations in paragraph 48 of the Amended Complaint.

49. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49 of the Amended Complaint.

50. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 of the Amended Complaint.

51. The Top Dawg Defendants deny the allegations in paragraph 51 of the Amended Complaint as to Friley, and deny knowledge or information sufficient to form a belief as to the truth of such allegation as to defendant Dave Meyers.

52. The Top Dawg Defendants deny the allegations in paragraph 52 of the Amended Complaint.

53. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53 of the Amended Complaint.

54. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54 of the Amended Complaint.

55. The Top Dawg Defendants deny the allegations in paragraph 55 of the Amended Complaint as to themselves, and deny knowledge or information sufficient to form a belief as to the truth of such allegations as to any other named defendant in this action.

56. The Top Dawg Defendants deny the allegations in paragraph 56 of the Amended Complaint, except admit that the Video has multiple segments, including one featuring a stage across which Lamar walks starting at the 2:59 mark, and continuing for approximately 18 seconds.

57. The Top Dawg Defendants deny the allegations in paragraph 57 of the Amended Complaint.

58. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 58 of the Amended Complaint and in subparagraphs (a) through (g) thereof, and deny the allegations in the second sentence thereof.

59. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 59 of the Amended Complaint.

60. The Top Dawg Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60 of the Amended Complaint.

61. The Top Dawg Defendants deny the allegations in paragraph 61 of the Amended Complaint.

62. The Top Dawg Defendants deny the allegations in paragraph 62 of the Amended Complaint.

63. The Top Dawg Defendants incorporate by reference the responses above to paragraphs 1 through 62 of the Amended Complaint, as though fully set forth herein.

64. The Top Dawg Defendants deny the allegations in paragraph 64 of the Amended Complaint.

65. The Top Dawg Defendants deny the allegations in paragraph 65 of the Amended Complaint.

66. The Top Dawg Defendants deny the allegations in paragraph 66 of the Amended Complaint.

67. The Top Dawg Defendants deny the allegations in paragraph 67 of the Amended Complaint.

68. The Top Dawg Defendants deny the allegations in paragraph 68 of the Amended

Complaint.

69. The Top Dawg Defendants incorporate by reference the responses above to paragraphs 1 through 68 of the Amended Complaint, as though fully set forth herein.

70. The Top Dawg Defendants deny the allegations in paragraph 70 of the Amended Complaint.

71. The Top Dawg Defendants deny the allegations in paragraph 71 of the Amended Complaint.

72. The Top Dawg Defendants deny the allegations in paragraph 72 of the Amended Complaint.

73. The Top Dawg Defendants deny the allegations in paragraph 73 of the Amended Complaint.

74. The Top Dawg Defendants deny the allegations in paragraph 74 of the Amended Complaint.

75. The Top Dawg Defendants incorporate by reference the responses above to paragraphs 1 through 74 of the Amended Complaint, as though fully set forth herein.

76. The Top Dawg Defendants deny the allegations in paragraph 76 of the Amended Complaint.

77. The Top Dawg Defendants deny the allegations in paragraph 77 of the Amended Complaint.

78. The Top Dawg Defendants deny the allegations in paragraph 78 of the Amended Complaint.

79. The Top Dawg Defendants deny the allegations in paragraph 79 of the Amended Complaint.

80. The Top Dawg Defendants deny the allegations in paragraph 80 of the Amended Complaint.

AFFIRMATIVE DEFENSES

The Top Dawg Defendants repeat and reallege every paragraph set forth above as if they were fully set forth herein. By alleging defenses herein, the Top Dawg Defendants do not intend to alter the burden of proof and/or burden of going forward with the evidence that otherwise exists with respect to any particular issue at law or in equity. All defenses are pleaded in the alternative and do not constitute an admission either of liability or as to whether plaintiff is entitled to any relief whatsoever. Furthermore, the Top Dawg Defendants reserve their right to supplement the below affirmative defenses.

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

The Court lacks personal jurisdiction over the Top Dawg Defendants.

THIRD AFFIRMATIVE DEFENSE

The Court lacks subject matter jurisdiction over the Action.

FOURTH AFFIRMATIVE DEFENSE

Each of the purported claims in the Amended Complaint fails because the Video was independently created.

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FIFTH AFFIRMATIVE DEFENSE

The prior art doctrine bars each of the purported claims in the Amended Complaint because none of the elements from Plaintiff's artwork (the "Artwork") supposedly used in the Video is original to Plaintiff or copyrightable.

SIXTH AFFIRMATIVE DEFENSE

Any alleged use in the Video of any elements from the Artwork is *de minimis* and not actionable as a matter of law.

SEVENTH AFFIRMATIVE DEFENSE

Any alleged use in the Video of any elements from the Artwork is fair use and not actionable as a matter of law.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, are the sole and direct result of forces, acts, and omissions independent of the Top Dawg Defendants.

NINTH AFFIRMATIVE DEFENSE

Without in any way admitting any of the allegations contained in the Amended Complaint, the alleged use of the Artwork did not proximately cause any of Plaintiff's alleged damages or any of the Top Dawg Defendants' alleged profits.

TENTH AFFIRMATIVE DEFENSE

Without in any way admitting any infringement, which is denied, the alleged infringements were innocent.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's prayer for injunctive relief is barred because she has an adequate remedy at law.

PRAYER FOR RELIEF

Wherefore, the Top Dawg Defendants pray that this Court enter judgment:

1. Dismissing the Amended Complaint in its entirety with prejudice;
2. Declaring that Plaintiff has no authorship interest or any other rights of any kind in the Video or any copyrights therein;
3. Awarding the Top Dawg Defendants' attorneys' fees and costs in this Action; and
4. For any other relief this Court may deem just and proper.

Dated: New York, New York
May 18, 2018

Respectfully submitted,

MANATT, PHELPS & PHILLIPS, LLP

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Top Dawg Defendants hereby demand their right to trial by jury of all claims in this Action triable by jury.

Dated: New York, New York
May 18, 2018

Respectfully submitted,

MANATT, PHELPS & PHILLIPS, LLP

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