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13 ERICKA LEE

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 WESTERN DIVISION

17 ERICKA LEE,
18 Plaintiff,

19 v.

20 DRAKE aka AUBREY DRAKE
21 GRAHAM, CASH MONEY
22 RECORDS, INC.,
23 Defendants.

24 CASE NO. **CV 12 0938** - DSF
25 COMPLAINT FOR (CWx)

- 26 1. DECLARATORY RELIEF;
27 2. BREACH OF FIDUCIARY DUTIES;
28 3. ACCOUNTING;
4. RESTITUTION FOR UNJUST ENRICHMENT.

DEMAND FOR JURY TRIAL

FILED

2012 FEB -2 PM 3:26

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

COPY

1 Plaintiff Ericka Lee alleges on information and belief as follows:

2 **I.**

3 **JURISDICTION AND VENUE**

4 1. Plaintiff's first claim for relief arises under the copyright laws of the
5 United States, as amended (17 U.S.C. § 101, *et seq*). The Court has subject matter
6 jurisdiction over this claim pursuant to 28 U.S.C. §§ 1331, 1332 and 1338, and
7 supplemental jurisdiction over the remaining claims pursuant to 28 U.S.C. §§ 1367.

8 2. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(2) because
9 Defendant has committed acts directed at this judicial district, where Plaintiff
10 resides.

11 **II.**

12 **THE PARTIES**

13 **PLAINTIFF**

14 3. Plaintiff Ericka Lee ("Lee" or "Plaintiff") is a resident of Los Angeles
15 County, California.

16 **DEFENDANTS**

17 4. Plaintiff is informed and believes, and on that basis alleges, that
18 Defendant Drake is a rap recording artist, whose given name is Aubrey Drake
19 Graham ("Defendant Drake"), who at all times herein was regularly doing business
20 in this judicial district.

21 5. Plaintiff is informed and believes, and on that basis alleges, that
22 Defendant Cash Money Records, Inc. ("Defendant Cash Money"), is a Louisiana
23 corporation, engaged in the business of marketing and distributing musical
24 recordings, with its principal place of business being 6200 Eastover Drive, New
25 Orleans, Louisiana 70128. On information and belief, Defendant Cash Money
26 regularly conducts business in this judicial district. On information and belief,

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1 6. Cash Money has marketed and/or distributed the sound recording of
2 “Marvin’s Room” that is the subject of this lawsuit, and is a copyright claimant of
3 authorship rights in and to “Marvin’s Room.”

4 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

5 7. Defendant Drake is arguably the most well-known and prolific hip-
6 hop/rap artist over the last 2 years. On information and belief his albums have
7 generated millions of dollars in revenue, and he is affiliated with some of the most
8 powerful and recognizable record labels in the music industry today. His record
9 label, Defendant Cash Money, is equally notorious for their far reaching success in
10 the field of rap and hip-hop music distribution.

11 8. Defendant Drake began his music career as a small-time independent
12 artist in Canada, who gained notoriety by preparing “mix-tapes,” i.e., music jargon
13 for independently released rap albums without the assistance of a major record
14 label.

15 9. Defendant Drake’s meteoric rise began in 2009 with the release of his
16 album “So Far Gone” which contained the monstrous hit “Best I Ever Had.” “Best
17 I Ever Had” was named “Hot Rap Song” of the year by Billboard, was nominated
18 for two Grammy Awards (Best Rap Solo Performance and Best Rap Song), and
19 was nominated for Single of the Year at the 2010 Juno Awards. “Best I Ever Had”
20 reached #2 on the Billboard Hot 100, #1 on the Billboard Hot R&B/Hip-Hop
21 Songs, and #1 on the Billboard Hot Rap Tracks. By all accounts, Defendant Drake
22 has become a worldwide phenomenon.

23 10. Defendant Drake and Defendant Cash Money have achieved this
24 success in large part by trampling on the rights of other artists who contributed to
25 their compositions, sound recordings and albums. Defendant Drake was sued for
26 copyright infringement over unauthorized “sampling” (using another

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1 artist's work) with respect to "Best I Ever Had," and on information and belief
2 Defendant Cash Money has been sued repeatedly for copyright infringement and
3 failure to pay royalties. Both are no strangers to the courtroom.

4 11. This current dispute involves, in part, the exclusion of Plaintiff from
5 sharing in co-writer royalties on one of Drake's biggest recent hits titled "Marvin's
6 Room" (hereafter "the Song").

7 12. Plaintiff and Defendant Drake were involved in a romantic and
8 business relationship between approximately early-2010 to mid-2011. During the
9 course of their relationship they traded poems, song lyrics and discussed
10 undertaking creative projects together. Plaintiff candidly shared her life story and
11 creative ideas with Defendant Drake, and trusted him as a confidant, lover and
12 friend.

13 13. In early 2011, Plaintiff and Defendant Drake agreed to work together
14 to write and create the composition for the Song, and split the proceeds accordingly.
15 Drake asked Plaintiff to record "the hook" of the Song (a phrase repeated numerous
16 times throughout the Song – typically the most important and central lyrics of any
17 popular music composition). Additionally, Defendant Drake recorded a monologue
18 of Plaintiff, which was intended to provide a basic thematic framework for the
19 Song. These recordings happened over a span of two days on or about February
20 18-19, 2011 via telephone. On information and belief, Defendant Cash Money was
21 aware of Plaintiff's aforementioned contributions to the Song before it sought to
22 register the copyright for the Song in its own name.

23 14. The "theme" of the Song is Defendant Drake's yearning for an ex-
24 girlfriend, and his unsatisfactory and troubled love life as a result of his fame.
25 Plaintiff's contribution to the writing of the Song includes the aforementioned 30-
26 second long introductory monologue, which sets the stage for the thematic elements
27 of the Song, and a vocalization of the "hook," which is repeated numerous times
28 throughout. Plaintiff's contribution is highly significant to the overall work.

1 15. Defendant Drake and Plaintiff intended to collaborate and create the
2 Song as a joint venture, discussing numerous times how important and integral
3 Plaintiff's contributions to the Song were. Defendant Drake even sent text
4 messages to Plaintiff confirming her role in the song-writing process, telling her
5 that "U [sic] basically made that song" and "it's [the Song] shit without you."

6 16. Around the time the Song was released to the public in mid-2011, the
7 romantic relationship between Plaintiff and Defendant Drake ended. Plaintiff
8 registered the Song with the United States Copyright Office on or about July 4,
9 2011, listing her and Defendant Drake as co-writers of the Song. Plaintiff's
10 registration was confirmed is July 11, 2011 according to the U.S. Copyright Office
11 Online Copyright Catalogue. The following month, on or about August 31, 2011,
12 Defendant Cash Money registered the same Song with the United States Copyright
13 Office listing Defendant Cash Money as the writer of the Song as an employer for
14 hire.

15 17. Plaintiff and Defendant Drake discussed on the telephone (prior to the
16 end of their romantic relationship) on or about early June 2011 the importance of
17 Plaintiff's involvement in the Song, and of her contributions. Defendant Drake
18 acknowledged on the telephone to Plaintiff how excited he was about the Song, and
19 about her contributions. Defendant Drake assured Plaintiff that the Song was not
20 going to be a "single" release, but was going to be released in October of that year
21 on a full album, and they planned to discuss Plaintiff's writer credit, her
22 involvement in the Song's release, and potential changes to the Song when they
23 were to see each other in Los Angeles later that month.

24 18. Before the Song was publicly released, Plaintiff believed that
25 Defendant Drake was looking out for her interests, and trusted him to properly
26 compensate her for her joint authorship. Shortly before they were to meet in Los

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1 Angeles in June 2011 Defendant Drake texted to Plaintiff: "I love you, you mean so
2 much to me." However Drake subsequently made himself unavailable and this
3 meeting never took place.

4 19. After the Song was publicly released, Defendant Drake offered
5 Plaintiff (in a text message) 2% of the "publishing royalties" of the Song (royalties
6 typically owing to the co-writer of a composition) – an amount far below what
7 Plaintiff is entitled to as a co-writer. Plaintiff did not reply to the "offer."

8 20. Defendant Drake credited Plaintiff in the liner notes of the album as a
9 vocalist under her alias "Syren Lyric Muse¹," rather than as a co-writer.

10 21. In or about November 2011, after Plaintiff had retained attorneys in an
11 effort to informally resolve the dispute over the writer credit, Defendant Drake
12 made several threatening and menacing phone calls to Plaintiff. During the course
13 of those conversations, Defendant Drake threatened her several times, shouting at
14 Plaintiff "What the fuck is your problem?" and telling her that he had "teams" of
15 people to take care of issues like her. Defendant Drake continued by telling her he
16 could have "whole fucking lives torn apart" if she did not accept "4-5%" of
17 publishing monies and a \$50,000 payout to go away and not file a lawsuit against
18 him. During the same conversation, Defendant Drake acknowledged her role in
19 writing the Song, asking her condescendingly "what do you deserve for a small part
20 of the Song?" Plaintiff declined to discuss the issue in depth with Defendant Drake
21 because she felt threatened and did not accept any "offers" he was demanding that
22 she accept.

23 22. To date, the youtube.com version of the Song has garnered over 38
24 million views, and on information and belief the Song has been one of the most
25 successful and significant revenue generating compositions of the year, selling over
26 500,000 individual downloads on the Internet. On information and belief,

27
28 ¹ Defendant Drake misspelled Plaintiff's alias even though the correct name was
emailed to him.

1 numerous other artists have re-recorded or created new versions of the Song from
2 which Plaintiff would be entitled royalties from Defendants.

3 23. Defendants have benefitted tremendously, both financially and from
4 the resulting publicity, derived from the Song. All of the revenue generated by the
5 Song has been and is being received by Defendants. Neither Defendant has made
6 any effort to account to, and/or pay Plaintiff what she was due as a co-writer of the
7 Song.

8 **FIRST CLAIM FOR RELIEF**

9 **DECLARATORY RELIEF**

10 **(Against All Defendants)**

11 24. Plaintiff incorporates by reference all previous allegations as if fully
12 set forth herein.

13 25. An actual and present controversy now exists between Plaintiff and
14 Defendants regarding Plaintiff's status as co-writer of the Song. More specifically,
15 Defendants have denied recognition of Plaintiff's status as co-writer of the sound
16 recording and composition of the Song, which entitles Plaintiff to writer credit and
17 money generated from the Song.

18 26. Plaintiff contends that she is a co-writer with Defendant Drake on the
19 sound recording and the composition on the Song. Plaintiff and Defendant Drake
20 both jointly contributed separate and distinct copyrightable lyrics and vocals to the
21 Song. They each possessed independent creative control over their respective
22 contributions.

23 27. Both Plaintiff and Defendant Drake manifested an intent to be co-
24 writers of the Song, and worked together jointly to create the Song. Both Parties
25 intended that their separate contributions be merged into inseparable or
26 interdependent parts of a unitary composition.

27 28. Plaintiff contributed significantly to the Song, including a 30-second
28 long introductory monologue and a repeated "hook" of the Song, which drives

1 home the message and thematic elements of the Song. Both of these contributions
2 contribute to the success and appeal of the Song.

3 29. On or about July 4, 2011, Plaintiff filed a copyright registration for the
4 Song identifying her and Defendant Drake as co-writers of the music (composition)
5 and sound recording.

6 30. Thereafter, on August 31, 2011, Defendant Cash Money filed a
7 copyright registration for the Song in which it only identifies itself as the writer of
8 the sound recording (as an employer for hire).

9 31. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201,
10 Plaintiff is entitled to a declaration of rights. Given the existence of the actual and
11 present controversy as alleged, Plaintiff requests that the parties' rights be
12 adjudicated.

13 32. Accordingly, Plaintiff seeks judicial determinations that (1) Plaintiff is
14 a co-writer of the sound recording "Marvin's Room," (2) Plaintiff is a co-writer of
15 the composition "Marvin's Room," (3) Plaintiff is entitled to co-writer credit on the
16 copyright to the Song and on subsequently released versions of the Song, and (4)
17 Plaintiff is entitled to prospective and retroactive royalties and other money owed
18 with respect to her interest in the Song.

19 **SECOND CLAIM FOR RELIEF**

20 **BREACH OF FIDUCIARY DUTIES**

21 **(Against Defendant Drake)**

22 33. Plaintiff incorporates by reference all previous allegations as if fully
23 set forth herein.

24 34. Plaintiff and Defendant Drake engaged in a joint venture to co-write
25 the Song with an understanding that credit and/or profits would be shared between
26 them.

27 35. Plaintiff and Defendant Drake undertook a joint effort to carry out a
28 single business enterprise for profit, and Plaintiff's effort, skill and tact contributed

1 to the success of the Song. Plaintiff and Defendant Drake undertook a cooperation
2 promotive of the common enterprise by writing the Song, which involved the
3 combination of the skill and efforts of both Plaintiff and Defendant Drake.

4 36. As a result of this joint venture and joint business relationship,
5 Defendant Drake owed Plaintiff the duty to act in Plaintiff's best interests, to be
6 loyal, to be careful, and refrain from taking actions that would reduce or usurp
7 Plaintiff's best interest. Defendant Drake likewise owed Plaintiff the duty to
8 account regarding any monies earned by him as a result of his involvement in the
9 writing of the Song, and to pay Plaintiff monies owed.

10 37. Defendant Drake owed specific duties to Plaintiff: (1) to not put his
11 own interests above Plaintiff's interests, (2) to act as a reasonably careful joint-
12 venturer would have acted under the same or similar circumstances, (3) to not
13 withhold payments and information from Plaintiff with respect to monies earned
14 from the Song, (4) to refrain from misappropriating opportunities to the exclusion
15 of Plaintiff, (5) to avoid secret dealings to the exclusion of Plaintiff, and (6) to not
16 engage in self-dealing.

17 38. Defendant Drake knowingly breached these duties by (1) failing to
18 account to Plaintiff with respect to monies earned from the exploitation of the Song,
19 (2) failing to pay Plaintiff or cause Plaintiff to be paid royalties owed as a result of
20 her status as co-writer of the Song, (3) intentionally denying Plaintiff writer credit
21 for the Song, to which she was entitled as a co-writer, (4) negotiating and entering
22 into a deal with record labels and/or other third-party entities for Defendant Drake
23 to receive payment for the Song to the exclusion of Plaintiff, (5) cutting off
24 communications with Plaintiff while at the same time negotiating a deal to receive
25 payment from the Song, and (6) profiting enormously from the success of the Song
26 without providing profits, monies or accountings to Plaintiff.

27 39. As a direct and proximate result of Defendant Drake's breaches,
28 Plaintiff has suffered damages in an amount to be determined at trial.

1 40. Defendant Drake's conduct as described herein was done with a
 2 conscious disregard of the rights of Plaintiff, with the intent to vex, annoy, and/or
 3 harass Plaintiff and to unjustly profit from the Song to the exclusion of Plaintiff.
 4 Such conduct was unauthorized and constitutes oppression, fraud, and/or malice
 5 entitling Plaintiff to an award of punitive damages in an amount appropriate to
 6 punish or set an example of Defendant Drake in an amount to be determined at trial.

7 **THIRD CAUSE OF ACTION**

8 **ACCOUNTING**

9 **(Against All Defendants)**

10 41. Plaintiff incorporates by reference all previous allegations as if fully
 11 set forth herein.

12 42. A relationship exists between Plaintiff on the one hand and Defendants
 13 on the other hand for which an accounting of Defendants' books and records is
 14 appropriate. This relationship includes but is not limited to (1) the fiduciary
 15 relationship between Plaintiff and Defendant Drake as co-joint venturers in the
 16 creation of the Song, and (2) the relationship between Plaintiff and both Defendants
 17 as co-writers of the Song, and (3) the fact that Defendants are in possession of the
 18 information relating to monies generated from the Song.

19 43. Compensation is due and owing from Defendants to Plaintiff. The
 20 proper compensation due to Plaintiff from Defendants can be ascertained by an
 21 accounting. Plaintiff does not know the precise amount of monies received by
 22 Defendants and owing to Plaintiff, but such monies can be determined by an
 23 accounting of Defendants' books and records.

24 44. Defendant Drake has stonewalled Plaintiff's efforts up to this point to
 25 receive a full accounting, and refused to respond to the requests of Plaintiff's
 26 attorneys to assist in resolving this matter.

27 45. Defendants have breached their duty to account by failing to account
 28 to Plaintiff, and failing to pay royalties owed.

4 FOURTH CAUSE OF ACTION

5 RESTITUTION FOR UNJUST ENRICHMENT

6 (Against All Defendants)

7 47. Plaintiff incorporates by reference all previous allegations as if fully
8 set forth herein.

9 48. Plaintiff is entitled to receive royalties from the sale and exploitation
10 of the Song pursuant to her status as co-writer.

11 49. Compensation is owing to Plaintiff but being wrongfully withheld by
12 Defendants. Thus, Defendants have acquired a benefit from their receipt and
13 retention of those monies.

14 50. Defendants' wrongful retention of such monies is unjust because it has
15 deprived Plaintiff from compensation to which she is entitled.

16 51. On information and belief, Plaintiff alleges that Defendants have been
17 unjustly enriched by wrongfully retaining and continuing to collect and retain
18 money owed to Plaintiff.

52. Therefore, Plaintiff seeks restitution, disgorgement of all monies wrongfully withheld by Defendants, and that a constructive trust be imposed on all monies wrongfully withheld by Defendants for the benefit of Plaintiff and Plaintiff's interests.

23 **PRAYER FOR RELIEF**

24 Wherefore, Plaintiff prays for judgment against the Defendants, and each of
25 them, as follows:

- 26 1. For general damages in an amount according to proof at trial, plus pre-
27 judgment interest thereon;
28 2. For punitive damages on the second claim for relief;

3. For attorneys' fees and costs of suit;
4. For the imposition of a constructive trust on monies earned from the Song;
5. For restitution;
6. For disgorgement of profits, and payment to Plaintiff of monies improperly collected by Defendants and not paid to Plaintiff with respect to the Song;
7. For an accounting;
8. For declaratory relief as alleged in the first claim for relief;
9. For such other, further, and different legal and equitable relief as the Court deems proper under the circumstances.

DATED: February 2, 2012

JOHNSON & JOHNSON LLP

By

Neville L. Johnson
Douglas L. Johnson
John D. Fowler
Attorneys for Plaintiff,
Ericka Lee

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury.

DATED: February 2, 2012

JOHNSON & JOHNSON LLP

By

Neville L. Johnson
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