



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

MARCUS GRAY (p/k/a FLAME), et  
al.,

Plaintiffs,

v.

KATHERYN ELIZABETH HUDSON  
(p/k/a KATY PERRY), et al.,

Defendants.

CASE NO. 2:15-cv-05642-CAS JCx

Honorable Christina A. Snyder

**PUBLICLY FILED REDACTED  
~~PROPOSED~~ FINAL PRETRIAL  
CONFERENCE ORDER**

**Final Pretrial Conference:**

Date: July 1, 2019

Time: 11:00 a.m.

Ctrm: 8D – 8th Fl., First Street

Filed: July 1, 2014

Trial: July 16, 2019

Following pretrial proceedings, pursuant to F.R.Civ.P. 16 and L.R. 16, **IT IS  
HEREBY ORDERED:**

1. The parties are:

- a. Plaintiffs are Marcus Gray, Emanuel Lambert, and Chike Ojukwu.
- b. Defendants are Capitol Records, LLC, Jordan Houston, Lukasz Gottwald, Sarah Theresa Hudson, Karl Martin Sandberg, Henry Russell Walter, UMG Recordings, Inc., Universal Music Group, Inc., WB Music Corp., Kobalt Music Publishing America, Inc., Kasz Money, Inc., Katheryn Elizabeth Hudson, and Kitty Purry, Inc.

Each of these parties has been served and has appeared. All other parties named in the pleadings and not identified in the preceding paragraph are now dismissed.

The pleadings which raise the issues are: Plaintiffs' Third Amended Complaint (Dkt. No. 172) and Defendants' Answers to the Third Amended Complaint (Dkt. Nos. 210, 211, 230).

2. Federal jurisdiction and venue are invoked upon the grounds: The Court has subject matter jurisdiction under Section 501 of the Copyright Act, 17 U.S.C. § 501, and 28 U.S.C. §§ 1331 and 1338(a). Venue is proper in this district under 28 U.S.S. §§ 1391(b), (c), and 1400(a).

3. The trial has been bifurcated into liability and damages. The trial is estimated to take 4-5 trial days for liability and 3-4 days for damages.

4. The trial is to be a jury trial. On the Wednesday of the week prior to the trial date the parties shall file and serve by e-mail, fax, or personal delivery: (a) joint proposed jury instructions as required by L.R. 51-1 and the Court's Procedures (b) any special questions requested to be asked on voir dire. Objections to disputed instructions shall be filed no later than the Friday before the commencement of trial.

1           5.       Set forth on the attached Schedule 5a (liability) and 5b (damages) are  
2 the facts that are admitted and require no proof. Pursuant to the parties' separate  
3 application, certain facts stated in Schedules 5a and 5b shall be sealed unless and  
4 until a trial on damages proceeds.

5           6.       Set forth on the attached Schedule 6a (liability) are the facts, though  
6 stipulated, shall be without prejudice to any evidentiary objection.

7           7.       The following are the claims and defenses to be presented at trial:

8           **Plaintiffs:**

9                 a.       As set forth more fully in their Memorandum of Contentions  
10 Fact and Law (Dkt. <sup>of</sup>No. 383), Plaintiffs plan to pursue the following claims against  
11 the following defendants: Infringement of Plaintiffs' copyright in its "Joyful  
12 Noise" song by Defendants' "Dark Horse" song

13                 b.       The elements required to establish Plaintiff's claims are: they  
14 must prove by a preponderance of the evidence that (1) they are the owners of a  
15 valid copyright the "Joyful Noise" song and (2) Defendants copied original  
16 expression in "Joyful Noise." As more fully set forth in Plaintiffs' Memorandum of  
17 Contentions of Fact and Law (Dkt. 383), Plaintiffs can prove copyright through a  
18 combination of proof that (a) Defendants had access to "Joyful Noise" (via  
19 widespread dissemination of the song or otherwise) and (b) that there is a  
20 "substantial similarity" between the original expression in "Joyful Noise" and  
21 portions of "Dark Horse."

22                 c.       In brief, the key evidence Plaintiffs rely on for their claim is:

23                 •       Ownership of a valid copyright: The Registration of Copyright  
24 (No. PA 1-900-321); the Assignment by Lecrae Moore of his copyright ownership  
25 interest to the three Plaintiffs (all of whom are listed as owners of the copyright in  
26 the original Registration); Assignment of Cross Movement Records; witness  
27 testimony.

1                   • Defendants’ access to “Joyful Noise”—proof through the  
 2 following: (a) Widespread dissemination (via YouTube and MySpace views,  
 3 award nominations; concerts, Billboard Magazine rankings, concert performances,  
 4 sales, radio and tv); (b) Evidence of “striking similarities” between the two songs,  
 5 based upon Dr. Todd Decker’s testimony; (c) The combination (i.e. nexus) of a  
 6 Grammy nomination the same year Defendant Gottwald was a voting member of  
 7 the Grammys.

8                   • Substantial similarity: Dr. Todd Decker, expert musicologists,  
 9 to opine on the extrinsic similarities.

10                  • Damages: Dr. Michael Einhorn, expert on music damages;  
 11 stipulations regarding revenues earned by each of the Defendants from sales of the  
 12 song and the Prism album; evidence produced by and testimony of Defendant  
 13 Capitol Records.

#### 14                   **Defendants’ Response to Plaintiffs’ Position**

15                  As more fully set forth in Defendants’ Memorandum of Contentions of Fact  
 16 and Law (Dkt. No. 385), Plaintiffs’ claim of infringement will fail at trial. To  
 17 prove copyright infringement, Plaintiffs must prove by a preponderance of the  
 18 evidence that (1) Plaintiffs are the owner of a valid copyright in the “Joyful Noise”  
 19 composition, including the allegedly infringed musical component thereof; (2)  
 20 Defendants copied original, protectable expression from the “Joyful Noise”  
 21 composition; and (3) damages.

22                  As to the first element, ownership, Plaintiffs must prove that their copyright  
 23 registration was not obtained through fraud on the Copyright Office and does not  
 24 contain materially false or inaccurate information related to the nature, ownership,  
 25 or chain of title to the work. Plaintiffs will not be able to satisfy their burden of  
 26 proving ownership as the evidence will show that they do not own a copyright in  
 27 the allegedly infringed instrumental music in “Joyful Noise” and do not own a  
 28 valid copyright registration in “Joyful Noise.”

1 As to the second element, copying, Plaintiffs must establish by a  
2 preponderance of the evidence (a) a reasonable possibility that defendant Walter or  
3 Gottwald—who authored the allegedly infringing instrumental music of “Dark  
4 Horse”—heard “Joyful Noise” before creating their instrumental music and (b)  
5 there are substantial similarities between “Dark Horse” and original, protectable  
6 elements of “Joyful Noise.” 9<sup>th</sup> Cir. Jury Instrs. No. 17.18. A reasonable  
7 opportunity means a “*reasonable* possibility, not merely a bare possibility,” that  
8 the defendant heard the work. *Loomis v. Cornish*, 836 F.3d 991 (9th Cir. 2016)  
9 (emphasis added). As to each:

10 • Defendants will show that Plaintiffs’ admissible evidence, if any, does  
11 not prove by a preponderance of evidence that Walter or Gottwald—who authored  
12 the allegedly infringing instrumental music of “Dark Horse”—had a reasonable  
13 opportunity to hear “Joyful Noise” prior to creating “Dark Horse.” Plaintiffs have  
14 no direct evidence of Walter or Gottwald hearing “Joyful Noise.” Nor do they  
15 have circumstantial evidence that they heard it through a chain of events (i.e., an  
16 intermediary). (On the eve of trial, Plaintiffs have stated that they will try to prove  
17 access because *Our World Redeemed* was nominated for a GRAMMY and  
18 Gottwald was a GRAMMY voter that year but they have no evidence to support  
19 this wholly speculative theory.) Finally, Plaintiffs also do not have circumstantial  
20 evidence that “Joyful Noise” was so widely disseminated that the jury could infer  
21 that Walter or Gottwald had a reasonable opportunity to hear it. Indeed, while  
22 Plaintiffs intend to introduce evidence of the so-called widespread dissemination of  
23 “Joyful Noise,” their evidence is in many instances inadmissible and does not  
24 prove dissemination of a type that makes it reasonably possible that Walter or  
25 Gottwald had an opportunity to hear the song; to the contrary it will be proven that  
26 Walter and Gottwald did not know who Plaintiffs were and did not hear their  
27 music, including “Joyful Noise.”  
28

1           • Plaintiffs will be unable to prove substantial similarity under the  
2 relevant extrinsic and intrinsic tests. More specifically, Plaintiffs will be unable to  
3 prove that “Joyful Noise” and “Dark Horse” are either intrinsically or extrinsically  
4 substantially similar in original, protected expression. Their own musicologist was  
5 compelled to concede that each of the purported similarities between the works are  
6 commonplace and there are substantive differences between the two works.  
7 Defendants’ musicology expert, in turn, will show that any the purported  
8 similarities between the two works are trite, commonplace, and unremarkable,  
9 either separately or in combination with each other and emphatically not  
10 substantially similar. (Plaintiffs have recently stated their intent to argue *striking*  
11 similarity but for nearly five years of litigation, Plaintiffs only argued that “Joyful  
12 Noise” and “Dark Horse” were substantially similar, including disclosing an  
13 expert’s report opining to the two works’ alleged substantial (not striking)  
14 similarity. The argument is waived and utterly lacking in any evidentiary support,  
15 including there being no an expert opinion of striking similarity.)

16           Moreover, even if Plaintiffs are able to bear their burden of demonstrating  
17 that that they own protectable expression in the “Joyful Noise” composition,  
18 Plaintiffs bear the burden of substantiating that “Dark Horse” copies more than a  
19 *de minimis* amount of protectable expression from the “Joyful Noise” composition.  
20 Here, however, any copying was *de minimis* at best.

21           In addition, Plaintiffs’ claim will fail because they will be unable to rebut the  
22 testimony of Walter and Gottwald as to how they created “Dark Horse,” including  
23 the allegedly infringing instrumental music therein, which will also preclude  
24 Plaintiffs from proving copying.

25           As to the third element, damages, Plaintiffs must establish by a  
26 preponderance of evidence that they are entitled to recover (1) the actual damages  
27 suffered by them as a result of the infringement, and (2) any profits of Defendants  
28 that have a non-speculative causal nexus to the infringement and are not taken into

1 account in computing the actual damages. Plaintiffs will not be able to satisfy their  
 2 burden of proving damages. Even if Plaintiffs can show that there were damages,  
 3 Defendants will show that any such damages are minimal under applicable Ninth  
 4 Circuit authorities.

5 **Defendants:**

6 As more fully set forth in Defendants' Memorandum of Contentions of Fact  
 7 and Law (Dkt. No. 385), Defendants plan to pursue the following affirmative  
 8 defenses:

9 **1(a). Independent Creation<sup>1</sup>**

10 **(b). Elements:** A showing of independent creation will defeat the  
 11 presumption of copying created by a plaintiff who has proven access and  
 12 substantial similarity.

13 **(c). Key Evidence:** Defendants will present documentary and other  
 14 physical evidence, as well as witness testimony, including but not limited to the  
 15 testimony of Walter and Gottwald as to how they created the instrumental music  
 16 that formed the musical bed for "Dark Horse" in March 2013; the audio recording  
 17 of this instrumental music and "Dark Horse"; and the testimony of Dr. Ferrara.

18  
 19 **2(a). *De Minimis* Use<sup>2</sup>**

20 **(b). Elements:** A use of a copyrighted work is *de minimis* if the average  
 21 audience would not recognize the appropriation. Even if Plaintiffs are able to bear  
 22 their burden of demonstrating that that they own protectable expression in the  
 23 "Joyful Noise" composition, Plaintiffs bear the burden of substantiating that "Dark  
 24  
 25

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26 <sup>1</sup> It is Defendants' position that independent creation is not an affirmative defense  
 27 but the Court need not decide this issue now as the parties agree that Defendants  
 can present evidence of their independent creation of "Dark Horse."

28 <sup>2</sup> It is again Defendants' position that *de minimis* use is not an affirmative defense  
 but include it here to preserve their position.

Horse” copies more than a *de minimis* amount of protectable expression from the “Joyful Noise” composition.

**(c). Key Evidence:** Defendants will present documentary and other physical evidence, as well as witness testimony, including but not limited to the testimony of Dr. Ferrara, to show that any use was *de minimis*.

### **3(a). Fair Use**

**(b). Elements:** The jury may decide that Defendants’ use of “Joyful Noise” constitutes fair use by considering the following factors (a) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (b) the nature of the copyrighted work; (c) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (d) the effect of the use upon the potential market for or value of the copyright work.

**(c). Key Evidence:** Defendants will present documentary and other physical evidence, as well as witness testimony, including but not limited to the testimony of Dr. Ferrara, to show that any use constituted fair use.

### **Plaintiffs’ Response to Defendants’ Position**

**1(a)** These Defendants, like all copyright defendants, claim that they independently created the allegedly infringing instrumental for the song “Dark Horse.” Neither documentary evidence nor the testimony of Dr. Ferrara can establish that the instrumental for “Dark Horse” was independently created. Defendants expect the jury to determine that the instrumental track was independently created based upon Gottwald and Walter’s own testimony, alone. In light of the extrinsic and intrinsic similarity of the instrumental in “Dark Horse” to that of Plaintiff’s song “Joyful Noise,” and strong indicia of widespread dissemination, contrasted with a lack of any evidence to rebut the presumption of



1 copying other than Defendants Gottwald and Walter's own testimony, Defendants  
2 cannot succeed on their affirmative defense of independent creation.

3       **2(a)** Defendants' position that their use of Plaintiffs' copyrighted work was  
4 *de minimis* will be readily defeated. Not only does the infringing ostinato repeat  
5 throughout 45% of "Dark Horse," but also, Katy Perry admitted at her deposition  
6 that the ostinato, or what she calls the "chorus," is the most "identifiable part of the  
7 song." Accordingly, Defendants affirmative defense of *de minimis* use will fail.

8       **3(a)** Defendants misconstrue the doctrine of fair use. It is undisputed that  
9 Defendant's song "Dark Horse," which infringes Plaintiffs' copyright in "Joyful  
10 Noise," was commercially exploited such that 17 U.S.C § 107 does not apply here.

11       8. In view of the admitted facts and the elements required to establish the  
12 claims and affirmative defenses, the following issues remain to be tried:

13       **Plaintiffs**

14       As more fully set forth in Plaintiffs' Memorandum of Contentions of Fact  
15 and Law (Dkt. No. 383), the following issues remain to be tried:

- 16       • Whether Plaintiffs are the owners of a valid copyright in "Joyful  
17       Noise?"
- 18       • Whether Defendants had access to "Joyful Noise" through proof of (1)  
19       a reasonable opportunity to hear it; (2) striking similarity; or (3) an  
20       intermediary/nexus?
- 21       • Whether "Dark Horse" is substantially similar to original elements of  
22       "Joyful Noise"?
- 23       • Whether Defendants are able to sustain their burden of proving their  
24       affirmative defense of independent creation?
- 25       • Whether Defendants are able to sustain their burden of proving their  
26       affirmative defense of *de minimis* use?
- 27       • Whether Defendants are able to sustain their burden of proving their  
28       affirmative defense of fair use?

- Whether Plaintiffs sustained actual damages as the result of Defendants' infringement?
- The amount of actual damages Plaintiffs sustained as a result of Defendants' infringement?
- Whether Defendants derived profit attributable to Defendants' infringement?
- The amount of profit derived by Defendants which is attributable to Defendants' infringement?

### **Defendants**

As more fully set forth in Defendants' Memorandum of Contentions of Fact and Law (Dkt. No. 385), Defendants submit that the following liability issues remain to be tried:

- Are Plaintiffs unable to sustain their burden of proving that each Defendant infringed Plaintiffs' copyrights in the "Joyful Noise" composition?
- Are Plaintiffs unable to sustain their burden of proving that they are the current owners of a valid copyright in the allegedly infringed instrumental music contained in the "Joyful Noise" composition?
- Are Plaintiffs unable to sustain their burden of proving that they are the current owners of a valid copyright registration in the "Joyful Noise" composition?
- Are Plaintiffs unable to sustain their burden of proving that Defendants copied original, protectable expression from the "Joyful Noise" composition?
- Are Plaintiffs unable to sustain their burden of proving there is a reasonable possibility that defendant Walter or Gottwald—who authored the allegedly infringing instrumental music in "Dark

Horse”—heard “Joyful Noise” before creating their instrumental music?

- Are Plaintiffs unable to sustain their burden of proving that there are substantial similarities between “Dark Horse” and original, protectable elements of “Joyful Noise”?
- Are Plaintiffs unable to sustain their burden of proving copying where Defendants have presented un rebutted evidence of the independent creation of “Dark Horse” and the allegedly infringing instrumental music therein?
- Are Plaintiffs unable to sustain their burden of proving that any copying of “Joyful Noise” in “Dark Horse” rose above the level of *de minimis* use?
- Are Plaintiffs unable to sustain their burden of proving that any use of “Joyful Noise” in “Dark Horse” constitutes fair use?

As more fully set forth in Defendants’ Memorandum of Contentions of Fact and Law (Dkt. No. 385), if Plaintiffs prove liability, Defendants submit that the following damages issues remain to be tried:

- Are Plaintiffs unable to sustain their burden of proving that they suffered actual damages as the result of the alleged infringement by each Defendant?
- If Plaintiffs sustains their burden of proving actual damages, what amount of damages have Plaintiffs sustained their burden of proving were the result of the alleged infringement by each Defendant?
- Are Plaintiffs unable to sustain their burden of proving a non-speculative, causal nexus between the alleged infringement by each defendant and the claimed net profits earned by each defendant as a result of their alleged infringement?

- If Plaintiffs sustains their burden of proving a non-speculative, causal nexus between the alleged infringement by each defendant and the claimed net profits earned by each defendant as a result of their alleged infringement, what amount of the net profits have Plaintiffs sustained their burden of proving is attributable to the alleged infringement?
- Are Plaintiffs unable to sustain their burden proving a non-speculative, causal nexus between the alleged infringement by each defendant and the claimed net profits earned by each Defendant from the exploitation of sound recordings containing “Dark Horse”?
- If Plaintiffs sustains their burden of proving a non-speculative, causal nexus between the alleged infringement by each defendant and the claimed net profits earned by each Defendant from the exploitation of sound recordings containing “Dark Horse,” what amount of the net profits have Plaintiffs sustained their burden of proving is attributable to the alleged infringement?

9. All discovery is complete.

10. All disclosures under F.R.Civ.P. 26(a)(3) have been made.

The joint exhibit list of the parties has been filed under separate cover as required by L.R. 16-6.1. Unless all parties agree that an exhibit shall be withdrawn, all exhibits will be admitted without objection at trial, except for the following exhibits:

Plaintiffs object to the following exhibits:

Exhibit No.	Grounds for Objection
2	Irrelevant. [FRE 401, 402] Unfairly prejudicial in that it is misleading and confuses the issues. [FRE 403] Lacks foundation. [FRE 602] Lacks authentication. [FRE 901] Hearsay. [FRE 801, 802]

Exhibit No.	Grounds for Objection
3	Irrelevant. [FRE 401, 402] Unfairly prejudicial in that it is misleading and confuses the issues. [FRE 403] Lacks foundation. [FRE 602] Lacks authentication. [FRE 901] Hearsay. [FRE 801, 802]
86	Irrelevant. [FRE 401, 402] Unfairly prejudicial in that it is misleading and confuses the issues. [FRE 403] Lacks foundation. [FRE 602] Lacks authentication. [FRE 901] Hearsay. [FRE 801, 802] Hearsay within hearsay. [FRE 805]
87	Irrelevant. [FRE 401, 402] Unfairly prejudicial in that it is misleading and confuses the issues. [FRE 403]  This evidence is the subject of Plaintiff's <i>Motion In Limine</i> #2 to exclude evidence not relevant to the claims at issue [Doc. 328].
94	Irrelevant. [FRE 401, 402] Unfairly prejudicial in that it is misleading and confuses the issues. [FRE 403] Lacks foundation. [FRE 602] Lacks authentication. [FRE 901]
95	Irrelevant. [FRE 401, 402] Unfairly prejudicial in that it is misleading and confuses the issues. [FRE 403] Lacks foundation. [FRE 602] Lacks authentication. [FRE 901]
96	Irrelevant. [FRE 401, 402] Unfairly prejudicial in that it is misleading and confuses the issues. [FRE 403] Lacks foundation. [FRE 602] Lacks authentication. [FRE 901]
97	Irrelevant. [FRE 401, 402] Unfairly prejudicial in that it is misleading and confuses the issues. [FRE 403] Lacks foundation. [FRE 602] Lacks authentication. [FRE 901]

Defendants object to the following exhibits:

<b>Exhibit No.</b>	<b>Grounds for Objection.</b>
14	Relevance Rule 403 Hearsay Foundation Authentication  <i>See Defendants Motion in Limine No. 4, Dkt. 340</i>
15	Relevance Rule 403 Hearsay Foundation Authentication  <i>See Defendants Motion in Limine No. 4, Dkt. 340</i>
16	Defendants do not know what this document is and therefore reserve their right to object. Out of an abundance of caution, they also state the following objections: Relevant Rule 403 Foundation Authentication
19	Relevance Rule 403 Hearsay  <i>See Defendants Motion in Limine No. 3, Dkt. 339</i>
20	Relevance Rule 403 Hearsay  <i>See Defendants Motion in Limine No. 3, Dkt. 339</i>
21	Relevance Rule 403 Hearsay  <i>See Defendants' Motion in Limine No. 6, Dkt. 342</i>
22	Relevance Rule 403 Hearsay  <i>See Defendants' Motion in Limine No. 6, Dkt. 342.</i>
23	Not produced in discovery Relevance Rule 403 Hearsay Foundation Authentication  <i>See Defendants Motion in Limine No. 4, Dkt. 340</i>
24	Not produced in discovery

Exhibit No.	Grounds for Objection.
	Relevance Rule 403 Hearsay Foundation Authentication  <i>See Defendants Motion in Limine No. 4, Dkt. 340</i>
25	Relevance Rule 403 Hearsay  <i>See Defendants' Motion in Limine No. 6, Dkt. 342</i>
26	Relevance Rule 403 Hearsay
27	Relevance Rule 403 Hearsay
28	Relevance Rule 403 Hearsay
29	Relevance Rule 403 Hearsay Foundation
30	Rule 403 (duplicative) Not produced in discovery
31	Rule 403 (duplicative) Not produced in discovery
32	Rule 403 (duplicative) Not produced in discovery
33	Relevance FRE 403 (duplicative) Hearsay
34	Relevance FRE 403 (duplicative) Hearsay
35	Relevance FRE 403 (duplicative) Hearsay
36	Relevance

1	<b>Exhibit</b>	<b>Grounds for Objection.</b>
2	<b>No.</b>	
3		FRE 403 (duplicative)
4		Hearsay
5	37	Relevance
6		FRE 403 (duplicative)
7		Hearsay
8	38	Relevance
9		FRE 403 (duplicative)
10		Hearsay
11	39	Relevance
12		FRE 403 (duplicative)
13		Hearsay
14	40	Relevance
15		FRE 403 (duplicative)
16		Hearsay
17	41	Relevance
18		FRE 403 (duplicative)
19		Hearsay
20	42	Relevance
21		FRE 403 (duplicative)
22		Hearsay
23	43	Relevance
24		FRE 403 (duplicative)
25		Hearsay
26	44	Relevance
27		FRE 403 (duplicative)
28		Hearsay
	45	Relevance
		FRE 403 (duplicative)
		Hearsay
	46	Relevance
		FRE 403 (duplicative)
		Hearsay
	47	Relevance
		FRE 403 (duplicative)
		Hearsay
	48	Hearsay
		Foundation
		Authentication
		Relevance



Exhibit No.	Grounds for Objection.
	<i>See Defendants' Motion in Limine No. 1, Dkt. 337</i>
49	Hearsay Foundation Authentication Relevance FRE 403  <i>See Defendants' Motion in Limine No. 1, Dkt. 337</i>
51	Hearsay Relevance FRE 403 Foundation Authentication
52	Hearsay Foundation Authentication
53	Hearsay Relevance FRE 403 Foundation Authentication
54	Hearsay Relevance FRE 403 Foundation Authentication
55	Hearsay Relevance FRE 403 Foundation Authentication
57	Relevance Rule 403 Foundation Authentication
59	Playing the video is duplicative, wastes time, is not relevant, and violates FRE 403
60	Playing the video is duplicative, wastes time, is not relevant, and violates FRE 403
61	Playing the video is duplicative, wastes time, is not relevant, and violates FRE 403

Exhibit No.	Grounds for Objection.
62	Playing the video is duplicative, wastes time, is not relevant, and violates FRE 403
63	Playing the video is duplicative, wastes time, is not relevant, and violates FRE 403
64	Rule 403 Foundation Authentication Hearsay  <i>See Defendants' Motion in Limine No. 8, Dkt. 344</i>
65	Rule 403 Foundation Authentication Hearsay  <i>See Defendants' Motion in Limine No. 8, Dkt. 344</i>
66	Rule 403 Foundation Authentication Hearsay  <i>See Defendants' Motion in Limine No. 8, Dkt. 344</i>
67	Not produced in discovery Rule 403 Foundation Authentication Hearsay  <i>See Defendants' Motion in Limine No. 8, Dkt. 344</i>
68	Not produced in discovery Rule 403 Foundation Authentication Hearsay  <i>See Defendants' Motion in Limine No. 8, Dkt. 344</i>
69	Rule 403 Foundation Authentication Hearsay  <i>See Defendants' Motion in Limine No. 7, Dkt. 343</i>
70	Relevance Rule 403 Hearsay  <i>See Defendants' Motion in Limine No. 9, Dkt. 345</i>
71	Relevance Rule 403

Exhibit No.	Grounds for Objection.
	Hearsay  <i>See Defendants' Motion in Limine No. 9, Dkt. 345</i>
72	Relevance Rule 403 Hearsay  <i>See Defendants' Motion in Limine No. 9, Dkt. 345</i>
73	Relevance Rule 403 Hearsay  <i>See Defendants' Motion in Limine No. 9, Dkt. 345</i>
77	Relevance Rule 403 Foundation Authentication  <i>See Defendants Motion in Limine No. 1, Dkt. 337</i>
78	Relevance Rule 403 Foundation Authentication
79	Relevance FRE 403 Foundation Authentication Hearsay
80	Hearsay Relevance Rule 403
81	Hearsay FRE 403  <i>See Defendants' Partial Daubert Motion, Dkt. 348</i>
82	Hearsay FRE 403  <i>See Defendants' Partial Daubert Motion, Dkt. 348</i>
83	Hearsay Authentication Foundation FRE 702 FRE 703  <i>See Defendants' Partial Daubert Motion, Dkt. 348</i>
84	Hearsay Authentication

Exhibit No.	Grounds for Objection.
	Foundation FRE 702 FRE 703  <i>See Defendants' Partial Daubert Motion, Dkt. 348</i>
85	Hearsay Authentication Foundation FRE 702 FRE 703  <i>See Defendants' Partial Daubert Motion, Dkt. 348</i>
98	Duplicative, time consuming, and irrelevant due to stipulation of fact
99	Duplicative, time consuming, and irrelevant due to stipulation of fact
100	Duplicative, time consuming, and irrelevant due to stipulation of fact
101	Duplicative, time consuming, and irrelevant due to stipulation of fact
102	Duplicative, time consuming, and irrelevant due to stipulation of fact
103	Duplicative, time consuming, and irrelevant due to stipulation of fact
104	Duplicative, time consuming, and irrelevant due to stipulation of fact
105	Duplicative, time consuming, and irrelevant due to stipulation of fact
106	Duplicative, time consuming, and irrelevant due to stipulation of fact
107	Duplicative, time consuming, and irrelevant due to stipulation of fact
108	Duplicative, time consuming, and irrelevant due to stipulation of fact
109	Duplicative, time consuming, and irrelevant due to stipulation of fact
110	Duplicative, time consuming, and irrelevant due to stipulation of fact
111	Relevance Rule 403  <i>See Defendants' Daubert Motion, Dkt. 351</i>
112	Relevance Rule 403 Authentication Foundation  <i>See Defendants' Daubert Motion, Dkt. 351</i>
113	Hearsay FRE 403

Exhibit No.	Grounds for Objection.
	<i>See Defendants' Daubert Motion, Dkt. 351</i>
114	Hearsay FRE 403 <i>See Defendants' Daubert Motion, Dkt. 351</i>
115	Hearsay FRE 403 <i>See Defendants' Daubert Motion, Dkt. 351</i>

11. Witness lists of the parties have been filed with the Court.

Only the witnesses identified in the lists will be permitted to testify (other than solely for impeachment). Any party may call any witness listed by another party.

Each party intending to present evidence by way of deposition designations will mark such depositions in accordance with L.R. 16-2.7 and L.R. 32-1 before the appropriate phase of trial (liability and damages). For this purpose, the following depositions shall be lodged with the Clerk as required by L.R. 32-1:

Plaintiffs:

- Silvio Pietroluongo (Billboard)
- Defendant Katherine Hudson (p/k/a Katy Perry)
- Defendant Sarah Hudson
- Defendant Karl Martin Sandburg (p/k/a Max Martin)

Defendants:

- Silvio Pietroluongo (Billboard)
- Marcus Gray
- Emanuel Lambert
- Chike Ojukwu
- Todd Decker
- Michael Einhorn

1 Nothing herein is intended to limit the parties' ability to use deposition  
 2 testimony afforded by the Federal Rules and each party will be allowed to present  
 3 the testimony of an adverse party, as well as their agents and experts.

4 Each party will also be allowed to present the deposition testimony of an  
 5 opposing party in the event that the party unexpectedly does not appear at  
 6 trial. Such designations will need to be disclosed within one day of the party being  
 7 given notice of the other party's complete unavailability.

8 Plaintiffs object to the presentation of testimony by deposition of the  
 9 following witnesses: Todd Decker; Michael Einhorn. Plaintiffs will object to  
 10 specific deposition testimony identified by Defendants in the index lodged with the  
 11 Court pursuant to Local Rules 16-2.7(c) and 32-1.

12 Defendants object to the presentation of testimony by deposition by Silvio  
 13 Pietroluongo for the reasons set forth in their Motion *in Limine* No. 9 but reserve  
 14 the right to present his testimony as needed in response to testimony presented by  
 15 Plaintiffs. Defendants will object to specific deposition testimony identified by  
 16 Plaintiffs in the index lodged with the Court pursuant to Local Rules 16-2.7(c) and  
 17 32-1.

18 12. The following law and motion matters and motions *in limine*, and no  
 19 others, are pending or contemplated:

- 20 a. Defendants' Motion in Limine No. 1 to Exclude Evidence or
- 21 Argument Regarding Alleged Violations of Plaintiffs' So-Called
- 22 Moral Rights
- 23 b. Defendants' Motion in Limine No. 2 to Preclude Evidence or
- 24 Argument of Striking Similarity
- 25 c. Defendants' Motion in Limine No. 3 to Exclude Evidence and
- 26 Argument Regarding Lack of Evidence of Sales
- 27 d. Defendants' Motion in Limine No. 4 to Exclude Evidence
- 28 Regarding Live Performances of "Joyful Noise"

- e. Defendants' Motion in Limine No. 5 to Exclude Evidence of Purported Playing of "Joyful Noise" During Radio and TV Interviews
- f. Defendants' Motion in Limine No. 6 to Exclude Evidence of Critical Acclaim for "Joyful Noise" In The Christian Music Community
- g. Defendants' Motion in Limine No. 7 to Exclude Evidence or Argument Regarding Myspace Plays
- h. Defendants' Motion in Limine No. 8 to Exclude Untimely And Unauthenticated Youtube Screenshot
- i. Defendants' Motion in Limine No. 9 to Exclude Billboard Evidence
- j. Defendants' Motion in Limine No. 10 to Exclude Evidence or Argument Regarding Access through The 51st Grammy Awards Show
- k. Defendants' Motion in Limine No. 11 to Exclude Evidence or Argument Relating to Defendants' Financial Condition
- l. Defendants' Motion to Preclude Portions of the Testimony of Plaintiffs' Expert Todd Decker at Trial
- m. Defendants' Motion to Preclude the Testimony of Plaintiffs' Expert Michael Einhorn at Trial
- n. Plaintiffs' Motion in Limine No. 1 to preclude defendants from making argument that would distort the standard for "widespread dissemination"
- o. Plaintiffs' Motion in Limine No. 2 to exclude evidence, reference and argument related to matters not relevant to the issues in this case
- p. Plaintiffs' Motion in Limine No. 3 to exclude evidence, reference

1 and argument related to matters not relevant to the issues in this  
2 case.

- 3 q. Plaintiffs' Daubert Motion No. 1 to preclude the testimony of  
4 Defendants' Expert Lawrence Ferrara (on the valuation topics set  
5 forth in his April 12, 2019 report)
- 6 r. Plaintiffs' Daubert Motion No. 2 to preclude the testimony of  
7 Defendants' Expert Jason King
- 8 s. Plaintiffs' Daubert Motion No. 3 to preclude the testimony of  
9 Defendants' Expert Charles Diamond
- 10 t. Plaintiffs' Daubert Motion No. 4 to preclude the testimony of  
11 Defendants' Expert Zachary P. St. Martin
- 12 u. Plaintiffs' Daubert Motion No. 5 to preclude the testimony of  
13 Defendants' Expert Bill Rosenblatt.
- 14 v. Defendants contend that because the effective date of the copyright  
15 registration for the "Joyful Noise" composition is more than five  
16 years after the publication of "Joyful Noise," the copyright  
17 registration is not prima facie evidence of the validity of the  
18 copyright and the facts stated in the certificate. 17 U.S.C.  
19 § 401(c). As such, the Court will need to decide what evidentiary  
20 weight, if any, is given to the registration. *Id.*
- 21 w. Plaintiffs contend that because Defendants explicitly abandoned  
22 their affirmative defense No. 13 related to the existence of a valid  
23 and enforceable copyright registration, which Defendants raised  
24 again for the first time in their Memorandum of Contentions of  
25 Law and Fact (Dkt. No. 385), the Court must determine whether  
26 Defendants are barred from pursuing such defense at trial.

27 13. Bifurcation of the following issues for trial is ordered. The trial will  
28 be bifurcated into liability and damages. Whether and which Defendants have



1 infringed Plaintiffs' copyright will be the issue of the first trial. If liability is  
2 found, the type(s) and amount(s) of damages owed to Plaintiffs, if any, will be the  
3 issue of the second trial. Plaintiffs contend that an unresolved issue remains  
4 regarding whether Plaintiffs will be entitled to conduct discovery on and assert as  
5 part of their damages claim profits related to Defendants' concert revenues.  
6 Defendants contend that the issue was resolved and Plaintiffs are not entitled to  
7 conduct discovery or seek profits related to Defendants' concert revenues.

8 14. The foregoing admissions having been made by the parties, and the  
9 parties having specified the foregoing issues remaining to be litigated, this Final  
10 Pretrial Conference Order shall supersede the pleadings and govern the course of  
11 the trial of this cause, unless modified to prevent manifest injustice.

12  
13 **IT IS SO ORDERED.**

14  
15 Dated: July 1, 2019

By: 

Honorable Christina A. Snyder  
Judge of the United States District Court

1 Approved as to form and content:

2 DATED: June 27, 2019

3 CAPES SOKOL GOODMAN  
SARACHAN PC

4 By: /s/ Michael A. Kahn  
5 Michael A. Kahn (*pro hac vice*)

6 Eric F. Kayira (*pro hac vice*)  
7 KAYIRA LAW, LLC

8 Attorneys for Plaintiffs

9 DATED: June 27, 2019

10 MITCHELL SILBERBERG & KNUPP LLP

11 By: /s/ Aaron M. Wais  
12 Aaron M. Wais (SBN 250671)  
13 Attorneys for Defendants other than Katheryn  
Elizabeth Hudson, and Kitty Purry, Inc.

14 DATED: June 27, 2019

15 GREENBERG TRAURIG, LLP

16 By: /s/ Vincent H. Chieffo  
17 Vincent H. Chieffo (SBN 49069)  
18 Attorneys for Defendants Katheryn Elizabeth  
Hudson p/k/a Katy Perry and Kitty Purry, Inc.

19  
20 **ATTESTATION REGARDING SIGNATURES**

21 Pursuant to Local Civil Rule 5-4.3.4(a)(2)(i), I hereby attest that all parties,  
22 on whose behalf this filing is jointly submitted, concur in this filing's content and  
23 have authorized its filing.

24 Dated: July 27, 2019

25 /s/ Aaron M. Wais  
26 Aaron M. Wais

**Schedule 5(a)**

In the liability trial, the following facts are admitted and require no proof.

1. The website [www.youtube.com](http://www.youtube.com) is an online video-sharing service owned by Google where users can upload, share, and watch videos.

2. YouTube launched in 2005.

3. By 2010, users were uploading more than 50,000 hours of video content to YouTube each day and there were more than two billion views of YouTube videos each day.

4. By 2012, users were uploading more than 85,000 hours of video content to YouTube each day and there were more than four billion views of YouTube videos each day.

5. Today, YouTube has over a billion users and there are more than 576,000 hours of video content being uploaded to YouTube each day, and each day users watch a billion hours of video, generating billions of “views” each day.

6. Among the records maintained by Google for each video that is uploaded to YouTube is the total number of “views” that a video has received at a particular moment in time—e.g., as of a specific date at a specific time. This is called a “view count.”

7. A view count does not identify any one person in particular as having watched a particular video.

8. Moreover, a “view” does not necessarily mean that a human actually watched or listened to the video while it was playing; it only means that the video was played.

9. In addition, a “view” does not necessarily mean that a video was played in its entirety or was even played for more than a few seconds.

10. Google takes proprietary measures to improve the accuracy of video view counts so that these numbers better reflect “quality views” by actual humans

1 and not computer programs or other means that may be used to artificially inflate a  
2 video's view count.

3 11. Video views are algorithmically validated using proprietary means.

4 12. To help verify that views are real and accurate, Google may also  
5 temporarily slow down, freeze, or adjust the view count, as well as discard suspect  
6 playbacks in its discretion. Because Google is constantly validating views, a view  
7 count for a particular video is always subject to being adjusted. Although Google  
8 takes measures to ensure that a video view count reflects only quality views,  
9 Google cannot guarantee that all of the views reflected in a video view count are in  
10 fact quality views, as the view count may have been improperly inflated by means  
11 that were not detected by Google.

12 13. Google is aware of certain instances in the past in which video view  
13 counts were improperly inflated by third parties using automated means in  
14 violation of YouTube policy.

15 14. In 2008, there were approximately [REDACTED] videos available for  
16 viewing on YouTube, including approximately [REDACTED] that were  
17 uploaded to YouTube in 2008 alone. The available videos accumulated  
18 approximately [REDACTED] views during 2008.

19 15. In 2009, there were approximately [REDACTED] videos available for  
20 viewing on YouTube, including approximately [REDACTED] videos that were  
21 uploaded to YouTube in 2009 alone. The available videos accumulated  
22 approximately [REDACTED] views during 2009.

23 16. In 2010, there were approximately [REDACTED] videos available for  
24 viewing on YouTube, including approximately [REDACTED] videos that were  
25 uploaded to YouTube in 2010 alone. The available videos accumulated  
26 approximately [REDACTED] views during 2010.

27 17. The YouTube videos receiving the most "views" in 2010 were:  
28

- a. First, the Official Music Video for Justin Bieber's song, Baby, featuring Ludacris, received 425,688,273 views in 2010;
- b. Second, the video for Shakira's song, Waka Waka (This Time for Africa), received 270,763,562 views in 2010;
- c. Third, the video for Lady Gaga's song, Bad Romance, received 266,191,920 views in 2010;
- d. Fourth, the Official Music Video for Eminem's song, Love the Way Lie, featuring Rihanna, received 251,890,764 views in 2010;
- e. Fifth, the Official Video for Justin Bieber's song, One Time, received 183,274,415 views in 2010.

18. In 2011, there were approximately [REDACTED] videos available for viewing on YouTube, including approximately [REDACTED] videos that were uploaded to YouTube in 2011 alone. The available videos accumulated approximately [REDACTED] views during 2011.

19. The YouTube videos receiving the most "views" in 2011 were:

- a. First, the Jennifer Lopez song, On the Floor, featuring Pitbull, received 464,437,051 views in 2011;
- b. Second, the video Crocodile Attack received 407,888,327 views in 2011;
- c. Third, the video for LMFAO's song, Party Rock Anthem, featuring Lauren Bennett, GoonRock, received 339,831,952 views in 2011;
- d. Fourth, the video Sterio heart received 313,286,752 views in 2011;
- e. Fifth, the Official Music Video for Justin Bieber's song, Baby, featuring Ludacris, received 259,746,426 views in 2011.

1           20. In 2012, there were approximately [REDACTED] videos available for  
2 viewing on YouTube, including approximately [REDACTED] videos that were  
3 uploaded to YouTube in 2012 alone. The available videos accumulated  
4 approximately [REDACTED] views during 2012.

5           21. The YouTube videos receiving the most “views” in 2012 were:

- 6           a. First, the video for Psy’s song, Gangnam Style M/V, received  
7           1,101,849,272 views in 2012;
- 8           b. Second, the video for Carly Rae Jepsen’s song, Call Me Maybe,  
9           received 373,789,532 views in 2012;
- 10          c. Third, the Official Video for Michel Telo’s song, Ai Se Eu Te  
11          Pego, received 373,608,879 views in 2012;
- 12          d. Fourth, the Official Video for Gotye’s song, Somebody That I  
13          Used To Know, featuring Kimbra, received 331,408,797 views  
14          in 2012;
- 15          e. Fifth, the Official Video for One Direction’s song, What Makes  
16          You Beautiful, received 271,945,208 views in 2012.

17          22. In 2013, there were approximately [REDACTED] videos available for  
18 viewing on YouTube, including approximately [REDACTED] videos that were  
19 uploaded to YouTube in 2013 alone. The available videos accumulated  
20 approximately [REDACTED] views during 2013.

21          23. The YouTube videos receiving the most “views” in 2013 were:

- 22          a. First, the video for Psy’s song, Gangnam Style M/V, received  
23          783,446,910 views in 2013;
- 24          b. Second, the video for Psy’s song, Gentleman M/V, received  
25          619,058,370 views in 2013;
- 26          c. Third, the Official Video for Miley Cyrus’s song, Wrecking  
27          Ball, received 461,848,016 views in 2013;

1 d. Fourth, the Official Video for Macklemore & Ryan Lewis's  
2 song, Thrift Shop, featuring Wanz, received 440,889,984 views  
3 in 2013;

4 e. Fifth, the Official Video for Miley Cyrus's song, We Can't  
5 Stop, received 332,047,880 views in 2013.

6 24. For each video in the above paragraphs for 2008-2013, the view count  
7 stated is only for the specific video identified, not all videos of that song posted on  
8 YouTube.

9 25. The sound recording of "Joyful Noise" is embodied in five videos  
10 posted to YouTube:

11 a. A video posted to YouTube on January 21, 2011, titled  
12 "Flame—Joyful Noise" at the url,  
13 [https://www.youtube.com/watch?v=QCcW-guAs\\_s](https://www.youtube.com/watch?v=QCcW-guAs_s) (Video 1).

14 b. A video posted to YouTube on January 21, 2011, titled  
15 "Flame—Joyful Noise" at the url,  
16 <https://www.youtube.com/watch?v=jTLeHuvHXuk> (Video 2)

17 c. A video posted to YouTube on December 18, 2009, titled  
18 "Joyful Noise—Flame feat. Lecrae and John Reilly" at the url,  
19 <https://www.youtube.com/watch?v=PwoEOB3Jr8Y> (Video 3).

20 d. A video published to YouTube on November 7, 2009, titled  
21 "Flame—Joyful Noise with Lyrics" and available at the url,  
22 <https://www.youtube.com/watch?v=zaUIncoyJ4w> (Video 4).

23 e. A video posted to YouTube on March 15, 2008, titled "Flame  
24 ft. Lecrae and John Reilly – Joyful Noise LYRICS" at the url,  
25 <https://www.youtube.com/watch?v=HU3gAGWoKYM> (Video  
26 5).

27 26. As of March 11, 2012, Video 1 had a view count of 293,956.

28 27. As of March 11, 2012, Video 2 had a view count of 483,931.

1           28. As of March 11, 2012, Video 3 had a view count of 7,283.

2           29. As of March 11, 2012, Video 4 had a view count of 18,153.

3           30. As of March 11, 2012, Video 5 had a view count of 561,718.

4           31. The view counts for Videos 1-5 do not identify any one person in  
5 particular as having watched any of the five videos listed.

6           32. Myspace LLC operates the website service [www.myspace.com](http://www.myspace.com).  
7 [Myspace is a social networking website, which was founded in 2003.](#)

8           33. Throughout its history, Myspace has offered an interactive, user-  
9 submitted network of friends, each of whom creates a personal profile page on  
10 which the user can blog, upload music, videos, and photographs.

11           34. Myspace tracks and displays the number of times that play of a  
12 specific song on a specific profile page is initiated. This “play count” is displayed  
13 on the profile page either in a column titled “plays” or by displaying the play count  
14 adjacent to the arrow “play” button on the profile page.

15           35. Each “play” does not necessarily mean that a person actually listened  
16 to the song while it was playing; instead, it indicates that the playing of the song  
17 was initiated.

18           36. Each “play” does not necessarily mean that the song was played in its  
19 entirety or was even played for more than a few seconds.

20           37. Each “play” of a song does not necessarily mean that a person  
21 initiated the play of a song. During Myspace’s history, users have used “bots,”  
22 which are autonomous programs that can interact with computer systems and  
23 websites such as Myspace, to autonomously initiate plays of a song.

24           38. A “play” does not identify any one person in particular as having  
25 initiated playback or listened to the song in question. Myspace has no records of  
26 and cannot identify whether any one person in particular has played or listened to a  
27 song.



**Schedule 5(b)**

In the damages phase of trial, the following facts are admitted and require no proof. Plaintiffs agree not to seek any additional discovery of financial data or backup materials from the Defendants.

The admissions below are without prejudice to the Parties' claims or positions in this case, including the Defendants' position that there is no liability. Defendants reserve the right to challenge the amount of alleged damages, including but not limited to the percentage or amount, if any, of income or profits earned by Defendants that Plaintiffs may appropriately seek as damages. Plaintiffs, in turn, reserve their right to challenge the deductibility of some or all of the categories of costs incurred by Defendants.

1. Houston received total gross income of \$ [REDACTED] from the exploitation of the composition and sound recording of "Dark Horse" in the United States.

2. Houston incurred costs attributable to the aforementioned exploitation of "Dark Horse" in the amount of \$ [REDACTED], consisting of legal and accounting fees.

3. Sandberg received total gross income of \$ [REDACTED] from the exploitation of the composition and sound recording of "Dark Horse" in the United States.

4. Sandberg incurred the following costs attributable to the aforementioned exploitation of "Dark Horse."

- a. Management commissions in the amount of \$ [REDACTED],  
calculated as [REDACTED]  
[REDACTED];

1 b. Legal, administrative, and accounting fees in the amount of

2 \$

3

4 5. Gottwald received total gross income of \$ from the

5 exploitation of the composition and sound recording of "Dark Horse" in the United  
6 States.

7 6. Gottwald incurred the following costs attributable to the  
8 aforementioned exploitation of "Dark Horse."

9 a. Production expenses in the amount of \$

10 b. Professional fees in the amount of \$.

11 7. Kasz Money Inc. received total gross income of \$ from  
12 the exploitation of the composition and sound recording of "Dark Horse" in the  
13 United States.

14 8. Kasz Money Inc. incurred the following costs attributable to the  
15 aforementioned exploitation of "Dark Horse."

16 a. Production expenses in the amount of \$

17 b. Professional fees in the amount of \$.

18 9. Walter received total gross income of \$ from the  
19 exploitation of the composition and sound recording of "Dark Horse" in the United  
20 States.

21 10. Walter incurred the following costs attributable to the aforementioned  
22 exploitation of "Dark Horse."

23 a. Management fees in the amount \$, calculated as

24 ;

25 b. Legal fees in the amount of \$, calculated as

26 ; and

1 c. Business management fees in the amount of \$ [REDACTED],  
2 calculated as [REDACTED]  
3 [REDACTED]

4 11. Sarah Hudson received total gross income of \$ [REDACTED] from the  
5 exploitation of the composition and sound recording of "Dark Horse" in the United  
6 States.

7 12. Sarah Hudson incurred the following costs attributable to the  
8 aforementioned exploitation of "Dark Horse."

9 a. Legal fees in the amount \$ [REDACTED], calculated as a percentage  
10 of an advance from Prescription Songs;

11 b. Legal fees in the amount of \$ [REDACTED], calculated as a [REDACTED]  
12 [REDACTED]  
13 [REDACTED]; and

14 c. Business management fees in the amount of \$ [REDACTED],  
15 calculated as [REDACTED]  
16 [REDACTED]

17 13. Perry received total gross income of \$ [REDACTED] from the  
18 exploitation of the composition and sound recording of "Dark Horse" in the United  
19 States.

20 14. Perry incurred the following costs attributable to the aforementioned  
21 exploitation of "Dark Horse."

22 a. Management commissions in the amount of \$ [REDACTED],  
23 calculated as [REDACTED]  
24 [REDACTED]

25 b. Legal fees in the amount of \$ [REDACTED], calculated as [REDACTED]  
26 [REDACTED]  
27 [REDACTED];  
28

1 c. Business management and accounting fees in the amount of  
2 \$ [REDACTED], calculated as [REDACTED]  
3 [REDACTED].

4 15. Kobalt Music Publishing America, Inc. received net income of  
5 \$ [REDACTED] from the exploitation of the composition and sound recording of  
6 “Dark Horse” in the United States.

7 16. WB Music Corp. received net income of \$ [REDACTED] from the  
8 exploitation of the composition and sound recording of “Dark Horse” in the United  
9 States.

**Schedule 6(a)**

In the liability phase of trial, the following facts are stipulated to without prejudice to Defendants' evidentiary objections to the matters stated therein, as stated in Defendants' Motion *in Limine* No. 7.

1. Pages 5-8 of Exhibit 69 is an archived screenshot from the Internet Archive from the URL <http://www.myspace.com:80/lecrae> as of September 7, 2011.

2. Page 9 of Exhibit 69 is an archived screenshot from the Internet Archive from the URL <https://myspace.com/lecrae/music/songs?filter=featured> as of June 13, 2013.

Pages 10-11 of Exhibit 69 is an archived screenshot from the Internet Archive from the URL <https://myspace.com/flame314> as of January 24, 2012.