

1 KIBLER FOWLER & CAVE LLP
Matthew J. Cave (SBN 280704)
2 mcave@kfc.law
John D. Fowler (SBN 271827)
3 jfowler@kfc.law
Kevin J. Cammiso (SBN 316540)
4 kcammiso@kfc.law
11100 Santa Monica Blvd., Suite 360
5 Los Angeles, California 90025
Telephone: (310) 409-0400
6 Facsimile: (310) 409-0401

7 *Attorneys for Plaintiffs Lucas Bolaño and*
8 *Julio Drove Pamart*
9

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
12

13 LUCAS BOLAÑO, an individual; and
14 JULIO DROVE PAMART, an
individual,

15 Plaintiffs,

16 v.

17 ELIZABETH WOOLRIDGE GRANT,
an individual; UNIVERSAL MUSIC
18 GROUP, INC., a Delaware corporation;
UMG RECORDINGS, INC., a
19 Delaware corporation; UMG LATIN
MUSIC, INC., a Delaware corporation;
20 KYLE NEWMAN, an individual;
SPENCER SUSSER, an individual;
21 MORGAN SUSSER, an individual;
TOVA DANN, an individual; KAREN
22 FOSTER, an individual; and DOES 1-
10, inclusive

23 Defendants.
24
25
26
27
28

CASE NO. 2:22-cv-04531

COMPLAINT FOR:

1. **COPYRIGHT INFRINGEMENT (COUNT I);**
2. **COPYRIGHT INFRINGEMENT (COUNT II); and**
3. **CONTRIBUTORY COPYRIGHT INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 Plaintiffs Lucas Bolaño (“Bolaño”) and Julio Drove Pamart (“Drove Pamart”)
 2 (together, “Plaintiffs”), demanding trial by jury, complain and allege as follows:

3 **INTRODUCTION**

4 1. Bolaño is an experimental musician based in Madrid, Spain. He is
 5 known for creating vivid soundscapes and sound art. Bolaño performs individually
 6 and as Experimental Little Monkey (“ELM”). Drove Pamart is also a Madrid-based
 7 director and filmmaker who focuses on experimental short films.

8 2. In 2009, Plaintiffs collaborated on a short film titled *SKY*, which
 9 features various cloudscape set to the song “Strange Dumpling Cheeks” by ELM.
 10 Towards the end of the film, a distinctive voice can be heard saying “Remember, I
 11 will always love you, bye” as clouds shift across the sunset.

12 3. Three years later, world renowned pop star Lana Del Rey lifted that
 13 portion of *SKY* and used it in the official music video for her mega-hit single
 14 “Summertime Sadness” (the “Music Video”)—without Plaintiffs’ knowledge or
 15 consent. In blatant disregard for Plaintiffs’ intellectual property rights, the first 17
 16 seconds of the Music Video are copied directly from *SKY* (which incorporates the
 17 sound recording “Strange Dumpling Cheeks”). Defendants do not even try to hide
 18 their unauthorized copying and use the phrase “Remember, I will always love you,
 19 bye” as the thematic underpinning for the entire Music Video.

20 4. When Plaintiffs discovered the infringement, they immediately sent
 21 Defendants a cease-and-desist letter.

22 5. To date, however, the Music Video remains on YouTube, where it
 23 continues to generate significant income for Defendants. Plaintiffs were left with no
 24 choice but to bring this action against Defendants for their acts of willful and
 25 contributory copyright infringement in violation of the United States Copyright Act,
 26 as codified in 17 U.S.C. §§ 101 *et seq.*

27 //

28 //

JURISDICTION AND VENUE

6. This Court has jurisdiction over Plaintiffs' copyright claims under 28 U.S.C. §§ 1331, 1332, and 1338.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c), and 28 U.S.C. § 1400(a) because the claims arise in this Judicial District and the Defendants transact business in this Judicial District.

PARTIES

8. Bolaño is, and at all relevant times was, a Spanish national residing in Madrid, Spain. Bolaño owns all rights to the song "Strange Dumpling Cheeks" by ELM. "Strange Dumpling Cheeks" was registered with the U.S. Copyright Office on May 17, 2022 (Reg. No. SR 928-275).

9. Drove Pamart is, and at all relevant times was, a Spanish national residing in Madrid, Spain. Drove Pamart owns all rights to the short film titled *SKY*. *SKY* was registered with the U.S. Copyright Office on May 17, 2022 (Reg. No. PAU 4-136-898).

10. On information and belief, Defendant Elizabeth Woolridge Grant ("Grant"), professionally known as Lana Del Rey, is, and at all relevant times was, an individual residing in Los Angeles County, California. Grant is a world renowned singer and songwriter that routinely conducts business in Los Angeles County, California. Throughout her career, Grant has won numerous awards, released chart-topping hits, and been nominated for six Grammy Awards. As a result, she is one of the most famous and instantly recognizable pop stars in the world today.

11. Defendant Universal Music Group, Inc. ("UMG") is a Delaware corporation with its principal place of business in Santa Monica, California. UMG is the world's largest record label and music publishing company.

12. Defendant UMG Recordings, Inc. ("UMG Recordings") is a Delaware corporation with its principal place of business in Santa Monica, California. UMG

1 Recordings is a subsidiary of UMG. Interscope Records, the worldwide distributor
2 of the Music Video, is a division of UMG Recordings.

3 13. Defendant UMG Latin Music, Inc. (“UMG Latin Music”) is a
4 Delaware corporation with its principal place of business in Santa Monica,
5 California. UMG, UMG Recordings, and UMG Latin Music are collectively
6 referred to as the “UMG Parties.”

7 14. On information and belief, Defendant Kyle Newman (“Newman”) is,
8 and at all relevant times was, an individual residing in Los Angeles County,
9 California. Newman is a filmmaker who regularly conducts business in Los
10 Angeles County, California. Newman directed the Music Video.

11 15. On information and belief, Defendant Spencer Susser (“Spencer”) is,
12 and at all relevant times was, an individual residing in Los Angeles County,
13 California. Spencer is a film director, screenwriter, and producer who regularly
14 conducts business in Los Angeles County, California. Spencer directed the Music
15 Video along with Newman.

16 16. On information and belief, Defendant Morgan Susser (“Morgan”) is,
17 and at all relevant times was, an individual residing in Los Angeles County,
18 California. Morgan is a cinematographer who regularly conducts business in Los
19 Angeles County, California. Morgan is credited as the Music Video’s
20 cinematographer.

21 17. On information and belief, Defendant Tova Dann (“Dann”) is, and at
22 all relevant times was, an individual residing in Los Angeles County, California.
23 Dann is a producer who regularly conducts business in Los Angeles County,
24 California. Dann was one of the producers of the Music Video.

25 18. On information and belief, Defendant Karen Foster (“Foster”) is, and at
26 all relevant times was, an individual residing in Los Angeles County, California.
27 Foster is a producer who regularly conducts business in Los Angeles County,
28 California. Foster produced the Music Video along with Dann.

19. Defendants Does 1 through 10 are sued by fictitious names as their true names are currently unknown to Plaintiffs. Plaintiffs will seek leave to amend this complaint to allege the true identities of these Defendants when the same have been ascertained.

20. Plaintiff is informed and believes that at all relevant times, all Defendants were the agents and/or co-conspirators of their co-defendants, and in doing the things hereinafter alleged, were acting within the course and scope of their authority as those agents and/or co-conspirators and with the permission and consent of their co-defendants.

GENERAL ALLEGATIONS

Plaintiffs' Works

21. In 2008, Bolaño created a song titled "Strange Dumpling Cheeks" by ELM. At the end of the track, a distinctive woman's voice can be heard clearly saying "Remember, I will always love you, bye." The song was then used as the title track for ELM's album of the same name. The album was initially published on compact discs and later uploaded to ELM's Bandcamp page for commercial distribution. It is widely disseminated and accessible across a variety of platforms. Bolaño is the sole and exclusive owner of all copyrights in the work "Strange Dumpling Cheeks."

22. In 2009, Bolaño collaborated with Drove Pamart on a short film called *SKY*. As the title suggests, *SKY* contains Super 8 film footage of various cloud formations set to ELM's song "Strange Dumpling Cheeks." In 2009, Drove Pamart uploaded the 3 minute and 29 second long video to YouTube for distribution, which can be viewed at the following link:

<https://www.youtube.com/watch?v=j420Y56jOMA>.

23. Between minute 3:09 and 3:26, the distinctive female voice can be heard saying "Remember, I will always love you, bye" as clouds shift across the sunset. The film then ends with a black-and-white credit screen attributing the

1 music to ELM. Below the video, the following additional credits are noted:

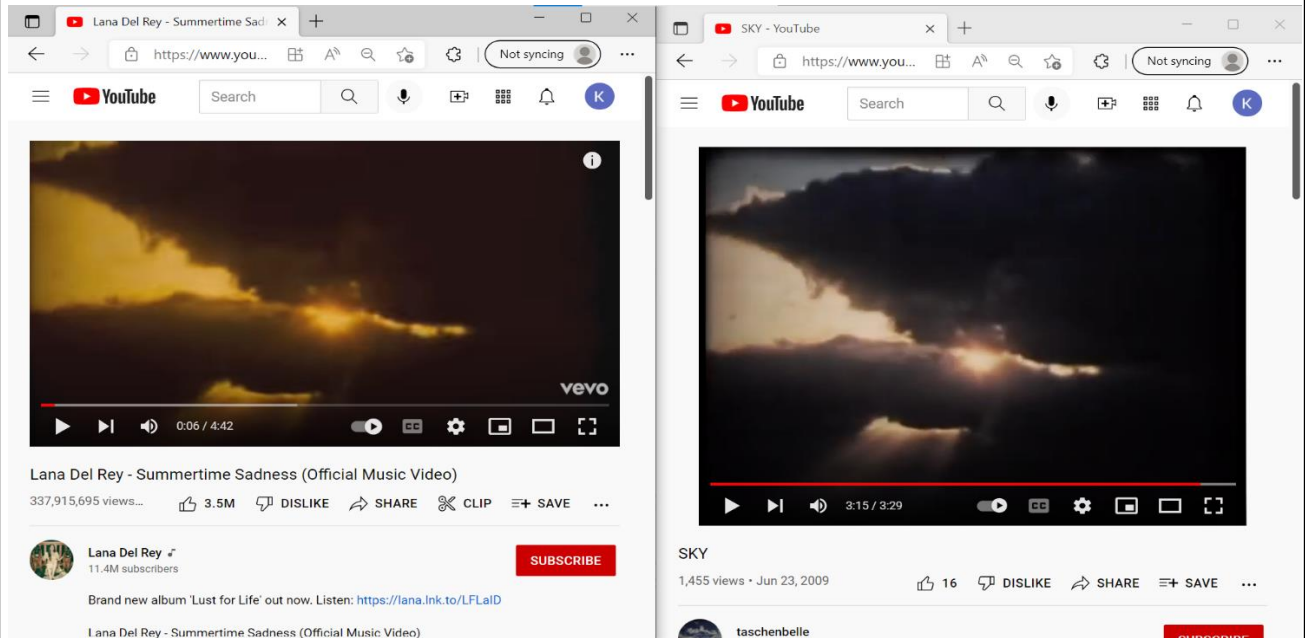
2 SUPER 8 by JULIO J. von DROVE
3 Music by EXPERIMENTALLITTLEMONKEY
4 Musicians: Ian Kryshak / Lin-Yi-Le / Lucas Bolaño

5 *Defendants' Work*

6 24. The studio version of Grant's "Summertime Sadness" was released by
7 Interscope Records on June 22, 2012 as the fourth single off her album *Born to Die*
8 (2012). The song was an instant hit, reaching number one on charts across the
9 globe.

10 25. The official Music Video was then published on YouTube on August
11 23, 2013 through UMG's video hosting service Vevo, and can be accessed at the
12 following link: <https://www.youtube.com/watch?v=TdrL3QxjyVw>. The Music
13 Video was directed by Kyle Newman and Spencer Susser. Spencer Susser is also
14 credited as the "film editor," while his brother, Morgan Spencer, is credited as the
15 cinematographer.

16 26. The first 17 seconds of Grant's music video are copied *directly* from
17 the 3:09 and 3:26 minute marks of *SKY*. Indeed, Defendants simply took this 17
18 second clip from *SKY*, and used it as an introduction to Grant's official Music
19 Video—without Plaintiffs' knowledge or consent and without paying Plaintiffs
20 anything. The only marginal differences are that Defendants appear to have
21 saturated the colors and cropped Plaintiffs' footage, as shown below:



27. But these minor alterations do not make Defendants’ copying any less apparent or egregious. At the 13 second mark of the music video, listeners can hear the same distinctive voice saying “Remember, I will always love you, bye” before the screen cuts black and “Summertime Sadness” begins to play. That phrase, and the footage from *SKY*, are critical to Grant’s work since they set the tone and feel for the entire music video, which is filmed in a similar way and depicts a young couple reminiscing on happier times before committing suicide. This tone and feel has garnered many favorable reviews from music critics and fans alike. To date, the music video has 357,359,116 views on YouTube and, on information and belief, has generated millions of dollars in royalties on the backs of Plaintiffs’ art.

28. Unfortunately, Plaintiffs have not seen a dime of these ill-gotten proceeds and have never even been credited for their work. Although YouTube indicates that the Music Video was licensed to YouTube by a host of different entities, none of them had a right to use or exploit “Strange Dumpling Cheeks” or *SKY* because Plaintiffs never licensed their works to any of these entities.¹

¹ Specifically, YouTube indicates that the Music Video was “[l]icensed to YouTube

29. Plaintiffs raised their concerns in a letter demanding that Defendants cease and desist from further infringing their copyrights.

30. To date, however, the Music Video remains on YouTube, where it continues to generate significant income for Defendants.

FIRST CAUSE OF ACTION

Copyright Infringement (Count I)

(Plaintiff Bolaño against all Defendants)

31. All previous allegations are realleged and incorporated herein by reference.

32. Bolaño is the sole and exclusive owner of the entire copyright in the work “Strange Dumpling Cheeks” (Reg. No. SR 928-275), which is an original work of authorship fixed in a tangible medium of expression.

33. Bolaño has not granted any license or otherwise permitted Defendants to use his copyrighted material.

34. The Music Video, which was created by Defendants, directly copies approximately 17 seconds of “Strange Dumpling Cheeks.” The Music Video was and continues to be available on YouTube at the following link:

<https://www.youtube.com/watch?v=TdrL3QxjyVw>.

35. Defendants had direct access to “Strange Dumpling Cheeks” since it was published and made publicly available on ELM’s Bandcamp page. Regardless, Defendants used Bolaño’s *exact* sound recording in their work, eliminating any

by UMG (on behalf of Polydor Records); LatinAutorPerf, UMPI, LatinAutor - SonyATV, UNIAO BRASILEIRA DE EDITORAS DE MUSICA - UBEM, Global Music Rights LLC, SOLAR Music Rights Management, CMRRA, Sony ATV Publishing, UMPG Publishing, Adrev Publishing, LatinAutor - UMPG, and 13 Music Rights Societies.” See <https://www.youtube.com/watch?v=TdrL3QxjyVw>. Plaintiffs reserve the right to name these entities as parties to this lawsuit once their roles in creating, distributing, or otherwise contributing to the Music Video have been ascertained by Plaintiffs.

1 potential defense based on lack of access.

2 36. As such, Defendants have violated and are continuing to violate
3 Bolaño's exclusive rights under 17 U.S.C. §§ 106 and 501, including but not limited
4 to Bolaño's exclusive rights to reproduce, prepare derivative works, distribute, and
5 perform his work "Strange Dumpling Cheeks."

6 37. As an actual and proximate result of such copyright infringement, as
7 described herein, Bolaño has suffered and will continue to suffer damages in an
8 amount to be proven at trial.

9 38. Defendants' copyright infringement was committed maliciously,
10 fraudulently, and oppressively with willful and conscious disregard of Bolaño's
11 rights and with the wrongful intent to injure Bolaño.

12 **SECOND CAUSE OF ACTION**

13 **Copyright Infringement (Count II)**

14 **(Plaintiff Drove Pamart against all Defendants)**

15 39. All previous allegations are realleged and incorporated herein by
16 reference.

17 40. Drove Pamart is the sole and exclusive owner of the entire copyright in
18 the audiovisual work *SKY* (Reg. No. PAu 4-136-898), which is an original work of
19 authorship fixed in a tangible medium of expression.

20 41. Drove Pamart has not granted any license or otherwise permitted
21 Defendants to Defendants to use his copyrighted material.

22 42. The Music Video, which was created by Defendants, directly copies
23 approximately 17 seconds of *SKY*. The Music Video was and continues to be
24 available on YouTube at the following link:

25 <https://www.youtube.com/watch?v=TdrL3QxjyVw>.

26 43. If not directly copied (which it was) the Music Video is so strikingly
27 similar to Drove Pamart's copyrighted material that independent creation is virtually
28 impossible.

1 44. Defendants had direct access to SKY since it was uploaded and made
2 publicly available on YouTube. Regardless, Defendants used Drove Pamart's *exact*
3 video in their work, eliminating any potential defense based on lack of access.

4 45. As such, Defendants have violated and are continuing to violate Drove
5 Pamart's exclusive rights under 17 U.S.C. §§ 106 and 501, including but not limited
6 to Drove Pamart's exclusive rights to reproduce, prepare derivative works,
7 distribute, and display copies of his work *SKY*.

8 46. As an actual and proximate result of such copyright infringement, as
9 described herein, Drove Pamart has suffered and will continue to suffer damages in
10 an amount to be proven at trial.

11 47. Defendants' copyright infringement was committed maliciously,
12 fraudulently, and oppressively with willful and conscious disregard of Drove
13 Pamart's rights and with the wrongful intent to injure Drove Pamart.

14 **THIRD CAUSE OF ACTION**

15 **Contributory Copyright Infringement**

16 **(Plaintiffs against Defendants Newman, Spencer, Morgan, Dann, Foster, and**
17 **Does 1 through 10)**

18 48. All previous allegations are realleged and incorporated herein by
19 reference.

20 49. To the extent Newman, Spencer, Morgan, Dann, Foster, and/or Does 1
21 through 10 did not directly infringe Plaintiffs' works, Plaintiffs are informed and
22 believe that these parties induced, caused, and/or materially contributed to the
23 infringing activity described herein by permitting and encouraging Defendants to
24 directly copy "Strange Dumpling Cheeks" and *SKY*.

25 50. Newman, Spencer, Morgan, Dann, Foster, and/or Does 1 through 10
26 each knew or had reason to know that materially contributing to Defendants' use of
27 Plaintiffs' copyrighted material for purposes of trade would contribute to
28 infringement of Plaintiff's copyrighted material.

1 51. As an actual and proximate result of Newman's, Spencer's, Morgan's,
2 Dann's, Foster's, and/or Does 1 through 10's contributory copyright infringement,
3 as described herein, Plaintiffs have suffered and will continue to suffer damages in
4 an amount to be proven at trial.

5 52. Newman's, Spencer's, Morgan's, Dann's, Foster's, and/or Does 1
6 through 10's contributory copyright infringement was committed maliciously,
7 fraudulently, and oppressively with willful and conscious disregard of Plaintiffs'
8 rights and with the wrongful intent to injure Plaintiffs.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of
11 them, as follows:

- 12 A. An award of damages in an amount to be determined at trial;
13 B. An order imposing a constructive trust on the money wrongfully
14 obtained;
15 C. Attorneys' fees and costs of suit incurred herein, pursuant to 17 U.S.C.
16 § 505;
17 D. Injunctive relief;
18 E. Pre-judgment interest as provided by law; and
19 F. An award of any other and further relief that the Court deems just and
20 proper.

21
22 Dated: July 1, 2022

KIBLER FOWLER & CAVE LLP

23
24
25 By: /s/ Matthew J. Cave

26 MATTHEW J. CAVE
27 JOHN D. FOWLER
28 KEVIN J. CAMMISO
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury pursuant to Federal Rules of Civil Procedure, Rule 38(b), 28 U.S.C. § 38, and Local Rule 38-1.

Dated: July 1, 2022

KIBLER FOWLER & CAVE LLP

By: /s/ Matthew J. Cave

MATTHEW J. CAVE

JOHN D. FOWLER

KEVIN J. CAMMISO

Attorneys for Plaintiffs