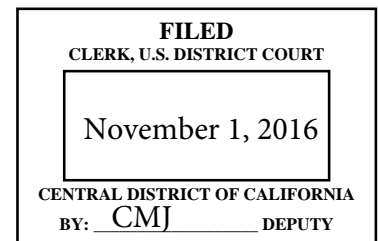


Michael A. Kahn (pro hac vice)  
Kahn@capessokol.com  
Drey A. Cooley (pro hac vice)  
Cooley@capessokol.com  
CAPES SOKOL  
7701 Forsyth Blvd., 12<sup>th</sup> Floor  
St. Louis, MO 63105  
(314) 721-7701

Eric F. Kayira (pro hac vice)  
eric.kayira@kayiralaw.com  
KAYIRA LAW, LLC  
200 S. Hanley Road, Suite 208  
Clayton, Missouri 63105  
(314) 899-9381

Carole E. Handler (129381)  
chandler@eisnerlaw.com  
Kathleen Cerniglia (268019)  
kcerniglia@eisnerlaw.com  
EISNER JAFFE, A PROFESSIONAL CORPORATION  
9601 Wilshire Boulevard, Suite 700  
Beverly Hills, California 90210  
Tel: (310) 855-3200



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MARCUS GRAY (p/k/a FLAME);  
EMANUEL LAMBERT; and  
CHIKE OJUKWU,

Plaintiffs,

v.

KATHERYN ELIZABETH  
HUDSON (p/k/a KATY PERRY);  
JORDAN HOUSTON (p/k/a JUICY  
J); LUKASZ GOTTWALD (p/k/a  
DR. LUKE); SARAH THERESA  
HUDSON; KARL MARTIN  
SANDBERG (p/k/a MAX MARTIN;  
HENRY RUSSELL WALTER (p/k/a  
CIRKUT); KASZ MONEY, INC.;  
CAPITOL RECORDS, LLC; KITTY  
PURRY, INC., UMG  
RECORDINGS, INC.;  
UNIVERSAL MUSIC GROUP,  
INC.; WB MUSIC CORP; BMG

No. 2:15-cv-05642-CAS-JC  
DEMAND FOR JURY TRIAL

**THIRD AMENDED COMPLAINT  
FOR COPYRIGHT INFRINGEMENT**

1 RIGHTS MANAGEMENT (US)  
2 LLC; and KOBALT MUSIC  
3 PUBLISHING AMERICA, INC.,

4 Defendants.

5  
6 **Introduction**

7 1. This is an action for injunctive and other relief under the Copyright  
8 Act of 1976, as amended, 17 U.S.C. § 101 *et seq.*(the “Copyright Act”), arising out  
9 of Defendants’ ongoing infringement of Plaintiffs’ copyright in their Christian  
10 gospel hip hop song entitled *Joyful Noise*. The Court has subject matter jurisdiction  
11 under 17 U.S.C. § 501 and 28 U.S.C. §§ 1331 and 1338(a).  
12

13 2. By any measure, Defendants’ song *Dark Horse* is a mega-hit.  
14 Defendant Katy Perry has performed the song on national television, including the  
15 Super Bowl XLIX Halftime Show on February 1, 2015, and at sold-out concerts  
16 around the nation. *Dark Horse* is one of the bestselling singles of all time, as is the  
17 album *Prism* on which it is featured. The music video for *Dark Horse* has now been  
18 viewed more than 1.5 *billion* times.  
19

20 3. By any measure, the *Dark Horse* song also constitutes an infringement  
21 of Plaintiffs’ copyright in their Christian gospel song *Joyful Noise*, released five  
22 years before *Dark Horse*. Specifically, Defendants’ unauthorized reproduction,  
23 distribution, and public performance of Plaintiffs’ musical composition constitute  
24 infringement of plaintiffs’ exclusive rights in their copyright.  
25  
26  
27  
28



1           10. Upon information and belief, Defendant Jordan Michael Houston  
2 (professionally known as Juicy J) is a citizen of Tennessee and maintains a  
3 residence within this District.  
4

5           11. Defendant BMG Rights Management (US) LLC (“BMG”) is a  
6 Delaware limited liability company that maintains a business office within this  
7 District at 6100 Wilshire Boulevard, Suite #1600, Los Angeles, California 90048.  
8 On information and belief, BMG is a music licensing company that administers,  
9 licenses, and profits from the music rights of an entity, alias, or d/b/a known  
10 DeeEtta Music, which is the assignee of Defendant Houston’s copyright interest in  
11 *Dark Horse*.  
12  
13

14           12. Upon information and belief, Defendant Lukasz Gottwald  
15 (professionally known as Dr. Luke) is a citizen of California and resides within this  
16 District.  
17

18           13. Upon information and belief, Defendant Karl Martin Sandberg  
19 (professionally known as Max Martin) is a citizen of Sweden. A material portion of  
20 his work in connection with the creation and recording of the *Dark Horse* song was  
21 performed in this District.  
22  
23

24           14. Upon information and belief, Defendant Henry Russell Walter  
25 (professionally known as Cirkut) is a citizen of Canada who resides in California  
26 within this District.  
27  
28

1           15. Defendant Sarah Theresa Hudson is a citizen of California and resides  
2 within this District.

3  
4           16. Defendant Kobalt Music Publishing America, Inc. (“Kobalt”) is a  
5 Delaware corporation that maintains an office within this District at 8201 Beverly  
6 Blvd., 4th Floor, Suite 400, Los Angeles, CA 90048. Upon information and belief,  
7 Kobalt Songs Music Publishing is a division within or a d/b/a of Kobalt.  
8

9           17. Upon information and belief, Kobalt is a music licensing company that  
10 administers, licenses, and profits from the music rights of the following four  
11 entities, aliases, or d/b/as that are the assignees of the copyright interests of  
12 Defendants Gottwald, Sandburg, Walter, and Sarah Hudson in the *Dark Horse*  
13 song: Kasz Money Publishing, MXM Music AB, Oneirology Publishing, and  
14 Prescription Songs.  
15  
16

17           18. Defendant UMG Recordings, Inc. (“UMG”) is a Delaware corporation  
18 with a principal place of business within this District at 2220 Colorado Avenue,  
19 Santa Monica, California 90404. Upon information and belief, UMG, through its  
20 Universal Music Enterprises division, handles the licensing and exploitation of the  
21 recording of *Dark Horse* and receives profits from that licensing and exploitation.  
22  
23

24           19. Defendant Universal Music Group, Inc. (“Universal”) is a Delaware  
25 corporation with a principal place of business within this District at 2220 Colorado  
26 Avenue, Santa Monica, California 90404. Universal describes itself on its website,  
27 [universalmusic.com](http://universalmusic.com), as follows:  
28

1 We are the world's leading music company. \* \* \* We own and operate  
2 a broad array of businesses engaged in recorded music, music  
3 publishing, merchandising, and audiovisual content in more than 60  
4 countries. We identify and develop recording artists and songwriters,  
5 and we produce, distribute and promote the most critically acclaimed  
6 and commercially successful music to delight and entertain fans  
7 around the world.

8 Upon information and belief, proceeds from the exploitation of the recording of  
9 *Dark Horse* are paid to Universal, and not Capitol Records.

10 20. Defendant Capitol Records, LLC ("Capitol") is a Delaware limited  
11 liability with a place of business within this District. Capitol is the record label that  
12 released and promotes the *Prism* album and the *Dark Horse* song.

13 21. Defendant Kitty Purry, Inc. ("Kitty Purry") is a California corporation  
14 with a principal place of business at 15260 Ventura Blvd, Suite 2100, Sherman  
15 Oaks, California 91403. Upon information and belief, Kitty Purry is owned and/or  
16 controlled by Defendant Perry. Among other things, Kitty Purry enters into  
17 contracts with various concert venues, the National Football League, and other  
18 entities concerning public performances of the *Dark Horse* song by Defendant  
19 Perry.  
20

21 22. Defendant Kasz Money, Inc. is a New York corporation that conducts  
22 business within this District, including with respect to the *Dark Horse* song, on a  
23 regular and ongoing basis. On information and belief, Kasz Money was the  
24  
25  
26  
27  
28

1 producer of the *Dark Horse* song and earns royalties from its commercial  
2 exploitation.

3  
4 **Jurisdiction and Venue**

5 23. The Court has subject matter jurisdiction under Section 501 of the  
6 Copyright Act, 17 U.S.C. § 501, and 28 U.S.C. §§ 1331 and 1338(a).

7  
8 24. This Court has personal jurisdiction over defendants because all of  
9 them are either California citizens, maintain a residence or place of business in  
10 California, do business within California on a regular and ongoing basis, or resided  
11 in California during a material portion of the creation of the *Dark Horse* song.

12  
13 25. Venue is proper in this district under 28 U.S.C. §§ 1391(b), (c) and  
14 1400(a).

15  
16 **Plaintiffs' Song: "Joyful Noise"**

17 26. Plaintiffs are the authors and creators of an original musical  
18 composition embodied in the sound recording entitled Joyful Noise.

19  
20 27. Plaintiffs created Joyful Noise in 2007 and published it in March of  
21 2008.

22  
23 28. On June 3, 2014, the United States Copyright Office issued the  
24 Certificate of Registration No. PA-1-900-321 for the copyright in Joyful Noise (the  
25 "Copyright").

26  
27 29. Plaintiffs have been at all relevant times three of the four owners of the  
28 Copyright.





1           37. On information and belief, based in part on U.S. Copyright  
2 Registration No. PA0001871672, the six individual Defendants in this action claim  
3 to be authors of music composition of *Dark Horse*.  
4

5           38. The individual Defendants had access to Joyful Noise prior to their  
6 creation of *Dark Horse*.  
7

8           39. According to the Copyright Office records, each of the six individual  
9 Defendants has transferred his or her copyright ownership interest in the  
10 composition of *Dark Horse* to the alias or entity identified above. For example, the  
11 Copyright Office records show that Defendant Katy Perry has transferred her  
12 copyright interest to a something known as “When I’m Rich You’ll Be My Bitch”  
13 with an address the same as Defendant WB Music.  
14

15           40. On or about October 5, 2013, *Dark Horse* debuted at Number 17 on  
16 the Billboard Hot 100 chart.  
17

18           41. In October of 2013, Capitol Records released the album *Prism*, and  
19 two months later Capital released *Dark Horse* as the album’s third official single.  
20

21           42. By January of 2014, *Dark Horse* had reached Number 1 on the  
22 Billboard Hot Digital Songs chart and the Billboard Hot 100 chart, where it  
23 remained for weeks.  
24

25  
26  
27  
28

1 **Defendants' Infringement of Plaintiffs' Copyright**

2 43. Defendants never sought or obtained permission from Plaintiffs to use  
3 the Joyful Noise song in creating, reproducing, recording, licensing, distributing,  
4 selling, broadcasting, or publicly performing *Dark Horse*.  
5

6 44. Plaintiffs never gave any of the Defendants permission, consent, or a  
7 license to use Joyful Noise for any purpose, including creation of any derivative  
8 work based on Joyful Noise.  
9

10 45. As alleged above, Defendants have licensed, copied, sold, performed,  
11 broadcast, and otherwise commercially exploited and profited from *Dark Horse* in  
12 numerous ways, included but not limited to the following:  
13

14 a. Selling the compact disc-release of *Prism* to the public on  
15 numerous websites and through retail stores throughout the nation;  
16

17 b. Duplicating and uploading the digital version of *Dark Horse* to,  
18 among other sites, iTunes, Amazon, Google Play, and eMusic for purchase  
19 by consumers;  
20

21 c. Licensing the composition and/or publishing rights to others for  
22 their exploitation.  
23

24 46. In addition, Defendants Perry and Houston publicly performed *Dark*  
25 *Horse* in 2014 at the nationally televised 56<sup>th</sup> Annual Grammy Awards®, and  
26 Defendant Perry has performed *Dark Horse* at various concerts and music festivals  
27 to hundreds of thousands of spectators throughout the nation.  
28

1           47. In addition, on information and belief, Universal and Capitol Records  
2 prepared the music video of *Dark Horse* and, in conjunction with Vevo LLC and  
3 one or more of the other defendants, arranged for its commercial syndication and  
4 publication on YouTube, Vevo.com, and other commercial sites, which have been  
5 viewed by members of the public more than 1.5 billion times, thus generating  
6 additional profits for all Defendants.  
7

8  
9           48. Defendants' actions, as alleged above, constitute infringement of  
10 Plaintiffs' Copyright. Among other things, Defendants' actions violate Plaintiffs'  
11 exclusive rights in Joyful Noise under Section 106 of the Copyright Act, 17 U.S.C.  
12 § 106.  
13

14           49. These Defendants have already infringed Plaintiffs' Copyright and  
15 caused damage and irreparable harm through their unauthorized copying,  
16 distribution, and public performance of Defendants' Song.  
17

18           50. So, too, Defendants unlawful actions have caused irreparable harm to  
19 Plaintiffs' reputation and the reputation of the Joyful Noise song within the  
20 Christian gospel music community by, among other things, creating a false  
21 association between the music of Joyful Noise and the anti-Christian imagery  
22 evoked by Defendants' Song, especially in the music video version.  
23

24           51. Prior to filing this lawsuit in July of 2014, Plaintiffs gave written  
25 notice of the infringement to Defendants or their representatives.  
26  
27  
28

1           52. Defendants continued to infringe the Copyright in Joyful Noise after  
2 receipt of such written notice of infringement, after the registration of the  
3 Copyright, and after the commencement of this lawsuit. For example, on Sunday,  
4 February 1, 2015—nearly seven months *after* the filing of this lawsuit and nearly  
5 eight months *after* the registration of the copyright in Joyful Noise—Defendant  
6 Perry was the headline performer at the Super Bowl XLIX Halftime Show.  
7  
8 Beginning at approximately the two-minute mark of the 12½-minute show, Ms.  
9 Perry performed the *Dark Horse* song. According to the Nielson ratings, the U.S.  
10 television viewing audience for Ms. Perry’s performance was 118.5 million  
11 viewers, which is the highest number of viewers in the history of Super Bowl  
12 Halftime shows.

13  
14  
15  
16           53. Defendants’ ongoing infringement of the Copyright in Joyful Noise  
17 constitutes willful infringement.

18  
19           54. If not enjoined, Defendants will continue to cause Plaintiffs irreparable  
20 harm.

21           WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor  
22 and against Defendants as follows:

23  
24           A. A permanent injunction enjoining and restraining Defendants, their  
25 agents, servants, employees, attorneys, partners, licensees, divisions, affiliates,  
26 parent corporation(s), and all others in active concert or participation with any of  
27  
28

1 them from copying, distributing, publicly displaying, or otherwise making any use  
2 of the Joyful Noise or Defendants' Song;

3  
4 B. An award of monetary damages sufficient to compensate Plaintiffs for  
5 the injuries suffered as a result of Defendants' wrongful conduct;

6  
7 C. An award of Defendants' profits and unjust enrichment realized from  
8 their infringement and other wrongful conduct;

9  
10 D. An award to Plaintiffs of interest, costs and reasonable attorney's fees  
11 expended in this action; and

12  
13 E. An award of such other and further relief as the Court deems just and  
14 proper.

15 **JURY DEMAND**

16 Plaintiff respectfully requests a jury trial.

17  
18 /s/Michael A. Kahn  
19 Michael A. Kahn (pro hac vice)  
20 kahn@capessokol.com  
21 Drey A. Cooley (pro hac vice)  
22 cooley@capessokol.com  
23 CAPES SOKOL GOODMAN & SARACHAN PC  
24 7701 Forsyth Blvd., 12<sup>th</sup> Floor  
25 St. Louis, Missouri 63105  
26 Tel: (314) 721-7701

27 Eric F. Kayira (pro hac vice)  
28 eric.kayira@kayiralaw.com  
KAYIRA LAW, LLC  
200 S. Hanley Road, Suite 208  
Clayton, Missouri 63105  
(314) 899-9381

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Carole E. Handler (129381)  
chandler@eisnerlaw.com  
Kathleen Cerniglia (268019)  
kcerniglia@eisnerlaw.com  
EISNER JAFFE, A PROFESSIONAL  
CORPORATION  
9601 Wilshire Boulevard, Suite 700  
Beverly Hills, California 90210  
Tel: (310) 855-3200

Attorneys for Plaintiffs