

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ANDRE SIMS,

Plaintiff,

v.

**SONY MUSIC ENTERTAINMENT; DARYL
CAMPER, JR.; JUSTIN LOVE and
GABRIELLA WILSON a/k/a H.E.R,**

Defendant.

CIVIL ACTION No.:

JURY TRIAL DEMANDED

COMPLAINT FOR COPYRIGHT INFRINGEMENT

ANDRE SIMS (“Sims” or “Plaintiff”), through his attorney, files this, his Complaint for Copyright Infringement against the above-named Defendants, **SONY MUSIC ENTERTAINMENT** (“Sony”); **DARYL CAMPER, JR.** (“Camper”); **JUSTIN LOVE** (“Love”) and **GABRIELLA WILSON a/k/a H.E.R.** (“Wilson”); (collectively, “Defendants”) and shows this Court as follows:

PRELIMINARY STATEMENT

1. **SIMS** brings this action seeking injunctive and monetary relief for Defendants’ intentional infringement of Plaintiff’s copyright in **SIMS**’ composition entitled “Endless Minds.”
2. **SIMS** is a pianist and composer with an active social media presence.
3. **SIMS** created “Endless Minds” in 2004.

4. **SIMS** is the sole owner of all the rights in “Endless Minds.”

5. Since creation of “Endless Minds,” **SIMS** has [manufactured,] published, distributed, advertised, publicly displayed [and sold copies of] “Endless Minds,” displaying this composition in the United States and on the social medial platforms Instagram and YouTube.

6. **SIMS** owns a federal registration for “Endless Minds,” which he obtained on _____, registration no. _____. A true and correct copy of the registration certificate for “Endless Minds” is attached as Exhibit 1 and incorporated herein by this reference.

7. The within action centers on the intentional and actionable copying of “Endless Minds” for use in Defendants’ song entitled “Focus,” without which blatant copyright, “Focus” would never have come to exist in its present form.

8. Defendants are writers, producers, performers, record labels, publishers and distributors of the infringing musical composition “Focus,” the music video for “Focus,” and all other products embodying the infringing composition and sound recording “Focus” (collectively, the “Infringing Focus Works”)

9. To write and record “Focus,” and ultimately to produce, perform, distribute and otherwise exploit “Focus,” Defendants copied “Endless Minds,” to which they had prior access, resulting in the song “Focus,” which is so similar to “Endless Minds” that the ordinary observer could easily determine that the songs sound the same in their essential compositional and other elements.

10. All the claims asserted herein arise out of and are based on Defendants' copying, reproduction, distribution, public display, and sale of "Endless Minds" without Plaintiff's consent. Plaintiff sues for copyright infringement under the United States Copyright Act of 1976, as amended (the "Copyright Act"), 17 U.S.S. § 101 et seq.

11. Plaintiff seeks all remedies afforded by the Copyright Act, including preliminary and permanent injunctive relief, Plaintiff's damages, and Defendants' profits from Defendants' willfully infringing conduct, and other monetary relief.

PARTIES

12. **SIMS** is an individual who resides in New Jersey.

13. Defendant Sony Music Entertainment "Defendant Sony Music is a Delaware corporation with its principal place of business in New York, New York. Defendant Sony Music can be served with Summons and Complaint in this action by service upon its registered agent, Corporation Service Company, at 251 Little Falls Drive, Wilmington, Delaware 19808.

14. Defendant Camper is an individual who resides in _____.

15. Defendant Wilson is an individual who resides in _____.

16. Defendant Love is an individual who resides in _____.

JURISDICTION AND VENUE

17. This Court has jurisdiction over this copyright infringement action pursuant to 28 U.S.C. § 1331 and 1338(a) in that the controversy stated arises under

the Copyright Act of 1976 (codified at 17 U.S.C. § 101, et seq.), which falls within the exclusive jurisdiction of the federal courts pursuant to 28 U.S.C. §1331.

18. Venue is proper in this Court under 28 U.S.C. § 1400(a) because Defendants' may be found in this district.

FACTS

19. **SIMS** incorporates Paragraphs 1 through 18 of this Complaint into these Operative Facts as if fully reaverred and realleged herein.

20. **SIMS** created "Endless Minds" in 2004.

21. On around October 9, 2015, **SIMS** published "Endless Minds" when he performed it on the social media platforms Instagram and YouTube.

22. "Endless Minds" is wholly original, and **SIMS** is the exclusive owner of all rights, title, and interest, including all rights under copyright, in "Endless Minds."

23. **SIMS** is the owner of valid and subsisting United States Copyright Registration No. _____ for "Endless Minds," issued by the United States Copyright Office on _____. *See* Exhibit 1.

24. Defendants published, reproduced, publicly displayed, distributed, and sold, or caused to be published, reproduced, publicly displayed, distributed, and sold, identical copies of "Endless Minds" when Defendants used "Endless Minds" as the melody for the song "Focus."

25. Defendants unlawfully exploited “Endless Minds” when they used it in the song “Focus” without the knowledge or consent of **SIMS**, resulting in the generation of massive profits, fame and credit in favor of the Defendants.

26. **SIMS** hired a musicologist that determined “Endless Minds” was reproduced in the song “Focus.” A true and correct copy of the link to this interview can be found in **SIMS**’ musicology report attached as Exhibit 2 and incorporated herein by this reference.

27. Moreover, Defendant Camper admitted that he used “Endless Minds” as the melody for “Focus” on an Instagram Live interview. *See* Exhibit 2.

28. Defendants’ use of “Endless Minds” is without **SIMS**’ authorization, consent, or knowledge, and without any compensation to **SIMS**.

29. Defendants’ identical copying and exploitation of “Endless Minds” was willful, and in disregard of, and with indifference to, **SIMS**’ rights.

30. Defendants’ intentional, infringing conduct was undertaken to reap the creative and artistic benefit and value associated with “Endless Minds.”

31. By failing to obtain **SIMS**’ authorization to use “Endless Minds” or to compensate Plaintiff for the use, Defendants have avoided payment of license fees and other financial costs associated with obtaining permission to exploit “Endless Minds” as well as the restrictions that Plaintiff is entitled to and would place on any such exploitation as conditions for **SIMS**’ permission, including the right to deny permission altogether.

32. Defendants conduct was undertaken purposefully, willfully, knowingly, and maliciously to the exclusion of, and without regard to the inevitable damage certain to result to, the rightful owner of the “Endless Minds” compositional elements and sound recording.

33. “Focus” continues to be exploited, licensed, performed, distributed, displayed, reproduced on compact discs and albums, as digital downloads, master tones, and music videos.

34. Upon information and belief, all Defendants are agents, employees, joint ventures, and partners of one another, and each joined in, ratified, contributed to, and encouraged the unlawful conduct alleged herein, rendering each jointly and severally liable to Plaintiff.

35. On May 7, 2020, **SIMS**’ counsel sent a cease and desist letter to Defendants, objecting to Defendants’ unauthorized reproduction, publication, distribution, public display, and sale of “Endless Minds.” A true and correct copy of the cease and desist letter is attached as Exhibit 3 and incorporated herein by this reference.

36. To date, **SIMS** has received no adequate response to its cease and desist letter and, after reasonable inquiry, has no evidence that Defendants have complied with the demands set out in the cease and desist letter.

37. Defendants have never accounted to or otherwise paid **SIMS** for its use of “Endless Minds.”

38. As a result of Defendants' actions, **SIMS** has been directly damaged, and is continuing to be damaged, by the unauthorized reproduction, publication, distribution, public display, and sale of "Endless Minds" through the song "Focus."

COUNT I

Direct, Contributory, and Vicarious Copyright Infringement

39. **SIMS** incorporates Paragraphs 1 through 38 of this Complaint into this Count I as if fully reaverred and realleged herein.

40. "Endless Minds" is an original composition containing copyrightable subject matter for which copyright protection exists under the Copyright Act, 17 U.S.C. § 101, et. Seq.

41. **SIMS** is the sole owner of all the rights under copyright in and to the musical composition "Endless Minds." "Endless Minds" is properly registered with the United States Copyright Office. *See* Exhibit 1.

42. Defendants' unauthorized reproduction, distribution, performance, display, and creation of "Focus," a derivative work of "Endless Minds," infringes **SIMS**' exclusive rights in direct violation under the Copyright Act.

43. Defendants did not seek or receive any permission or authorization, express or otherwise, to interpolate any portion of "Endless Minds" composition into the infringing work "Focus."

44. Defendants' infringing conduct alleged herein was and continues to be willful and with full knowledge of **SIMS**' rights in "Endless Minds," and has enabled Defendants to illegally obtain profits therefrom.

45. As a direct and proximate result of Defendants' infringing conduct alleged herein, **SIMS** has been harmed and is entitled to damages in an amount to be proven at trial.

46. Pursuant to 17 U.S.C. § 504, **SIMS** is further entitled to recover from Defendants the gains, profits and advantages they have obtained as a result of its acts of copyright infringement. **SIMS** is at present unable to ascertain the full extent of the gains, profits and advantages defendant has obtained by reason of its acts of copyright infringement, but **SIMS** is informed and believes, and on the basis of such information and belief alleges, that Defendants have obtained such gains, profits and advantages in an amount exceeding \$1,500,000.

47. **SIMS** further seeks attorneys' fees and costs pursuant to 17 U.S.C. § 505.

COUNT II

CONSTRUCTIVE TRUST

48. **SIMS** incorporates Paragraphs 1 through 47 of this Complaint into this Count II as if fully re-averred and realleged herein.

49. By reason of the fraudulent and otherwise wrongful manner in which the Defendants, and each of them, infringed on **SIMS**' copyright and have falsely asserted an alleged right, claim or interest in and to **SIMS**' intellectual property to

which each of them, have no legal or equitable right, claim or interest therein, Defendants may not in good conscience retain any legal or beneficial interest in **SIMS**' intellectual property.

50. Defendants impliedly promised not to copy Sims' composition.

51. As a result of the infringement, Defendants, and each of them, have been unjustly enriched.

52. Defendants, and each of them, are involuntary trustees holding said property and profits therefrom in constructive trust for **SIMS**, with the duty to convey the same to **SIMS** forthwith.

COUNT III

EQUITABLE ACCOUNTING

53. **SIMS** incorporates Paragraphs 1 through 52 of this Complaint into this Count III as if fully re-averred and realleged herein.

54. As a direct and proximate result of Defendants' infringing conduct alleged herein, **SIMS** has no adequate remedy at law to quantify the profits unlawfully obtained by Defendants.

55. Because Defendants are trustees for profits, Sims is entitled to an equitable accounting, including, but not limited to the production of all records related to the profits obtained by Defendants.

COUNT IV

INJUNCTIVE RELIEF

56. **SIMS** incorporates Paragraphs 1 through 55 of this Complaint into this Count IV as if fully re-averred and realleged herein.

57. As a direct and proximate result of Defendants' infringing conduct alleged herein, **SIMS** has sustained and will continue to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy at law. Unless Defendants' infringing conduct is enjoined by this Court, Defendants will continue to infringe "Endless Minds."

58. **SIMS** is entitled to a permanent injunction against Defendants, their officers, directors, agents, employees, representatives and all persons acting in concert with them prohibiting the reproduction, distribution, sale, public performance, or other use or exploitation of "Focus," in any and all formats, configuration, and/or media, including without limitation all Infringing Focus Works.

WHEREFORE, SIMS demands judgment against Defendants, Sony Music Entertainment, Daryl Camper Jr., Gabriella Wilson, and Justin Love as follows:

- A. For a judicial determination and declaration that the Defendants have willfully infringed "Endless Minds" in violation of the Copyright Act.
- B. For a judicial determination and declaration that the Defendants' are directly, vicariously, and or contributorily liable for copyright infringement as alleged herein, as may be applicable;
- C. For permanent injunctions prohibiting the Defendants and their agents, employees, servants, officers, attorneys, successors in interest, licensees,

partners, assigns, and all persons acting in concert with the foregoing, or at their direction or behest, and each and all of them, from directly and/or indirectly causing, enabling, facilitating, permitting, encouraging, promoting, inducing, and/or participating in the infringement of any right enjoyed and/or owned by Plaintiff and protected by the Copyright Act.

- D. Defendants' profits obtained as a result of Defendants' infringing conduct, including but not limited to all profits from sales and other exploitation of "Endless Minds" and any products, works, or other materials that include, copy, are derived from, or otherwise embody the "Endless Minds," or in the Court's discretion, such amount as the Court finds to be just and proper;
- E. An award of attorney fees and costs pursuant to 17 U.S.C. 505 and all other applicable laws;
- F. For pre-judgment and post-judgment interest on all damages awarded;
- G. That Defendants be ordered to provide an accounting of Defendants' profits attributable to Defendants' infringing conduct, including Defendants' profits from sales and any other exploitation of "Endless Minds" and "Focus," and any products, works or other materials that include, copy, are derived from, or otherwise embody "Endless Minds;" and
- H. That this Court grant **SIMS** such other and further relief as this Court may deem equitable and just under the circumstances.

Date: 16 July 2020.

By: s/ Stephen M. Katz
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