

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

**JOSHUA FRAUSTRO and
MIGUEL AGUILAR aka KEMIKA1956,
Plaintiffs,**

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v.

**BELCALIS ALMANZAR aka CARDI B,
JOSHIA I. PARKER aka OG PARKER,
JAMES D. STEED aka DJ SWANQO,
CELEBRITY BOOKING AGENCY,
ATLANTIC RECORDS,
WARNER MUSIC GROUP,
Defendants.**

CIVIL ACTION NO. 7:24-CV-00264

PLAINTIFFS' VERIFIED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiffs Joshua Fraustro and Miguel Aguilar aka Kemika1956, by and through their attorney, Robert R. Flores, and for their Complaint against Defendants Belcalis Almanzar aka Cardi B, Joshia I. Parker aka OG Parker, James D. Steed aka DJ SwanQo, Celebrity Booking Agency, Atlantic Records, and Warner Music Group, allege as follows:

I. JURISDICTION AND VENUE

This civil action seeks damages and injunctive relief for multiple claims including copyright infringement, vicarious infringement, contributory infringement, unfair competition, and misappropriation under the Copyright infringements under 17 U.S.C. § 504.

The Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) because it arises under federal copyright law. Additionally, jurisdiction is proper under 28 U.S.C. § 1338(a) (jurisdiction over copyright cases).

Diversity jurisdiction also applies under 28 U.S.C. § 1332 as the amount in controversy exceeds \$75,000 and the parties are citizens of different states: Plaintiff Joshua Fraustro is a citizen of Texas, and Plaintiff Miguel Aguilar aka Kemika1956 is a citizen of California, while Defendants Belcalis Almanzar aka Cardi B and James D. Steed aka DJ SwanQo are citizens of New York, Joshia I. Parker aka OG Parker is a citizen of Georgia, and Celebrity Booking Agency, Atlantic Records, and Warner Music Group are entities with principal places of business in New York.

Venue is proper in the Southern District of Texas pursuant to 28 U.S.C. § 1391(b) and (c) because a substantial part of the events giving rise to the claims occurred in this district, specifically related to the unauthorized use of Plaintiffs' copyrighted work "Greasy Frybread." Furthermore, Defendants conduct business within this district.

II. PARTIES

Plaintiff Joshua Fraustro is an individual residing in McAllen, Texas. Plaintiff Miguel Aguilar aka Kemika1956 is an individual residing in McAllen, Texas. Plaintiffs created the musical composition "Greasy Frybread" in 2021, which was released under the label Tattoo Muzik Group Studios on November 9, 2021. This song has gained significant recognition, including features in the FX hit series "Rez Dogs" and registration on Spotify.

Defendant Belcalis Almanzar aka Cardi B is an individual residing in Atlanta, GA. She can be served through her attorney, Lisa Moore, at 887 West Marietta St, Suite M-102, Atlanta, GA 30318.

Defendant Joshia I. Parker aka OG Parker is an individual residing in Atlanta, GA. He can be served at 410 Piney SW Nay, Atlanta, GA 30331.

Defendant James D. Steed aka DJ SwanQo is an individual associated with Galixee

Management Inc. The company's principal address is 50 Rockefeller Plaza, 4th Floor, New York, NY 10020. Defendant can be served through company's registered agent address located at 2894 Remington Green Ln., Ste. A, Tallahassee, FL 32308.

Defendant Celebrity Booking Agency is a business entity with its principal place of business in Las Vegas, NV. The company's principal address is 3651 Lindell Road Suite D423A, Las Vegas, NV, 89103. Defendant can be served through company's registered agent Gayle Richardson, located at 8024 Dark Hollow Place, Las Vegas, NV 89117.

Defendant Atlantic Records is a corporation with its principal place of business in New York, NY. The CEO, Craig Kallman, can be served at 1633 Broadway, New York NY 10019.

Defendant Warner Music Group is a corporation with its principal place of business in New York, NY. The CEO, Stephen Cooper, can be served at 818 W Seventh St, Los Angeles, CA 90017.

I. FACTUAL ALLEGATIONS

Plaintiffs created the song "Greasy Frybread" in 2021 and it was released under the label Tattoo Muzik Group Studios on November 9, 2021. The song has been used in the FX hit series Rez Dogs and is registered on Spotify. Defendant Cardi B, along with other Defendants, has used the song in her new album without permission. The song "Enough (Miami)" by Cardi B was released under the label Atlantic Records on March 15, 2024.

II. COUNT I – COPYRIGHT INFRINGEMENT

Defendants have infringed Plaintiffs' copyright in the musical composition "Greasy Frybread" by reproducing, distributing, and publicly performing the Infringing Work, in violation of 17 U.S.C. § 106. In *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991), the Supreme Court held that originality and creativity are the touchstones of copyright protection. Plaintiffs' work meets these criteria and is thus protected. As a direct and proximate

result of Defendants' infringement, Plaintiffs are entitled to damages and Defendants' profits in an amount to be proven at trial, pursuant to 17 U.S.C. § 504.

III. COUNT II – VICARIOUS INFRINGEMENT

Defendants Atlantic Records and Warner Music Group, having the right and ability to supervise the infringing activity and also having a direct financial interest in such activities, are liable for vicarious infringement. In *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259 (9th Cir. 1996), the court held that a party can be held vicariously liable for the infringing acts of another if they have the right and ability to supervise the infringing activity and a direct financial interest in such activities.

IV. COUNT III – CONTRIBUTORY INFRINGEMENT

Defendants Atlantic Records and Warner Music Group, with knowledge of the infringing activity, induced, caused, or materially contributed to the infringing conduct of another, and are liable for contributory infringement. In *Gershwin Publ'g Corp. v. Columbia Artists Mgmt., Inc.*, 443 F.2d 1159 (2d Cir. 1971), the court held that one who, with knowledge of the infringing activity, induces, causes, or materially contributes to the infringing conduct of another, may be held liable as a contributory infringer.

V. COUNT IV – UNFAIR COMPETITION

Defendants' actions have caused confusion among consumers or harmed the plaintiffs' business reputation, constituting unfair competition. Under the Lanham Act, 15 U.S.C. § 1125(a), unfair competition involves any false designation of origin, false or misleading description of fact, or false or misleading representation of fact which is likely to cause confusion or to deceive as to the affiliation, connection, or association of such person with another person.

VI. COUNT V – MISAPPROPRIATION

Defendants have taken the plaintiffs' property and used it for their own advantage, constituting misappropriation. In *International News Service v. Associated Press*, 248 U.S. 215 (1918), the Supreme Court recognized a common law claim for misappropriation where one party misappropriates the labor, skill, and money of another for their own use.

VII. TEMPORARY RESTRAINING ORDER

Plaintiffs seek a Temporary Restraining Order (TRO) to immediately halt the ongoing infringement of Plaintiffs' copyright in the musical composition "Greasy Frybread." Given the ongoing nature of the infringement, immediate and irreparable harm is being caused to Plaintiffs. A TRO is necessary to prevent further distribution and public performance of the infringing work "Enough (Miami)" by Cardi B and other Defendants. The requirements for a TRO under Rule 65(b) of the Federal Rules of Civil Procedure are met because Plaintiffs are likely to succeed on the merits, will suffer irreparable harm in the absence of immediate relief, the balance of equities tips in Plaintiffs' favor, and an injunction is in the public interest.

VIII. APPLICATION FOR TEMPORARY INJUNCTION AND PERMANENT INJUNCTION

Plaintiffs also seek a temporary injunction to maintain the status quo pending the outcome of this litigation and a permanent injunction to permanently enjoin Defendants from further infringing Plaintiffs' copyright. A temporary injunction is necessary to prevent ongoing harm during the pendency of this action. Plaintiffs meet the four-factor test for a preliminary injunction: likelihood of success on the merits, likelihood of irreparable harm in the absence of preliminary relief, that the balance of equities tips in Plaintiffs' favor, and that an injunction is in the public interest. Upon prevailing, a permanent injunction should be issued pursuant to 17 U.S.C. § 502 to prevent Defendants from further infringing Plaintiffs' copyrighted work.

IX. DECLARATORY RELIEF

Plaintiffs seek declaratory relief pursuant to 28 U.S.C. § 2201. Plaintiffs request a declaration that Plaintiffs are the rightful owners of the copyright in the musical composition "Greasy Frybread," and that Defendants' actions constitute infringement of Plaintiffs' copyright. A declaratory judgment will clarify the legal relations and obligations of the parties and will prevent future disputes over the same issue.

X. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants, granting the following relief:

- a. Statutory damages for willful infringement pursuant to 17 U.S.C. § 504(c);
- b. Temporary Restraining Order (TRO) and preliminary injunction to prevent further infringement during the pendency of this action, and a permanent injunction enjoining Defendants from further infringement;
- c. An order requiring Defendants to recall and destroy all infringing copies;
- d. An award of Plaintiffs' attorneys' fees and costs pursuant to 17 U.S.C. § 505;
- e. Declaratory relief establishing Plaintiffs' ownership of the copyright in the musical composition "Greasy Frybread"; and
- f. Such other and further relief as this Court may deem just and proper.

Respectfully submitted,

By:



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Attorney for Plaintiffs

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CIVIL ACTION NO. 7:24-CV-00264

PLAINTIFFS' SWORN DECLARATION

I, Joshua Fraustro, declare the following under penalty of perjury:

1. I am one of the Plaintiffs in the above-captioned action. I have personal knowledge of the facts stated herein and, if called as a witness, could and would competently testify thereto.
2. The allegations contained in the Verified Original Petition filed on behalf of Plaintiffs Joshua Fraustro and Miguel Aguilar aka Kemika1956 are true and correct to the best of my knowledge, information, and belief.
3. Plaintiffs created the musical composition "Greasy Frybread" in 2021, which was released under the label Tattoo Muzik Group Studios on November 9, 2021. This song has gained significant recognition, including features in the FX hit series "Rez Dogs" and registration on Spotify.
4. Defendants Belcalis Almanzar aka Cardi B, Joshia I. Parker aka OG Parker, James D. Steed aka DJ SwanQo, Celebrity Booking Agency, Atlantic Records, and Warner Music Group have knowingly and willfully violated the exclusive rights of Plaintiffs under the Copyright Act of 1976 (17 U.S.C. § 101 et seq.). Specifically, Defendants have unlawfully reproduced, distributed, and publicly performed Plaintiffs' copyrighted work "Greasy Frybread" in Defendant Cardi B's album "Enough (Miami)," released by Atlantic Records on March 15, 2024, without authorization.

5. This unauthorized use constitutes direct infringement under 17 U.S.C. § 106 and Defendants Atlantic Records and Warner Music Group are additionally liable for vicarious and contributory infringement under applicable case law (see Fonovisa, Inc. v. Cherry Auction, Inc., 76 F.3d 259 (9th Cir. 1996); Gershwin Publ'g Corp. v. Columbia Artists Mgmt., Inc., 443 F.2d 1159 (2d Cir. 1971)).
6. As a result of Defendants' deliberate infringement, Plaintiffs have suffered substantial damages, including but not limited to financial losses and irreparable harm to their artistic reputation and marketability.
7. I am aware that this declaration is made under penalty of perjury and that any false statements herein may subject me to criminal penalties.

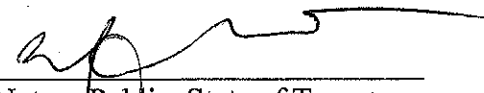
Further affiant sayeth not.

Executed on this 2nd day of July, 2024, in McAllen, Texas.

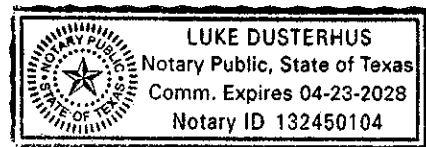


Joshua Fraustro

WITNESS my hand and official seal this 2nd day of July, 2024.



Notary Public, State of Texas
My Commission Expires: 4/23/2028



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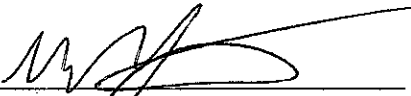
I, Miguel Aguilar aka Kemika1956 declare the following under penalty of perjury:

1. I am one of the Plaintiffs in the above-captioned action. I have personal knowledge of the facts stated herein and, if called as a witness, could and would competently testify thereto.
2. The allegations contained in the Verified Original Petition filed on behalf of Plaintiffs Joshua Fraustro and Miguel Aguilar aka Kemika1956 are true and correct to the best of my knowledge, information, and belief.
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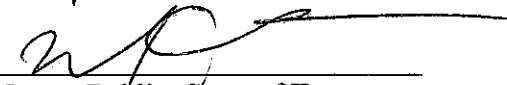
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Further affiant sayeth not.

Executed on this 2 day of July, 2024, in McAllen, Texas.


Miguel Aguilar aka Kemika1956

WITNESS my hand and official seal this 2nd day of July, 2024.


Notary Public, State of Texas
My Commission Expires: 04/23/2028

