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9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 ARTEM STOLIAROV p/k/a ARTY,  
12 an individual.

Case No.: 2:19-cv-3934

13 PLAINTIFF,

14 vs.

**COMPLAINT FOR COPYRIGHT  
INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

Complaint Filed:

15 MARSHMELLO CREATIVE, LLC, a  
16 Delaware Limited Liability Company;  
17 CHRISTOPHER COMSTOCK p/k/a  
18 MARSHMELLO, an individual;  
19 DANIEL CAMPBELL SMITH, an  
20 individual; STEVEN MCCUTCHEON  
21 p/k/a STEVE MAC, an individual;  
22 MARSHMELLO MUSIC LLC, a  
23 Delaware Limited Liability Company;  
24 ROKSTONE MUSIC LIMITED, a  
25 United Kingdom Private Limited  
26 Company; WWKD LIMITED, a  
27 United Kingdom Private Limited  
28 Company; KOBALT MUSIC  
PUBLISHING AMERICA, INC., a  
Delaware Corporation; POLYGRAM  
PUBLISHING, INC. d/b/a  
UNIVERSAL POLYGRAM  
INTERNATIONAL PUBLISHING, a  
Delaware Corporation.

DEFENDANTS.

**JURISDICTION**

1  
2 1. This Court has subject matter jurisdiction under 28 U.S.C § 1331 as  
3 the action arises under the original and exclusive jurisdiction of the federal court  
4 and 28 U.S.C § 1338(a) as the controversy arises under the Copyright Act of 1976  
5 (17 U.S.C § 101 *et seq.*).

6 2. This Court has personal jurisdiction over Defendants as discussed  
7 fully herein.

8 3. This Court has general personal jurisdiction over Marshmello  
9 Creative, LLC (hereinafter, “Marshmello Creative”) because, upon information  
10 and belief, it has continuous and systematic contacts with the State of California  
11 to render it essentially at home in California. Specifically, (1) Marshmello  
12 Creative is qualified to do business in California and is registered as a foreign  
13 corporation with the California Secretary of State; (2) Marshmello Creative’s  
14 principal place of business is in California, including an office located at 16000  
15 Ventura Blvd. Suite 600, Encino, California 91436, where it employs California  
16 residents; and (3) upon information and belief, Defendant Christopher Comstock  
17 p/k/a Marshmello (hereinafter, “Marshmello”), a resident of California, is the  
18 manager and sole shareholder of Marshmello Creative and is, in fact, the alter  
19 ego of Marshmello Creative.

20 4. This Court has specific personal jurisdiction over Marshmello  
21 Creative because its suit-related conduct creates a substantial connection with the  
22 State of California. Marshmello Creative is a copyright claimant of the United  
23 States Copyright Registration for the infringing musical composition “Happier”  
24 (hereinafter, the “Infringing Work” or “Happier”), as embodied in the sound  
25 recording bearing registration number SR0000831528. Upon information and  
26 belief, Marshmello Creative has generated substantial revenue from exploitation  
27 of the Infringing Work in California, which upon information and belief flows  
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1 through Marshmello Creative to Defendant Marshmello. Further and, as  
2 discussed more fully below, Marshmello co-wrote and recorded the Infringing  
3 Work in California.

4 5. This Court has general personal jurisdiction over Marshmello  
5 because, upon information and belief, he is a resident of the State of California  
6 and this Judicial District, owns property in this Judicial District, and has other  
7 substantial contacts with the State of California and with this Judicial District  
8 specifically.

9 6. This Court has specific personal jurisdiction over Marshmello  
10 because this suit arises out of or relates to his contacts with the State of California  
11 and this Judicial District. Specifically, upon information and belief, Marshmello  
12 co-wrote the Infringing Work in the State of California. Upon information and  
13 belief, the sound recording of the Infringing Work was also recorded in whole or  
14 in part in Marshmello's studio in California. Additionally, upon information and  
15 belief, Marshmello has performed the Infringing Work at California locations  
16 including the following: (1) performing "Happier" live on September 20, 2018 at  
17 1 Oak in West Hollywood, California; (2) performing "Happier" live on October  
18 20, 2018 at the Hollywood Bowl in Los Angeles, California; (3) performing  
19 "Happier" live on March 14, 2019 at the Microsoft Theater in Los Angeles,  
20 California; and (4) performing "Happier" live on March 15, 2019 at the iHeart  
21 Radio Music Awards at the Microsoft Theater in Los Angeles, California.

22 7. Additionally, this Court has specific personal jurisdiction over  
23 Marshmello because, upon information and belief, Marshmello has licensed  
24 and/or authorized the licensing, distribution, and sale of the Infringing Work to  
25 residents of California and to California companies including within this Judicial  
26 District; has directly advertised or authorized others to advertise the Infringing  
27 Work through California companies and to California residents; and has  
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1 generated substantial revenues from performing the Infringing Work in the State  
2 of California and this Judicial District.

3 8. This Court has specific personal jurisdiction over Daniel Campbell  
4 Smith (hereinafter, “Smith”) because this suit arises out of or relates to Smith’s  
5 contacts with the State of California and this Judicial District. Upon information  
6 and belief, Smith and Defendant Steven McCutcheon p/k/a Steve Mac  
7 (hereinafter, “Mac”), began writing “Happier” outside of California, but sent the  
8 incomplete version of Happier to Marshmello in California with the specific  
9 intent that Marshmello would continue to write/work on the Infringing Work in  
10 California, in collaboration with Smith and Mac, and that Happier would be  
11 recorded in California, and in this Judicial District. Furthermore, upon  
12 information and belief, the sound recording of the Infringing Work was recorded  
13 by Smith in whole or in part in Marshmello’s studio in California. Additionally,  
14 Smith has performed the Infringing Work at California locations including the  
15 following: (1) performing “Happier” live on September 4, 2018 at The Wiltern  
16 in Los Angeles, California; and (2) performing “Happier” live on December 8,  
17 2018 at SAP Center in San Jose, California. Marshmello, Smith, and Mac are in  
18 fact practical partners with respect to their work on the Infringing Work.

19 9. Additionally, this Court has specific personal jurisdiction over  
20 Smith because, upon information and belief, Smith has licensed and/or  
21 authorized the licensing, distribution, and sale of the Infringing Work to  
22 California companies and to residents of California and within this Judicial  
23 District; and has directly advertised or authorized others to advertise the  
24 Infringing Work through California companies and to California residents; and  
25 has generated substantial revenues from performing the Infringing Work and  
26 selling the Infringing Work in the State of California and this Judicial District.

1           10. This Court also has specific personal jurisdiction over Smith  
2 because, upon information and belief, Smith is signed with Performing Rights  
3 Organization ASCAP, which, upon information and belief, directs its actions on  
4 Smith's behalf in California, collects public performance royalties on his behalf  
5 in this Judicial District, and thereby serves as his agent in this Judicial District,  
6 all with respect to the Infringing Work, among other of his musical compositions.  
7 Upon information and belief, Smith has entered into agreements with WWKD  
8 Limited (hereinafter, "WWKD") to exploit his interest in the Infringing Work  
9 and upon information and belief, WWKD has specifically directed its actions on  
10 behalf of Smith, as his agent, in this Judicial District. On information and belief,  
11 Smith retains the right to approve licenses entered into with respect to the  
12 Infringing Work by WWKD.

13           11. This Court has specific personal jurisdiction over Mac because this  
14 suit arises out of or relates to Mac's contacts with the State of California and this  
15 Judicial District. Upon information and belief, Mac and Smith began writing  
16 "Happier" outside of California but sent the incomplete version of Happier to  
17 Marshmello in California with the specific intent that Marshmello, in  
18 collaboration with Smith and Mac, would continue to write/work on the  
19 Infringing Work in California. Mac and Smith also knew, and intended that  
20 Happier would be recorded in California, and in this Judicial District.  
21 Furthermore, upon information and belief, Mac licensed and/or authorized the  
22 licensing, distribution, and sale of the Infringing Work to California companies  
23 and to residents of California and within this Judicial District; and has directly  
24 advertised or authorized others to advertise the Infringing Work through  
25 California companies and to California residents; and has generated substantial  
26 revenues from selling the Infringing Work in the State of California and this  
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1 Judicial District. Marshmello, Smith, and Mac are in fact practical partners with  
2 respect to their work on the Infringing Work.

3 12. Additionally, this Court has specific personal jurisdiction over Mac  
4 because, upon information and belief, Mac is signed with Performing Rights  
5 Organization ASCAP, which, upon information and belief, directs its actions on  
6 Mac's behalf in California, collects public performance royalties on his behalf in  
7 this Judicial District, and thereby serves as his agent in this Judicial District, all  
8 with respect to the Infringing Work, among other of his musical compositions.  
9 Upon information and belief, Smith has entered into agreements with Rokstone  
10 Music Limited (hereinafter, "Rokstone") to exploit his interest in the Infringing  
11 Work and upon information and belief, Rokstone has specifically directed its  
12 actions on behalf of Smith, as his agent, in this Judicial District. Upon  
13 information and belief, Mac also retains the right to approve licenses entered into  
14 by Rockstone with respect to the Infringing Work. Marshmello, Smith, and Mac  
15 are in fact practical partners with respect to their work on the Infringing Work.

16 13. This Court has general personal jurisdiction over Marshmello Music  
17 LLC (hereinafter, "Marshmello Music") because, upon information and belief, it  
18 has continuous and systematic contacts with the State of California to render it  
19 essentially at home in California. Specifically, (1) Marshmello Music is qualified  
20 to do business in California and is registered as a foreign corporation with the  
21 California Secretary of State; (2) Marshmello Music maintains a strong presence  
22 in California, including an office located at 16000 Ventura Blvd. Suite 600,  
23 Encino, California 91436, where it employs California residents; and (3) upon  
24 information and belief, Defendant Marshmello, a resident of California, is the  
25 manager of and sole shareholder of Marshmello Music. Marshmello Music is in  
26 fact the alter ego of Marshmello.

1           14. This Court has specific personal jurisdiction over Marshmello  
2 Music because its suit-related conduct creates a substantial connection with the  
3 state of California and this Judicial District. Specifically, (1) Marshmello Music  
4 knowingly and intentionally licensed and distributed, or authorized the licensing  
5 and distribution of, the Infringing Work in California and to California  
6 companies; (2) Marshmello Music maintains a contractual and alter ego  
7 relationship with its sole shareholder Marshmello, a California citizen, under  
8 which Marshmello Music receives income and its interest in the Infringing Work,  
9 which was created in California by Marshmello, and recorded in California by  
10 Marshmello and Smith; (3) Marshmello Music's conduct causes injury to, and is  
11 directed at, Plaintiff and his intellectual property within the United States and the  
12 State of California; (4) Marshmello Music has benefitted substantially from the  
13 sale and exploitation of the Infringing Work to California residents; (5)  
14 Marshmello Music is, at a minimum, constructively aware of its continuous and  
15 substantial commercial interactions with California residents; (6) Marshmello  
16 Music actively participated in and/or authorized the unlawful manufacture of the  
17 Infringing Work in California and to California companies; (7) Marshmello  
18 Music issued a mechanical license allowing for the Infringing Work to be  
19 included in the recording of "Happier" (hereinafter, the "Infringing Sound  
20 Recording"), which was recorded in California; and (8) Marshmello Music  
21 advertised the Infringing Work to California residents and through California  
22 Companies.

23           15. This Court has general personal jurisdiction over Rokstone.  
24 Rokstone, through its affiliation with Polygram Publishing, Inc. d/b/a Universal  
25 Polygram International Publishing (hereinafter, "Universal"), conducts  
26 systematic and continuous business in the State of California and this Judicial  
27 District and has generated substantial revenue from the exploitation of the  
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1 Infringing Work in California from Universal's principal place of business  
2 located at 2100 Colorado Avenue, Santa Monica, California 90404.

3 16. This Court has specific personal jurisdiction over Rokstone because  
4 its suit-related conduct creates a substantial connection with the State of  
5 California, which includes: (1) Rokstone is engaged in conduct within the State  
6 of California and in this Judicial District, specifically Rokstone knowingly and  
7 intentionally licensed and distributed, or authorized the licensing and distribution  
8 of, the Infringing Work to California companies and for California distribution;  
9 (2) Rokstone issues licenses through Universal as its agent for exploitation in the  
10 United States and California specifically, over which, upon information and  
11 belief, Mac and Rokstone retained approval rights; (3) Rokstone has benefitted  
12 substantially from the sale and exploitation of the Infringing Work through  
13 California companies and to California residents; (4) Rokstone is, at a minimum,  
14 constructively aware of its continuous and substantial commercial interactions  
15 with California residents; (5) Rokstone actively participated in, and/or authorized,  
16 the unlawful manufacture of the Infringing Work in California, including  
17 entering into a mechanical license with the California based record label allowing  
18 for the Infringing Work to be included in the Infringing Sound Recording, which  
19 was recorded in California; and (6) Rokstone advertised the Infringing Work  
20 through California companies and to California residents.

21 17. This Court has specific personal jurisdiction over WWKD because  
22 its suit-related conduct creates a substantial connection with the State of  
23 California, which includes: (1) WWKD is engaged in conduct within the State  
24 of California and in this Judicial District, specifically Defendant knowingly and  
25 intentionally licensed and distributed, or authorized the licensing and distribution  
26 of, the Infringing Work to California companies and for California distribution;  
27 (2) WWKD issued a mechanical license with the California based record label  
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1 allowing for the Infringing Work to be included in the Infringing Sound  
2 Recording, which was recorded in California; (3) WWKD issues licenses,  
3 through Universal as its agent for exploitation in the United States and California  
4 specifically, over which, upon information and belief, Smith and WWKD  
5 retained approval rights; (4) WWKD has benefitted substantially from the sale  
6 and exploitation of the Infringing Work through California companies and to  
7 California residents; (5) WWKD is, at a minimum, constructively aware of its  
8 continuous and substantial commercial interactions with California residents; (6)  
9 WWKD actively participated in, and/or authorized, the unlawful manufacture of  
10 the Infringing Work in California; and (7) WWKD advertised the Infringing  
11 Work through California companies and to California residents. Finally, Smith is  
12 the sole shareholder of WWKD and the two are alter egos of each other. Smith,  
13 and WWKD, as discussed above, purposefully directed the incomplete version  
14 of the Infringing Work to Marshmello in California with the knowledge and  
15 intent that Marshmello, in collaboration with Smith and Mac, would write and  
16 complete the Infringing Work in California.

17 18. This Court has general personal jurisdiction over Universal because,  
18 upon information and belief, it has continuous and systematic contacts with the  
19 State of California to render it essentially at home in California. Specifically,  
20 Universal has a principle place of business located 2100 Colorado Avenue, Santa  
21 Monica, California 90404 where, upon information and belief, it employs  
22 California residents and conducts substantial business.

23 19. This Court has specific personal jurisdiction over Universal because  
24 its suit-related conduct creates a substantial connection with the State of  
25 California and this Judicial District. Specifically, (1) Universal knowingly and  
26 intentionally licensed and distributed, or authorized the licensing and distribution  
27 of, the Infringing Work in California and to California companies as the agent  
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1 for both WWKD and Rokstone; (2) Universal maintains a contractual  
2 relationship with Defendant Rokstone and Defendant WWKD under which it  
3 sub-publishes the Infringing Work; (3) Universal's conduct causes injury to, and  
4 is directed at, Plaintiff and his intellectual property within the United States and  
5 the State of California; (4) Universal has benefitted substantially from the sale  
6 and exploitation of the Infringing Work to California residents; (5) Universal is,  
7 at a minimum, constructively aware of its continuous and substantial commercial  
8 interactions with California residents; (6) Universal actively participated in  
9 and/or authorized the unlawful manufacture of the Infringing Work in California  
10 and to California companies, including by signing a mechanical license with the  
11 California-based record label authorizing the inclusion of the Infringing Work in  
12 the Infringing Sound Recording, which was recorded in California; and (7)  
13 Universal advertised the Infringing Work to California residents and through  
14 California Companies.

15         20. This Court has general personal jurisdiction over Kobalt Music  
16 Publishing America, Inc. (hereinafter, "Kobalt") because, upon information and  
17 belief, it has continuous and systematic contacts with the State of California to  
18 render it essentially at home in California. Specifically, (1) Kobalt is qualified  
19 to do business in California and is registered as a foreign corporation with the  
20 California Secretary of State; and (2) Kobalt maintains a strong presence in  
21 California, including an office located at 8201 Beverly Blvd, 4th Floor, Suite 400,  
22 West Hollywood, California 90048, where it employs California residents.

23         21. This Court has specific personal jurisdiction over Kobalt because its  
24 suit-related conduct creates a substantial connection with the State of California  
25 and this Judicial District. Specifically, (1) Kobalt knowingly and intentionally  
26 licensed and distributed, or authorized the licensing and distribution of, the  
27 Infringing Work in California and to California companies; (2) Kobalt maintains  
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1 a contractual relationship with Marshmello, a California citizen under which  
2 Kobalt receives income and its interest in the Infringing Work, which was created  
3 in California; (3) Kobalt’s conduct causes injury to, and is directed at, Plaintiff  
4 and his intellectual property within the United States and the State of California;  
5 (4) Kobalt has benefitted substantially from the sale and exploitation of the  
6 Infringing Work to California residents; (5) Kobalt is, at a minimum,  
7 constructively aware of its continuous and substantial commercial interactions  
8 with California residents; (6) Kobalt actively participated in and/or authorized  
9 the unlawful manufacture of the Infringing Work in California and to California  
10 companies, including by signing a mechanical license with the California based  
11 record label authorizing the inclusion of the Infringing Work in the Infringing  
12 Sound Recording, which was recorded in California; and (7) Kobalt advertised  
13 the Infringing Work to California residents and through California Companies.

14 **VENUE**

15 22. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) as a substantial  
16 part of the events giving rise to the claim occurred in this Judicial District. Venue  
17 is proper pursuant to 28 U.S.C. § 1391(b)(1) and 28 U.S.C. § 1400 as at least one  
18 of the Defendants reside or may be found in this Judicial District and is subject  
19 to personal jurisdiction.

20 23. This case is properly filed in the Central District, as a substantial  
21 part of events giving rise to this case occurred in the Central District of California.

22 **INTRODUCTION**

23 24. Plaintiff Artem Stoliarov (hereinafter, “Arty”) hereby complains  
24 and alleges against Defendants: Marshmello, Mac, Smith, Marshmello  
25 Creative, Marshmello Music, Rokstone, WWKD, and Kobalt (collectively,  
26 “Defendants”) as follows:  
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1           25. This is an action for willful copyright infringement. In 2014,  
2 One Republic wrote and recorded the musical composition “I Lived.” On  
3 September 23, 2014, Arty created an authorized derivative work of “I Lived,”  
4 entitled “I Lived (Arty Remix).” Arty does not claim ownership of the original  
5 underlying musical composition “I Lived” either as embodied in the original  
6 work bearing that name, or in the “I Lived (Arty Remix).” Arty only owns the  
7 original compositional elements he added to the underlying composition “I  
8 Lived” as embodied in “I Lived (Arty Remix)” (those original compositional  
9 elements added by Arty are hereinafter referred to as the “Original Work” or “I  
10 Lived (Arty Remix).” As discussed herein, it was only the original  
11 compositional elements that Arty added to the underlying composition “I Lived”  
12 that were willfully copied by Defendants note for note and became the most  
13 recognizable and important part of the Infringing Work. A United States  
14 Copyright for those original compositional elements Arty added to the  
15 underlying composition in “I Lived (Arty Remix)” was duly registered with  
16 the United States Copyright Office on March 6, 2019 bearing Registration  
17 Number PA0002157682.

18           26. The Defendants are the credited writers, copyright claimants,  
19 performers, publishers, producers, and/or administrators of the Infringing Work  
20 “Happier” which, as set forth more fully herein, deliberately copied the infringed  
21 original elements from the Original Work. Defendants copied the Original Work  
22 without license or consent, and have exploited the subsequent Infringing Work  
23 to their collective benefit without regard to Plaintiff’s rights and to Plaintiff’s  
24 detriment. The Infringing Work directly misappropriate quantitatively and  
25 qualitatively important portions of Plaintiff’s Original Work in a manner that is  
26 easily recognizable to the ordinary observer. The Infringing Work is substantially  
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1 similar to the Original Work as discussed fully below, and satisfies both the  
2 extrinsic and intrinsic test for copyright infringement. All Defendants herein are  
3 practical partners of each other as that term is understood under California law.  
4 All Defendants herein are jointly and severally liable for willful copyright  
5 infringement, as all have benefitted from the copying of the Original Work as  
6 described herein, and all have violated one or more of Plaintiff's exclusive rights  
7 under Section 106 of the United States Copyright Act.

8 **PARTIES**

9 27. Plaintiff Arty, an individual, is a citizen of Russia residing in the  
10 United States of America on a visa. Arty created the original compositional  
11 elements that is the basis of this lawsuit and is embodied in the Infringing Work  
12 in a manner that constitutes willful copyright infringement. Arty is a musician,  
13 producer, and DJ. Arty is a legal owner of the registered copyright in the  
14 Original Work as discussed above.

15 28. Defendant Marshmello Creative is a limited liability company  
16 organized and existing under the laws of Delaware with its principal place of  
17 business at 16000 Ventura Blvd., Suite 600 Encino, California 91436.  
18 Marshmello Creative is the copyright claimant of the Infringing Work.  
19 Marshmello Creative has generated substantial revenue from its authorization to  
20 unlawfully exploit, and direct exploitation of, the Infringing Work.

21 29. Defendant Marshmello, an individual is, upon information and  
22 belief, a resident of the State of California. Marshmello is a writer and performer  
23 of the Infringing Work "Happier." Upon information and belief, he is signed  
24 with Defendant Marshmello Music and Defendant Kobalt.

25 30. Defendant Smith, an individual, is a citizen of the United Kingdom.  
26 Smith is a singer, songwriter, and producer. He founded the British rock band  
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1 Bastille. In 2018, he collaborated with Marshmello and Mac in co-writing the  
2 Infringing Work. Smith is the sole shareholder in Defendant WWKD.

3 31. Defendant Mac, an individual, is a citizen of the United Kingdom.  
4 Mac is a songwriter and producer signed with Defendant Rokstone. Mac is a  
5 writer of the Infringing Work. In 2018, he collaborated with Marshmello and  
6 Smith in co-writing the Infringing Work.

7 32. Defendant Marshmello Music is a limited liability company  
8 organized and existing under the laws of Delaware. Marshmello Music has a  
9 principal place of business at 16000 Ventura Blvd., Suite 600 Encino, California  
10 91436. Marshmello Music is a publisher of the Infringing Work “Happier.”  
11 Marshmello Music is Marshmello’s publisher and serves as the administrator  
12 and/or music publisher of the Infringing Work. Marshmello Music has also  
13 exploited the Infringing Work and collects royalties for the Infringing Work as  
14 described herein.

15 33. Rokstone is a private limited company organized and existing under  
16 the laws of the United Kingdom with its principal place of business at Berbies,  
17 9 Bonhill Street, London, EC2A 4DJ. Upon information and belief, Rokstone  
18 serves as a music publisher of the Infringing Work for Defendant Mac’s share  
19 of the Infringing Work and is affiliated with Universal, which administers  
20 Rokstone’s interests in the United States. Rokstone has also exploited the  
21 Infringing Work and collects royalties for the Infringing Work as described  
22 herein.

23 34. WWKD is a private limited company organized and existing under  
24 the laws of the United Kingdom with its principal place of business at 2nd Floor  
25 Northumberland House, 303-306 High Holborn, London, United Kingdom,  
26 WC1V 7JZ. Upon information and belief, WWKD serves as a music publisher  
27 of the Infringing Work and is affiliated with Universal, which upon information  
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1 and belief operates under a license agreement with WWKD and acts as  
2 WWKD's agent and administers WWKD's interests in the United States.  
3 WWKD has also exploited the Infringing Work and collects royalties for the  
4 Infringing Work as discussed herein.

5 35. Defendant Universal is a Delaware corporation organized and  
6 existing under the laws of Delaware with its registered agent located at  
7 Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.  
8 Universal also has offices located in Los Angeles, California. Upon information  
9 and belief, Universal sub-publishes Defendant Rokstone's and Defendant  
10 WWKD's interest in the Infringing Work. Universal has exploited the Infringing  
11 Work and collects royalties for the Infringing Work as discussed herein.

12 36. Defendant Kobalt is a Delaware corporation organized and existing  
13 under the laws of Delaware with its principal place of business at 220 West 42nd  
14 Street, 11th Floor, New York, New York 10036. Kobalt also has offices located  
15 in Los Angeles, California. Upon information and belief, Kobalt is the  
16 publishing administrator for Defendant Marshmello Music on the Infringing  
17 Work "Happier." Upon information and belief, Defendant Marshmello signed a  
18 global publishing deal with Kobalt under which Kobalt administers  
19 Marshmello's catalog. Kobalt has also exploited the Infringing Work and  
20 collects royalties for the Infringing Work as discussed herein.

21 **STATEMENT OF FACTS**

22 **1. Background of the writer of "I Lived (Arty Remix)"**

23 37. Arty is an electronic dance musician, producer, and DJ who has  
24 collaborated with artists including Halsey, Armin van Buuren, Above & Beyond,  
25 BT, Paul van Dky, Mat Zo, OneRepublic, and Matisse & Sakko.  
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1 38. In 2011, Arty was rated number 25 in the Top 100 DJs selection of  
2 DJ Magazine, and his debut album, *Glorious*, peaked at #14 on the US  
3 Dance/Electronic Albums chart.

4 39. 2018 was a record-breaking year for Arty, which began with his  
5 single *Sunrise* going to #2 on US dance radio, and then closing the year with  
6 “Velvet” released on *Ninjawerks*, which was the first ever EDM and gaming  
7 collaboration soundtrack.

8 40. In 2018 alone, Arty released 20 new songs between his two  
9 projects: ARTY, and progressive trance-focused, ALPHA 9, including  
10 incredibly successful remixes for Above and Beyond, Axwell & Ingrosso, and  
11 Armin Van Buuren, making him #1 in 2018 for most releases by any EDM artist.  
12 Further, already in 2019, Arty’s single “Save Me Tonight” has reached #1 on US  
13 Dance Radio.

14 41. Arty has built an international following mixing his trademark big-  
15 room anthems with downtempo electronica year after year, showcasing his gift  
16 for translating club-focused sounds to the pop/radio format. With nods to classic  
17 trance, Arty continues to produce under the moniker ALPHA 9, and is currently  
18 wrapping up a United States tour with special performances internationally.

19 42. Further, with an XS Encore Las Vegas residency under his belt, and  
20 a pedigree of performances at Ultra, Electric Daisy Carnival, Tomorrowland,  
21 Ushuaïa, Amnesia Ibiza, and Creamfields, Arty has established himself as one  
22 of the music industry's most consistent artists, a prodigious talent, and has  
23 become a go-to for other artists, crafting immensely popular remixes for Axwell  
24 & Ingrosso, Armin Van Buuren, Halsey, London Grammar, Above & Beyond,  
25 Porter Robinson, Years & Years, and importantly, One Republic.

26 43. One Republic originally recorded the song “I Lived”, which spent  
27 15 weeks on the Billboard Mainstream Top 40 chart in 2014 and 2015.  
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1 Following the success of the One Republic original, Arty created an authorized  
2 remix of the “I Lived” track, and is a credited writer and producer of “I Lived  
3 (Arty Remix),” which was released in 2014.

4 44. To date, the Original Work has generated over 10,000,000 streams  
5 on Spotify and over 3,800,000 views on YouTube.

6 **2. Background and Success of the Infringing Work**

7 45. Defendants are the performers, writers, producers, publishers,  
8 copyright owners, and administrators of the Infringing Work.

9 46. The single “Happier” was released on August 17, 2018 by  
10 Astralwerks, a division of Universal Music Group.

11 47. Upon information and belief, Defendant Smith and Defendant Mac  
12 began writing the Infringing Work in the United Kingdom, but directed the  
13 incomplete Infringing Work to Defendant Marshmello in California to complete  
14 the writing thereof. Upon information and belief, Defendant Marshmello added  
15 the infringing material to the Infringing Work, in collaboration with Mac and  
16 Smith, while working in the State of California. Defendant Marshmello  
17 reportedly wrote fifteen different versions of the Infringing Work, in  
18 collaboration with Mac and Smith, in an attempt finish the Infringing Work  
19 before finally settling on the final iteration of the Infringing Work, which as set  
20 forth below, contains note for note copying of the Original Work.

21 48. The Infringing Work peaked at No. 2 on U.S. Billboard Hot 100 on  
22 February 16, 2019. The song has been on the chart for 35 weeks and remains on  
23 the chart at No. 12. “Happier” has been on Billboard Adult Contemporary for  
24 20 weeks with a peak position of No. 9 for the week of April 27, 2019. “Happier”  
25 peaked at No. 2 on Billboard Adult Top 40 on December 22, 2018 and was on  
26 the chart for 31 weeks. “Happier” peaked at No. 1 on Billboard Dance Club  
27 Songs on November 17, 2018 and was on the chart for 20 weeks. “Happier” is  
28

1 currently the No. 1 song on Billboard Hot Dance/Electronic Songs. “Happier”  
2 has been No. 1 on the chart since September 29, 2018, 31 weeks, and has been  
3 on the chart for a total of 35 weeks. “Happier” peaked at No. 1 on Billboard Pop  
4 Songs on November 17, 2018 and was on the chart for 30 weeks. “Happier”  
5 peaked at No. 2 on Billboard Rock Airplay on October 27, 2018. “Happier”  
6 remains on the chart at No. 6 and has been on the chart for 35 weeks.

7 49. “Happier” was certified 2x Multi-Platinum on January 22, 2019 by  
8 RIAA for selling 2,000,000 copies.

9 50. As of May 4, 2019, the “Happier (Official Lyric Video)” has  
10 attracted more than 333,732,300 views on YouTube. As of May 4, 2019, the  
11 “Happier (Official Music Video)” has generated more than 283,987,600 views  
12 on YouTube. As of April 23, 2019, “Happier” has over 729,182,000 streams on  
13 Spotify.

14 51. Defendant Marshmello and Defendant Smith performed “Happier”  
15 live on *Good Morning America* on November 7, 2018. Defendant Marshmello  
16 and Defendant Smith performed “Happier” live on *The Ellen DeGeneres Show*  
17 on December 11, 2018. Defendant Marshmello and Defendant Smith performed  
18 “Happier” live on *The Voice* on December 19, 2018.

19 52. Upon information and belief, Defendant Marshmello performed  
20 “Happier” at Electronic Zoo – New York’s premiere electronic music festival  
21 and at the iHeartRadio Jingle Ball in Philadelphia, Pennsylvania. Upon  
22 information and belief, Defendant Marshmello is currently on tour and has  
23 performed “Happier” in India, Thailand, Australia, Japan, California, Florida,  
24 and Nevada. Upon information and belief, Defendant Marshmello has also  
25 performed “Happier” in England, Minnesota, Arizona, Georgia, and Colorado.

26 53. The Infringing Work was also performed in a virtual concert live  
27 in the videogame *Fortnite*. Upon information and belief, the virtual performance  
28

1 reached almost 10 million users. Upon information and belief, the Infringing  
2 Work moved from No. 8 on the Billboard Hot 100 to No. 2 following the virtual  
3 concert. The YouTube video of this event has been viewed in excess of  
4 6,067,620 times.

5 54. The Infringing Work was played at the 2019 NFL draft on April 25,  
6 2019 in front of an audience of more than 200,000 people. The Infringing Work  
7 was adapted to focus on the infringing material. This demonstrates that the  
8 infringing material is critical to the success of the Infringing Work and the most  
9 important part of the Infringing Work. At bottom, the Infringing Work has been  
10 a worldwide phenomenon, generating, upon information and belief, in excess of  
11 \$20 million in revenue. Its success is owing in substantial part to the  
12 unauthorized inclusion of the Original Work. Defendants are required to  
13 disgorge their ill-gotten gains under the United States Copyright Act, as the  
14 success of the Infringing Work is due in large part to the unauthorized inclusion  
15 of the Original Work.

16 **3. Access**

17 55. As set forth above, the Original Work was also a huge success and  
18 brought both the Original Work and Arty to the attention of the entire dance  
19 music/EDM industry.

20 56. Indeed, Defendant Marshmello is familiar with Plaintiff and his  
21 work as the two are personal acquaintances and often perform at the same  
22 musical venues and festivals including Beyond Wonderland in Southern  
23 California in March 2015, Freaknight on October 26, 2018 in Seattle,  
24 Washington, Decadence NYE 2016 music festival held on December 30-31,  
25 2016 in Chandler, Arizona, and the upcoming Electric Love Festival to be held  
26 in Salzburgering, Austria on July 4-6, 2019. Many of these events saw Arty and  
27  
28

1 Marshmello perform on the same day, including at least one event where Arty  
2 performed “I Lived (Arty Remix).”

3 57. In October 2017, Plaintiff and Defendant Marshmello were in Las  
4 Vegas together at an Alesso show at XS the night before Defendant  
5 Marshmello’s XS residency.

6 58. Defendant Kobalt publishes works by both Plaintiff and Defendant  
7 Marshmello.

8 59. Plaintiff’s manager has specifically told Defendant Marshmello’s  
9 manager that he managed Plaintiff.

10 60. Defendant Marshmello’s team was in talks with Plaintiff’s manager  
11 about designing and producing Marshmello shows.

12 61. Defendant Marshmello’s manager has attended events hosted by  
13 Plaintiff’s manager in Los Angeles, California.

14 62. Defendant Marshmello’s manager and Plaintiff’s booking agent are  
15 closely acquainted.

16 63. Defendant Marshmello and his manager have met to play toplines  
17 in the past and made mention of working with Plaintiff.

18 64. Defendant Marshmello was thus undeniably fully familiar with the  
19 work of Plaintiff.

20 65. Given that Plaintiff and Defendant Marshmello are both active in  
21 the EDM community and their music represents the same music genres, and the  
22 fact that the Original Work is itself a major hit created by Plaintiff, and known  
23 by all in the EDM community including Marshmello to be so, and the fact that  
24 Arty performed the Original Work at events where Marshmello was also present,  
25 it is undeniable that Defendant Marshmello, Smith, and Mac were familiar with  
26 the Original Work at the time they wrote the Infringing Work.

1           66. As a result, given the above, including the keen knowledge  
2 Marshmello has of Arty and his work, Defendants unquestionably had access to  
3 the Original Work, were fully familiar with the Original Work, and participated  
4 in the willful copying of it.

5 **4. Substantial Similarity**

6           67. Upon the release of the Infringing Work, Plaintiff immediately  
7 recognized his own work, “I Lived (Arty Remix).”

8           68. Fans of both artists have noted the clear similarity of both the  
9 Original Work and the Infringing Work. For example, in September 2018, a fan  
10 Tweeted that when he heard “Happier,” he immediately thought of “I Lived  
11 (Arty Remix).” Defendant Marshmello liked this Tweet.

12           69. In addition to being apparent to the ordinary listener, a comparison  
13 of the musical elements of both “I Lived (Arty Remix)” and the Infringing Work  
14 reveals the works are substantially similar. Each example below shows that  
15 Defendants copied qualitatively and quantitatively important portions of “I  
16 Lived (Arty Remix)” and placed those copied portions into qualitatively and  
17 quantitatively important portions of the Infringing Work.

18           70. As evidenced in the following musical transcription, the repeating  
19 4-bar synthesizer melody in the Infringing Work is almost identical to the first  
20 4-bars of the 8-bar synthesizer melody in the Original Work. Out of 20 notes in  
21 the Infringing Work, the order of the first 19 pitches is identical to the order of  
22 the first 19 pitches in the Original Work. Additionally, 15 out of 20 notes have  
23 identical metric placements (i.e. placement on or within a beat in a bar), and  
24 identical pitches. Furthermore, 11 of the 20 notes have identical pitches,  
25 identical metric placements, and identical rhythmic durations.

**Synthesizer Melodies: Comparative Transcription in C Major**

The musical transcription consists of two systems of staves. The first system includes two staves: the top staff is for "I Lived (Arty Remix)" (1:56) and the bottom staff is for "Happier" (0:48). Both are in 4/4 time. The second system also consists of two staves, continuing the transcription of the two pieces. Chords are indicated above the notes on each staff.

71. The chords accompanying the synthesizer melodies also have similarities. The synthesizer melodies begin in bar 1 with a vi chord, and at the end of bar 4, there is a V chord that moves back to a vi chord in bar 5. The synthesizer melody at issue is heard for a total of approximately 88 seconds of the 4:25 duration of the Original Work. The synthesizer melody at issue is heard for a total of approximately 57 seconds of the 3:33 duration of the Infringing Work. These similarities are detailed in the following musical transcription:

**Original Work Synthesizer Melody in its Recorded Key of A Major**

1

2 F#m D A E

3

4

5 F#m D A C#m7

6

9 F#m D A E

8

9

10 13 F#m D A C#m7

11

**Infringing Work Synthesizer Melody in its Recorded Key of F Major**

12

13 Dm7 C7/E F F/A Bbmaj7 C

14

15

16 5 Dm7 C7/E F F/A Bbmaj7 C

17

18 72. There is very strong objective musicological evidence that a

19 significant amount of melodic expression in the Infringing Work is copied from

20 the Original Work with each of the transcriptions above showing that the

21 Infringing Work was modeled after and copied original, prominent, and

22 qualitatively and quantitatively important parts of the Original Work. The

23 qualitatively and quantitatively important substantial similarities in each of the

24 examples above, and between the works as a whole, coupled with undeniable

25 access makes any claim of independent creation of the Infringing Work dead on

26 arrival. The elements copied from the Original Work are also original as there

1 is no prior art substantially similar to the Original Work. The copying alleged  
2 herein constitutes willful copyright infringement.

3 **5. Continued Exploitation**

4 73. The overwhelming success of the Infringing Work set forth above  
5 has provided Defendants substantial opportunities to tour and perform around  
6 the world. The revenue and profits derived from these performances and  
7 appearances, among all other revenue and profits, are directly attributable to the  
8 success of the Infringing Work. Thus, the touring and concert revenue generated  
9 for Defendants is causally connected to the Infringing Work, such that the  
10 touring revenue, concert revenue, and related public performance revenue  
11 should be disgorged by Plaintiff. The same is true of the inclusion of the Original  
12 Work in *Fortnite*, and with respect to indirect profits received by the Defendants  
13 with respect to the Infringing Work.

14 74. Not only has the Infringing Work been a huge musical success for  
15 the Defendants, but it has resulted in touring revenue, artist royalties, licensing  
16 revenue, producer royalties, and songwriting and publishing revenue attributable  
17 to the success of the Infringing Work. These opportunities would not have been  
18 available to Defendants if they had not infringed Plaintiff's Original Work.

19 75. The Infringing Work continues to be reproduced, sold, distributed,  
20 publicly performed, licensed, and otherwise exploited on compact discs and  
21 albums by Defendants, and as digital downloads, ringtones, and mastertones,  
22 and in music videos, all without payment to Plaintiff.

23 76. As discussed above, all Defendants are responsible in some manner  
24 for the events described herein and are liable to Plaintiff for damages available  
25 under the Copyright Act. Defendants are involved with the creation, release,  
26 reproduction, distribution, exploitation, licensing, receipt of revenue, and public  
27 performance of the Infringing Work, which constitutes, among other things, the  
28

1 improper preparation of a derivative work and direct, vicarious, and contributory  
2 infringement. As co-infringers and practical partners, Defendants are jointly and  
3 severally liable for all amounts owed, and for the profits enjoyed by the others.  
4 Upon information and belief, Defendants have received, or are owed in pipeline  
5 money, in total, more than \$20 million in profits related to the Infringing Work.  
6 This revenue and profit received by Defendants include, but is not limited to,  
7 artist royalties, producer royalties, writer and publisher royalties, licensing  
8 royalties, synchronization royalties, public performance royalties, touring  
9 revenue, and other revenue, among other things, all of which are directly  
10 attributable to the Original Work and should be disgorged to Plaintiff.

11 77. These acts by Defendants are willful, knowing, and malicious, and  
12 perpetrated without regard to Plaintiff's rights.

13 **FIRST CAUSE OF ACTION**

14 **(Copyright Infringement – 17 U.S.C. § 501)**

15 **(Against All Defendants)**

16 78. Plaintiff respectfully repeats and incorporates by reference the  
17 allegations contained in Paragraphs 1 through 77, as though fully set forth herein.

18 79. Plaintiff is the legal or beneficial owner of the United States  
19 copyright in the work "I Lived (Arty Remix)," Registration Number PA 2-157-  
20 682, as discussed above, relating to the original compositional elements he added  
21 to the underlying composition "I Lived."

22 80. Defendants have directly, vicariously, and/or contributorily  
23 infringed and/or induced infringement of Plaintiff's copyright in violation of 17  
24 U.S.C. § 501.

25 81. Defendants had access to "I Lived (Arty Remix)," as discussed  
26 above.

1 82. Defendants' acts were performed without Plaintiff's permission,  
2 license, or consent. Defendants' unauthorized reproduction, distribution, public  
3 performance, display, and creation of a derivative work, "Happier," infringes  
4 Plaintiff's exclusive rights in violation of the Copyright Act, 17 U.S.C. § 101 *et*  
5 *seq.*

6 83. Defendants' infringement has been and continues to be, willful,  
7 intentional, purposeful, and with complete disregard to Plaintiff's rights.

8 84. As a direct and proximate result of Defendants' infringement,  
9 Plaintiff has been irreparably harmed.

10 85. "Happier" copies prominent original parts of "I Lived (Arty  
11 Remix)." This copying satisfies both the intrinsic and extrinsic tests to establish  
12 copyright infringement.

13 86. From the date of creation of "Happier," all Defendants have  
14 infringed Plaintiff's copyright interest in "I Lived (Arty Remix)" including:

15 a. by substantially copying and publicly performing, or  
16 authorizing the copying and public performance, including publicly  
17 performing "Happier" at radio, live concerts, personal appearances, and  
18 on video, television, and otherwise;

19 b. by substantially copying the related marketing and  
20 promotion of the sale of the videos, tickets to concerts and other  
21 performances, and other merchandise; and

22 c. by participating in and furthering the aforementioned  
23 infringing acts, and/or sharing in the proceeds therefrom, all through  
24 substantial use of "I Lived (Arty Remix)" in and as part of "Happier,"  
25 packaged in a variety of configurations and digital downloads, mixes, and  
26 versions, and performed in a variety of ways including radio, concerts,  
27 personal appearances, video, television, and/or otherwise.  
28

1 87. Plaintiff has received no copyright ownership interests in, and for  
2 any of the exploitations of, “Happier” or any of the works associated with  
3 “Happier.”

4 88. Defendants have and continue to reproduce, distribute, and  
5 manufacture large numbers of “Happier” which violates Plaintiff’s copyrights  
6 and are at issue in this lawsuit. Defendants have not only marketed and exploited  
7 the works that are at issue but have granted or caused to be granted to various  
8 parties, licenses to produce, sample, and/or distribute the work that is in violation  
9 of Plaintiff’s copyright.

10 89. Defendants had the right and ability to control other infringers and  
11 have derived a direct financial benefit from that infringement such that  
12 Defendants should be found to be vicariously liable.

13 90. Defendants, with knowledge of the infringement, materially  
14 contributed to the direct infringement alleged herein such that they may be found  
15 contributorily liable.

16 91. The infringement is continuing as “Happier” continues to be  
17 licensed for sale, downloads, ringtones, mastertones, and other exploitations by  
18 Defendants, and/or their agents.

19 92. As a direct and proximate result of Defendants’ infringement,  
20 pursuant to 17 U.S.C. § 504(a)(1) and (b), Plaintiff is entitled to actual damages  
21 in addition to Defendants’ profits both domestically and relating to foreign sales  
22 of other exploitation of “Happier” that were manufactured, distributed, or  
23 otherwise infringed domestically. Further, Plaintiff is entitled to a running  
24 royalty on all future exploitations of “Happier” following judgment in an amount  
25 to be determined.

1 93. In the alternative to profits and actual damages, pursuant to 17  
2 U.S.C. § 504(c), Plaintiff is entitled to the maximum amount of statutory  
3 damages for each act of copyright infringement.

4 94. As a direct and proximate result of Defendants' infringement,  
5 Plaintiff has incurred attorneys' fees and costs which are recoverable pursuant  
6 to 17 U.S.C. § 505.

7 95. Defendants' conduct has caused, is continuing to cause, and will  
8 further cause great damage to Plaintiff, which damages cannot be accurately  
9 measured in monetary terms, and therefore, unless enjoined by the Court,  
10 Plaintiff will suffer irreparable injury, for which Plaintiff is without adequate  
11 remedy at law. Accordingly, Plaintiff is entitled to a permanent injunction  
12 pursuant to 17 U.S.C. § 502 following judgment, prohibiting further  
13 infringement, reproduction, distribution, sale, public performance, other use, or  
14 exploitation of Plaintiff's copyright.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for judgment and relief, as follows:

- 17 1. For judgment in favor of Plaintiff and against Defendants;
- 18 2. For a declaration and finding that Defendants have willfully  
19 infringed Plaintiff's copyrighted work in violation of the Copyright Act;
- 20 3. For a declaration and finding that Defendants are directly,  
21 vicariously, and/or contributorily liable for copyright infringement, as  
22 applicable;
- 23 4. For actual damages and profits for copyright infringement pursuant  
24 to 17 U.S.C. § 504(a)(1) and (b), including a finding that Defendants are jointly  
25 and severally liable for actual damages, as well as for each other's profits as  
26 practical partners;



1 Dated: May 6, 2019

Respectfully submitted,

2  
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