

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

DANNY CLINCH, an individual,

Plaintiff,

v.

WARNER MUSIC GROUP CORP., a Delaware corporation, individually, and doing business as “HIPHOPDX”; and DOES 1 through 10,

Defendants.

Case No.: 1:21-cv-8534

**PLAINTIFF’S COMPLAINT FOR:**

1. COPYRIGHT INFRINGEMENT;
2. VICARIOUS AND/OR CONTRIBUTORY COPYRIGHT INFRINGEMENT; and
3. VIOLATION OF DMCA (17 U.S.C. § 1202)

Jury Trial Demanded

Plaintiff, Danny Clinch, by and through his undersigned attorneys, hereby prays to this honorable Court for relief based on the following:

**JURISDICTION AND VENUE**

1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101 *et seq.*
2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and 1338 (a) and (b).
3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and 1400(a) in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred.

**PARTIES**

4. Plaintiff Danny Clinch (“Clinch”) is an individual residing in the state of New Jersey in the United States.
5. Plaintiff is informed and believes and thereon alleges that Defendant Warner Music Group Corp., a Delaware corporation, is operating under its own name and as “HipHopDX” (“HipHopDX”) and is doing business in and with the State of New York.
6. Plaintiff is informed and believes and thereon alleges that Defendants Does 1 through 10, inclusive, are other parties not yet identified who have infringed Plaintiff’s

copyrights, have contributed to the infringement of Plaintiff's copyrights, or have engaged in one or more of the wrongful practices alleged herein. The true names, whether corporate, individual or otherwise, of Defendants 1 through 10, inclusive, are presently unknown to Plaintiff, which therefore sues said Defendants by such fictitious names, and will seek leave to amend this Complaint to show their true names and capacities when same have been ascertained.

7. Plaintiff is informed and believes and thereon alleges that at all times relevant hereto each of the Defendants was the agent, affiliate, officer, director, manager, principal, alter-ego, and/or employee of the remaining Defendants and was at all times acting within the scope of such agency, affiliation, alter-ego relationship and/or employment; and actively participated in or subsequently ratified and/or adopted each of the acts or conduct alleged, with full knowledge of all the facts and circumstances, including, but not limited to, full knowledge of each violation of Plaintiff's rights and the damages to Plaintiff proximately caused thereby.

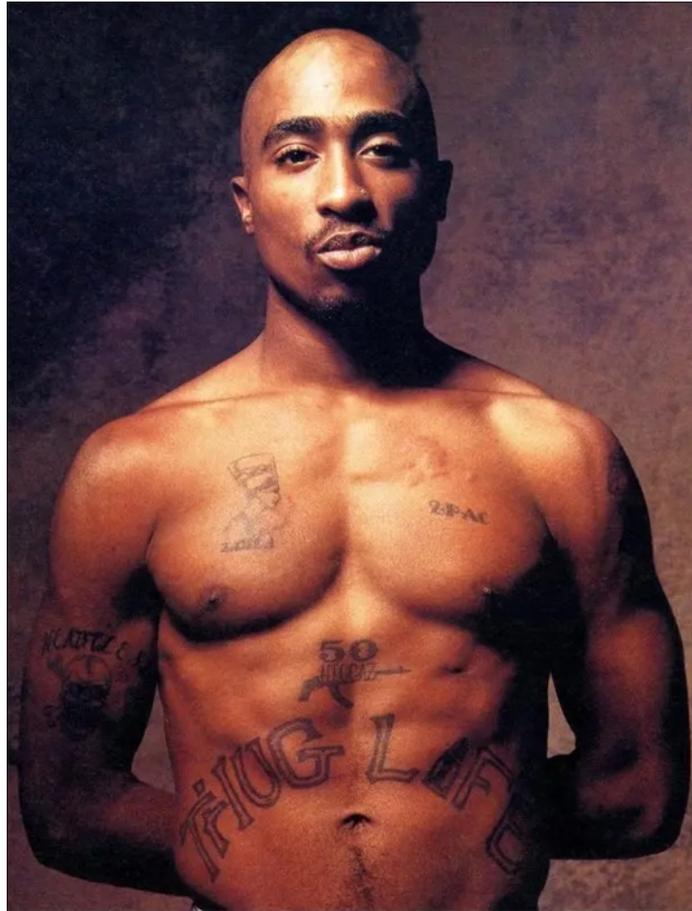
**CLAIMS RELATED TO THE SUBJECT PHOTOGRAPH**

8. Clinch is a renowned photographer who has created a remarkable body of work depicting compelling and intimate images. One of Clinch's celebrated photographs depicts the late recording artist Tupac Shakur. This photograph, referenced hereinafter as the "Subject Photograph," has been misappropriated and used without permission by the Defendants, and each of them.

9. Plaintiff is informed and believes and thereon alleges that following his publication and display of the Subject Photograph, HipHopDX, Doe Defendants, and each of them used the Subject Photograph without Plaintiff's authorization for commercial purposes in various ways, including, but not limited to, the use on its website at the URL <https://hiphopdx.com/editorials/id.2756/title.stray-shots-examing-kendrick-lamar-as-tupac-the-enigma-of-chance-the-rapper>.

10. An image of the Subject Photograph and a screen capture of Defendant's website with the Subject Photograph embedded are set forth hereinbelow:

**Subject Photograph**



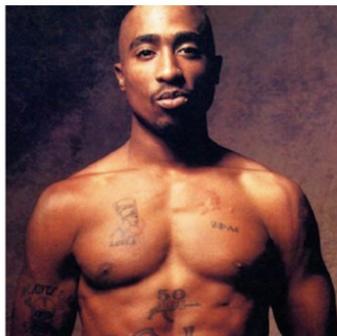
**Screen Capture of Infringement**

1.6M W 624K 323K 634K **HIPHOPDX**

HOME NEWS SINGLES VIDEOS REVIEWS **EDITORIALS** RELEASES

### Stray Shots: Examining Kendrick Lamar As Tupac & The Enigma Of Chance The Rapper

Published on Feb 27, 2015, 1:28 PM  
by DX Staff



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Once upon a time in a universe far, far away, HipHopDX used to host blogs. Through Meia, Brilliance, Aliya Ewing and others, readers got unfiltered opinions on the most current topics in and beyond Hip Hop. After a few years, a couple redesigns and the collective vision of three different Editors-in-Chief, blogs are back. Sort of. Since our

**FIRST CLAIM FOR RELIEF**

(For Copyright Infringement - Against All Defendants, and Each)

11. Plaintiff repeats, re-alleges and incorporates herein by reference as though fully set forth the allegations contained in the preceding paragraphs of this Complaint.

12. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, infringed Plaintiff's copyrights by creating an infringing and/or derivative work from the Subject Photograph, and by publishing the work which infringes the Subject Photograph to the public, including without limitation, on and through its website(s).

13. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, infringed Plaintiff's rights by copying the Subject Photograph without Plaintiff's authorization or consent and creating an unlawful derivative work from the Subject Photograph.

14. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, had access to the Subject Photograph, including, without limitation, through viewing the Subject Photograph on Plaintiff's website, publications, profiles, exhibitions and/or through other authorized channels, over the internet, including without limitation as accessed via a search engine, or through a third-party source.

15. Due to Defendants', and each of their, acts of infringement, Plaintiff has suffered general and special damages in an amount to be established at trial.

16. Due to Defendants' acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement of Plaintiff's rights in the Subject Photograph. As such, Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly attributable to Defendants' infringement of its rights in the Subject Photograph in an amount to be established at trial.

17. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, have committed acts of copyright infringement, as alleged above, which were willful, intentional and malicious, which further subjects Defendants, and each of them, to liability for

statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000.00) per infringement. Within the time permitted by law, Plaintiff will make its election between actual damages and statutory damages.

**SECOND CLAIM FOR RELIEF**

(For Vicarious and/or Contributory Copyright Infringement – Against all Defendants, and Each)

18. Plaintiff repeats, re-alleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs of this Complaint.

19. Plaintiff is informed and believes and thereon alleges that Defendants knowingly induced, participated in, aided and abetted in, and profited from the illegal reproduction, publication, and distribution of the Subject Photograph as alleged hereinabove.

20. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, are vicariously liable for the infringement alleged herein because they had the right and ability to supervise the infringing conduct and because they had a direct financial interest in the infringing conduct. Specifically, each Defendant had the ability to oversee the development, publication, and distribution of the infringing imagery at issue. Defendants, and each of them, also realized profits through their respective obtainment, distribution, and publication of the Subject Post.

21. By reason of the Defendants', and each of their, acts of contributory and vicarious infringement as alleged above, Plaintiff has suffered and will continue to suffer substantial damages to his business in an amount to be established at trial, as well as additional general and special damages in an amount to be established at trial.

22. Due to Defendants' acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement of Plaintiff's rights in the Subject Photograph. As such, Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly attributable to Defendants' infringement of his rights in the Subject Photograph, in an amount to be established at trial.

23. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, have committed acts of copyright infringement, as alleged above, which were willful, intentional, and malicious, which further subjects Defendants, and each of them, to liability for statutory damages under Section 504(c)(2) of the Copyright Act and/or precludes them from proffering certain defenses or legal positions in litigation.

**THIRD CLAIM FOR RELIEF**

(For Violations of the Digital Millennium Copyright Act (17 U.S.C. §1202 – Against all Defendants, and Each))

24. Plaintiff repeats, re-alleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs of this Complaint.

25. Plaintiff’s photography was routinely published with attribution, credit, and other copyright management information. His name, the title of the publication, and other indicia of authorship would be visible on his work.

26. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, removed Plaintiff’s copyright management information from the Subject Photograph knowing or having reason to know that such removal would induce, enable, facilitate, or conceal and infringement and/or added false copyright management information to the Subject Photograph with the intent to induce, enable, facilitate, or conceal infringement, before publishing same.

27. Specifically, Defendants published the Subject Photograph under HipHopDX branding with credits to “DX Staff.”

28. The aforementioned facts constitute “copyright management information” as that phrase is defined in 17 U.S.C. § 1202(c) and is false.

29. When Defendants published the Subject Photograph, they knowingly provided and/or distributed false copyright management information in violation of 17 U.S.C. § 1202(a), and did so in order to induce, enable, facilitate, or conceal infringement.

30. When Defendants published the Subject Photograph, they removed Plaintiff's copyright management information from the Subject Photograph knowing or having reason to know that such removal would induce, enable, facilitate, or conceal and infringement in violation of 17 U.S.C. § 1202(b), as set forth above.

31. As a result of the foregoing, Plaintiff has been damaged and may recover those damages as well as Defendants' profits, and/or statutory damages, and attorneys' fees under the Digital Millennium Copyright Act.

**PRAYER FOR RELIEF**

32. Wherefore, Plaintiff prays for judgment as follows against all Defendants and with respect to each claim for relief:

a. That Defendants, and each of them, as well as their employees, agents, or anyone acting in concert with them, be enjoined from infringing Plaintiff's copyright in the Subject Photograph, including, without limitation, an order requiring Defendants, and each of them, to remove the Subject Photograph from their respective websites.

b. That Plaintiff be awarded all profits of Defendants, and each of them, plus all losses of Plaintiff, plus any other monetary advantage gained by the Defendants, and each of them, through their infringement, the exact sum to be proven at the time of trial, and/or, to the extent available, statutory damages as available under the 17 U.S.C. § 504, 17 U.S.C. § 1203, and other applicable law.

c. That a constructive trust be entered over any revenues or other proceeds realized by Defendants, and each of them, through their infringement of Plaintiff's intellectual property rights;

d. That Plaintiff be awarded his attorneys' fees as available under the Copyright Act U.S.C. § 505;

e. That Plaintiff be awarded his costs and fees under the statutes set forth above;

f. That Plaintiff be awarded statutory damages and/or penalties under the statutes set forth above;

- g. That Plaintiff be awarded pre-judgment interest as allowed by law;
- h. That Plaintiff be awarded the costs of this action; and
- i. That Plaintiff be awarded such further legal and equitable relief as the Court deems proper.

Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P. 38 and the 7<sup>th</sup> Amendment to the United States Constitution.

Respectfully submitted,

Dated: October 15, 2021

**DONIGER / BURROUGHS**



By: \_\_\_\_\_

Scott Alan Burroughs, Esq.  
Laura M. Zaharia, Esq.  
247 Water Street, First Floor  
New York, New York 10038  
(310) 590-1820  
scott@donigerlawfirm.com  
lzaharia@donigerlawfirm.com  
Attorneys for Plaintiff