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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 TRACY CHAPMAN,
16 Plaintiff,
17 vs.
18 ONIKA TANYA MARAJ p/k/a
19 NICKI MINAJ and DOES 1-10,
20 Defendants.

No. 2:18-cv-09088-VAP-SS

Honorable Virginia A. Phillips

**[REDACTED] NOTICE OF MOTION
AND MOTION FOR PARTIAL
SUMMARY JUDGMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Hearing Date: September 14, 2020
Hearing Time: 2:00 p.m.

Final Pretrial Conf.: October 5, 2020
Trial Date: October 13, 2020

[Concurrently filed with: 1. Separate
Statement; 2. Appendix of Evidence; and 3.
[Proposed] Order]

1 **TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on September 14, 2020 at 2:00 p.m., or
3 as soon thereafter as this matter may be heard, in Courtroom No. 8A of the United
4 States District Court for the Central District of California, located at 350 West 1st
5 Street, Los Angeles, California 90012, Plaintiff Tracy Chapman (“Ms. Chapman”),
6 by and through her undersigned attorneys, will and hereby does move under Rule 56
7 of the Federal Rules of Civil Procedure for partial summary judgment in her favor as
8 to liability for her cause of action for copyright infringement in her Complaint
9 against Defendant Onika Tanya Maraj p/k/a Nicki Minaj (“Ms. Maraj”).

10 Ms. Chapman is entitled to partial summary judgment on her claim for
11 copyright infringement liability because there are no genuine disputes as to any
12 material facts with regard to Ms. Maraj’s actions. It is undisputed that beginning in
13 June 2018, Ms. Maraj and her representatives and/or agents made multiple requests
14 to license Ms. Chapman’s copyright in her well-known musical composition *Baby*
15 *Can I Hold You* (the “Composition”) for use in Ms. Maraj’s recording (featuring
16 Nas) *Sorry* (the “Infringing Work”), which Ms. Maraj created without Ms.
17 Chapman’s consent for inclusion on Ms. Maraj’s then-forthcoming album, *Queen*
18 (the “Album”).

19 Ms. Chapman, through her agents and representatives, repeatedly denied Ms.
20 Maraj’s after-the-fact requests to use the Composition. Notwithstanding those
21 denials, Ms. Maraj continued working on the Infringing Work and publicizing it on
22 social media. Ultimately, while Ms. Maraj did not include the Infringing Work on
23 the Album, she distributed the Infringing Work to a well-known disc jockey at the
24 popular New York City radio station HOT 97, who promoted the Infringing Work
25 on his social media accounts, stating that Ms. Maraj had given him something CONFIDENTIAL
26 CONFIDENTIAL” that is CONFIDENTIAL”. The disc jockey then played the CONFIDENTIAL
27 Infringing Work on HOT 97, and, possibly, through other outlets. None of Ms.
28 Maraj’s actions relating to her liability are debatable. The facts are undisputed. Ms.

1 Maraj violated Ms. Chapman’s copyright by creating an illegal derivative work and
2 distributing that work. Moreover, these actions were indisputably willful. Ms.
3 Maraj had knowledge of the illegality of her actions and proceeded. Thus, Ms.
4 Chapman’s copyright claim is appropriate for summary judgment.

5 This Motion is based on this Notice of Motion, the accompanying
6 Memorandum of Points and Authorities, the concurrently filed Statement of
7 Undisputed Material Facts and Conclusions of Law, the concurrently filed
8 Declarations of Tracy Chapman and Nicholas Frontera, the concurrently lodged
9 proposed Order, all other pleadings and papers on file in this action, and upon such
10 argument and/ or evidence that the Court may consider at or before the hearing on
11 this motion.

12 Pursuant to Local Rule 7-3, this Motion is made following the conference of
13 counsel, which took place on July 29, 2020. Due to the global pandemic, the parties
14 were unable to meet in-person, but did meet and confer telephonically. During the
15 conference, counsel for the parties thoroughly discussed the substance of the
16 arguments set forth herein, as well as potential resolution of the disagreements, in an
17 attempt to eliminate the need for this Motion; the parties were unable to reach an
18 agreement obviating the necessity for this motion.

19 Dated: August 17, 2020

20 Respectfully submitted,
21 MANATT, PHELPS & PHILLIPS, LLP
22 John M. Gatti
23 Lauren J. Fried
24 Nicholas Frontera

25 By: /s/ John M. Gatti
26 John M. Gatti
27 *Attorneys for Plaintiff*
28 TRACY CHAPMAN

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 It is the bedrock principle of Copyright Law that an author of an original
4 work has the right to control how her work is exploited. “In fact, [the Supreme
5 Court] has held that a copyright owner has the capacity arbitrarily to refuse to
6 license one who seeks to exploit the work.” *Stewart v. Abend*, 495 U.S. 207, 229
7 (1990) (citing *Fox Film Corp. v. Doyal*, 286 U.S. 123, 127 (1932)).

8 This case presents a prototypical example of copyright infringement through
9 violation of this basic principle. Defendant Onika Tanya Maraj p/k/a Nicki Minaj
10 (“Ms. Maraj”) sought a license to interpolate Plaintiff Tracy Chapman’s (“Ms.
11 Chapman”) hit song *Baby Can I Hold You* (the “Composition”) in Ms. Maraj’s song
12 *Sorry* (the “Infringing Work”) for her then-forthcoming album *Queen* (the
13 “Album”). Ms. Chapman, who has a long-established and well-known practice of
14 denying derivative uses of her works, clearly and unequivocally denied Ms. Maraj’s
15 request for use multiple times. Unhappy with this result, the day after receiving the
16 final denial from Ms. Chapman’s attorney, Ms. Maraj continued working on the
17 Infringing Work and devised a plan to promote her Album by distributing the
18 Infringing Work on the radio through a prominent New York disc jockey, Aston
19 George Taylor p/k/a Funkmaster Flex (“Mr. Taylor”). Specifically, Ms. Maraj
20 personally reached out to Mr. Taylor and asked him to play the Infringing Work on
21 his popular radio show the same week her album, *Queen*, debuted, and, that she
22 would text him the Infringing Work. Within 24 hours, Mr. Taylor received the
23 Infringing Work, posted on social media that he had received the Infringing Work
24 from Ms. Maraj, and, ultimately, played the Infringing Work on his radio show the
25 night after Ms. Maraj’s album release. The Infringing Work went viral and was
26 reposted all over the Internet, causing Ms. Chapman to incur significant expenses in
27 connection with, among other things issuing takedown notices, and necessitating
28 this lawsuit.

1 Each of these facts is indisputable based on the documentary evidence and
2 testimony in the record. Ms. Maraj's actions constitute copyright infringement on
3 multiple fronts and lack any legal justification.

4 Based on the foregoing, Ms. Chapman respectfully requests this Court grant
5 her motion for partial summary judgment as to the issue of liability for copyright
6 infringement, and enter a judgment in favor of Ms. Chapman, and against Ms.
7 Maraj, concluding that: (1) Ms. Maraj infringed Ms. Chapman's Composition by
8 creating the Infringing Work without permission, (2) Ms. Maraj's conduct was
9 willful, (3) Ms. Maraj infringed Ms. Chapman's Composition by distributing the
10 Infringing Work, and (4) Ms. Maraj's conduct was willful. Should the Court grant
11 this Motion, and, respectfully, it should, the only remaining issue will be the
12 amount of damages, including fees and costs, to which Ms. Chapman is entitled.

13 **II. FACTUAL BACKGROUND**

14 **A. Plaintiff Tracy Chapman and the Composition**

15 Ms. Chapman is an internationally known Grammy Award-winning singer,
16 songwriter, and musician who first gained popularity in the late 1980s. Ms.
17 Chapman's self-titled debut album, which she released in 1988, features such hits as
18 the Composition and *Fast Car*. The Composition was a huge success, and reached
19 the Top 50 on Billboard Magazine's Hot 100 chart. Ms. Chapman's debut album
20 was a triumph, garnering Ms. Chapman a 1989 Grammy Award for Best
21 Contemporary Folk Album and a nomination for Album of the Year. Ms. Chapman
22 won two more Grammy Awards in 1989 for Best New Artist and for Best Female
23 Pop Vocal Performance for *Fast Car*. Ms. Chapman's achievements continued
24 throughout her career. During the 1990s and 2000s, Ms. Chapman received several
25 more Grammy nominations, including for Best Rock Song for *Give Me One*
26 *Reason*, which she won, and many other awards. At every turn, Ms. Chapman's
27 music has been critically acclaimed and respected.

28 Ms. Chapman wrote the Composition in 1982, and obtained a copyright

1 registration for the work (and other musical compositions)—PAu000556755—from
 2 the United States Copyright Office on October 20, 1983. (Undisputed Fact (“UF”)
 3 1, 2, Declaration of Nicholas Frontera (“Frontera Decl.”), ¶ 5, Ex. 4; *id.* at ¶ 27, Ex.
 4 26; Declaration of Tracy Chapman (“Chapman Decl.”) at ¶ 2.)¹ Ms. Chapman later
 5 entered into a co-publishing agreement with, and granted a partial assignment of the
 6 copyright in the Composition to, SBK April Music, Inc. (“SBK”). (Chapman Decl.
 7 at ¶ 4.) SBK later obtained a copyright registration for the Composition--
 8 PA0000417830—on or about May 5, 1989, listing it and Purple Rabbit Music,
 9 Chapman’s publishing designee, as the copyright claimants. (Frontera Decl., ¶ 6,
 10 Ex. 5; Chapman Decl. at ¶ 3.) On May 15, 2016, SBK’s rights in the Composition
 11 transferred back to Ms. Chapman, making her the sole owner of the copyright in the
 12 Composition. (UF 3, Chapman Decl., ¶ 4, Ex. 1.)

13 **B. Defendant Onika Tanya Maraj and Infringing Work**

14 Ms. Maraj is a well-known rapper and hip hop recording artist. In 2017, Ms.
 15 Maraj began recording the Infringing Work. (UF 4 Frontera Decl., ¶ 7, Ex. 6
 16 (Deposition of Onika Tanya Maraj (“Maraj Dep.”) at 50:25-51:3.) The Infringing
 17 Work features fellow rapper and hip hop recording artist Nasir bin Olu Dara Jones
 18 p/k/a Nas (“Nas”). (UF 5, Frontera Decl., ¶ 7, Ex. 6 (Maraj Dep. at 50:25-51:3.))
 19 Ms. Maraj hoped to include the Infringing Work on her upcoming album *Queen*.
 20 (Frontera Decl., ¶ 8, Ex. 7 at p. 71, ¶ 19.) Ms. Maraj acknowledged that the
 21 Infringing Work was a “musical interpolation . . . that incorporated music and lyrics
 22 from the Composition.” (UF 6-8, Frontera Decl., ¶ 8, Ex. 7 at p. 71, ¶¶ 19, 20.)
 23 Specifically, Ms. Maraj admitted “that the Infringing Work uses a majority of the
 24 Composition’s lyrics.” (UF 7 Frontera Decl., ¶ 9, Ex. 8 at p. 81 (Suppl. Resp. to
 25 RFA No. 8); *id.* at ¶ 10, Ex. 9 (containing side by side comparison of the

26
 27 ¹ The Declaration of Tracy Chapman and the Declaration of Nicholas Frontera are
 28 attached to Plaintiff’s Appendix of Evidence in Support of Motion for Partial
 Summary Judgment. All references to page numbers are to the consecutively
 numbered pages of the Appendix. References to “UF” are to the undisputed facts
 contained in Plaintiff’s Separate Statement of Undisputed Facts.

1 Composition and the Infringing Work); *id.* at ¶ 9, Ex. 8 at p. 81 (Suppl. Resp. to
2 RFA No. 10) (admitting lyrics were accurately listed in exhibit.) Because of this,
3 Ms. Maraj “knew that [she] needed a License to use the Composition in the
4 Infringing Work in order to include the Infringing Work on [her] album Queen.”
5 (UF 9, Frontera Decl., ¶ 9, Ex. 8 at p. 80 (Suppl. Resp. to RFA No. 5).) Despite
6 this, Ms. Maraj began recording the Infringing Work, which interpolates the
7 Composition, without first seeking Ms. Chapman’s authorization to do so.
8 (Frontera Decl., ¶ 8, Ex. 7 at p. 71, ¶ 20.)

9 C. **Ms. Chapman Denies Ms. Maraj’s Various Requests for**
10 **Authorization to Use the Composition in the Infringing Work**

11 On May 23, 2018, Joshua Berkman (“Mr. Berkman”), a representative from
12 Ms. Maraj’s record label, Republic Records, e-mailed Deborah Mannis-Gardner
13 (“Ms. Mannis-Gardner”) of DMG Clearances, Inc., the number one clearance
14 company in the world, to request that she obtain a clearance to use the Composition
15 in the Infringing Work. (UF 11, Frontera Decl., ¶ 11, Ex. 10 at p. 99 ; *id.* at ¶ 12,
16 Ex. 11 (Deposition of Deborah Mannis-Gardner (“Mannis-Gardner Dep.”) at
17 107:11-108:8, 132:11-108:8, 133:9-14.)) Shortly thereafter, Ms. Mannis-Gardner
18 notified Mr. Berkman that “if [the requested clearance song] is shelly thunder/foxy
19 brown (sic) reggae version of Sorry written by Tracy Chapman then its (sic) not
20 available for sampling.” (UF 12, Frontera Decl., ¶ 11, Ex. 10 at p. 99; *id.* at ¶ 12,
21 Ex. 11 (Mannis-Gardner Dep. at 110:10-110:14.)) Indeed, Ms. Mannis-Gardner
22 knew that Ms. Chapman was on the “do not sample list”—an unwritten list of
23 artists that are well-known in the music industry for not allowing samples of their
24 works. (Frontera Decl., ¶ 12, Ex. 11 (Mannis-Gardner Dep. at 111:9-23, 115:14-
25 116:4.)) Ms. Mannis-Gardner knew this based on her more than 30 years of
26 industry and clearance experience. (*Id.*; *see also id.* at 132:11-108:8, 133:9-14,
27 134:21-135-3.)

28 Despite Ms. Mannis-Gardner notifying Mr. Berkman that Ms. Chapman did

1 not allow for sampling, Mr. Berkman instructed Ms. Mannis-Gardner to attempt to
2 clear the Infringing Work anyway. (UF 13, Frontera Decl., ¶ 13, Ex. 12; *id.* at ¶ 12,
3 Ex. 11 (Mannis-Gardner Dep. at 112:19-114:3.)) Accordingly, on June 26, 2018,
4 Ms. Mannis-Gardner contacted Gelfand, Rennert & Feldman, LLP (“Gelfand”), Ms.
5 Chapman’s business managers, to attempt to clear the Infringing Work. (Chapman
6 Decl. at ¶ 5, Ex. 2 at p. 27; Frontera Decl., ¶ 12, Ex. 11 (Mannis-Gardner Dep. at
7 117:2-119:17, 120:20-121:12.)) In her request, Ms. Mannis-Gardner stated that
8 “[w]hen . . . Tracy Chapman was with Sony/ATV her material was always denied”,
9 and asked “[i]s she still on the do not sample or interpolate list? I have an A LIST
10 artist who wants to use the song Sorry.” (Chapman Decl. at ¶ 5, Ex. 2 at p. 27.)

11 After a lengthy exchange, Ms. Mannis-Gardner submitted an official request
12 for approval to license the Composition for use in the Infringing Work. (Chapman
13 Decl. at ¶ 5, Ex. 2 at p. 26; Frontera Decl., ¶ 14, Ex. 13; *id.* at ¶ 12, Ex. 11 (Mannis-
14 Gardner Dep. at 122:5-15.)) That request was passed along to Ms. Chapman, who
15 instructed Gelfand to deny it. (UF 14, Chapman Decl. at ¶ 5.) As a result, on July
16 16, 2018, a Gelfand representative e-mailed Ms. Mannis-Gardner unequivocally
17 stating that “the request has not been approved.” (Chapman Decl. at ¶ 5, Ex. 2 at p.
18 25.) That same day, Ms. Mannis-Gardner forwarded the denial to Mr. Berkman.
19 (UF 15, *Id.*; Frontera Decl., ¶ 12, Ex. 11 (Mannis-Gardner Dep. at 123:22-124:22.))

20 In spite of this denial, Ms. Maraj and her representatives continued to create
21 the Infringing Work, including its interpolation of the Composition, and seek
22 clearance from Ms. Chapman. On July 18, 2018, Mr. Berkman e-mailed Ms.
23 Mannis-Gardner asking if they could “figure out a way to get to [Ms. Chapman]
24 direct” to clear the song. (UF 16, Frontera Decl., ¶ 15, Ex. 14; *id.* at ¶ 12, Ex. 11
25 (Mannis-Gardner Dep. at 126:7-131:18.)) Ms. Mannis-Gardner reiterated: “Tracy
26 doesn’t approve samples or interpolations and the songs out there are not with
27 consent. I am unfamiliar with Tracy’s Mmgt or legal counsel. Im (sic) sorry.” (*Id.*)

28 Nevertheless, Ms. Maraj and her representatives persisted. On July 27, 2018,

1 Gee Roberson, Ms. Maraj’s personal manager, contacted Todd Gelfand of Gelfand
2 requesting that he connect Ms. Chapman with Ms. Maraj to discuss an “idea [of Ms.
3 Maraj’s] that is one of the most personal for her that was inspired by [Ms.
4 Chapman’s] art that [Ms. Maraj] would like the opportunity to touchbase (sic) with
5 [Ms. Chapman] about.” (UF 16, Chapman Decl., ¶ 6, Ex. 3 at pp. 31-32; Frontera
6 Decl. at ¶ 4.)

7 Days after Mr. Roberson’s email, on August 1, 2018, Ms. Maraj personally
8 attempted to reach Ms. Chapman through Twitter, tweeting out to her more than 10
9 million followers: “Tracy Chapman, can you please hit me . . . omg for the love of
10 #Queen.” (UF 17, Frontera Decl., ¶ 9, Ex. 8 at p. 83 (Suppl. Resp. to RFA No.
11 18).)

12 After being made aware of the fact that Ms. Maraj’s representatives had once
13 again sought her clearance approval despite her previous denial, Ms. Chapman
14 instructed her attorney to inform Mr. Roberson that the use was denied. (UF 18, 19,
15 Chapman Decl. at ¶ 6.) On August 2, 2018, Ms. Chapman’s attorney wrote:

16 I have spoken to Ms. Chapman and while she appreciates the positive
17 feelings of your client, you should know that she carefully protects her
18 copyrights and in the normal course of business does not approve
19 these kinds of requests. We hope that with this confirmation, your
20 client will move on with the project without the requested sample.
Thank you and your client for understanding.

21 (UF 20, Chapman Decl., ¶ 6, Ex. 3 at p. 31.) Mr. Roberson confirmed that he had
22 been “made aware of the denied use via our email on Aug 2nd and the album is in
23 stores without the requested sample.” (Frontera Decl., ¶ 26, Ex. 25 at p. 222.)

24 **D. Ms. Maraj Continues to Create and Distributes the Infringing
Work Despite the Denials**

25 In the face of Ms. Chapman’s repeated denials of authorization to use the
26 Composition in the Infringing Work, Ms. Maraj developed a plan to release it to the
27 public. On August 3, 2018, Ms. Maraj, from her verified Instagram account, sent a
28 private direct message to Mr. Taylor, a popular New York disc jockey for hit radio

1 station Hot 97 FM, confirming that she would not be releasing the Infringing Work
2 on the Album, but asking him to premiere the Infringing Work on his radio show.
3 Ms. Maraj wrote:

4 **CONFIDENTIAL**
5 [REDACTED]
6 [REDACTED]

7 (UF 25, Frontera Decl., ¶ 16, Ex. 15 at p. 147 (emphasis added); *id.* at ¶ 17, Ex. 16
8 (Deposition of Aston George Taylor (“Taylor Dep.”) at 159:7-162:18.)) In
9 response, the same day, Mr. Taylor stated, “I will make a movie!!!!” (UF 26,
10 Frontera Decl., ¶ 16, Ex. 15 at p. 147.) Mr. Taylor admitted his response meant he
11 would play the song, say he liked it, and make it exciting. (UF 26, Frontera Decl., ¶
12 17, Ex. 16 (“Taylor Dep.”) at 162:25-163:7.)

13 Having confirmed that Mr. Taylor would premiere the Infringing Work the
14 week her Album released, Ms. Maraj continued to finalize the Infringing Work with
15 Nas. The same day Ms. Maraj coordinated the release of the Infringing Work with
16 Mr. Taylor, she texted Nas: **CONFIDENTIAL**”
17 (Frontera Decl., ¶ 18, Ex. 17 at p. 182; *id.* at ¶ 7, Ex. 6 (Maraj Dep. at 55:5-24;
18 56:15-19.)) After some additional discussion, Ms. Maraj sent Nas a link to
19 download the **CONFIDENTIAL** of the Infringing Work. (UF 22, Frontera Decl., ¶ 18,
20 Ex. 17 at p. 182; *id.* at ¶ 7, Ex. 6 (Maraj Dep. at 56:10-24.)) Ms. Maraj and Nas
21 then exchanged a number of texts discussing changes to the verses of the Infringing
22 Work, which still included the Composition. (Frontera Decl., ¶ 18, Ex. 17 at p.
23 184-85.) Ms. Maraj told Nas: **CONFIDENTIAL**
24 [REDACTED] (*Id.*)

25 On August 5, 2020, Ms. Maraj informed Nas that the Infringing Work was
26 **CONFIDENTIAL** (UF 23, Frontera Decl., ¶ 18, Ex. 17 at p. 186; *id.* at ¶ 7,
27 Ex. 6 (Maraj Dep. at 59:12-60:2.)) On August 7, 2018, Nas asked Ms. Maraj if she
28 was **CONFIDENTIAL** (Frontera Decl., ¶

1 18, Ex. 17 at p. 187.) Ms. Maraj responded, **CONFIDENTIAL**

2
3 **CONFIDENTIAL** (UF 24, *Id.*) Nas responded, **CONFIDENTIAL**

4 (*Id.*)

5 On August 10, 2018, Ms. Maraj released the Album without the Infringing
6 Work. (Frontera Decl., ¶ 8, Ex. 7 at p. 71, ¶ 19.) The same day she released the
7 Album, Ms. Maraj followed up with Mr. Taylor via direct message on August 10,
8 2018 stating: **CONFIDENTIAL**

9 (UF 27, Frontera Decl., ¶ 16, Ex. 15 at p. 148.) Mr. Taylor then provided his phone
10 number and stated, **CONFIDENTIAL**

11 (UF 28, Frontera Decl., ¶ 16, Ex. 15 at p. 148.) Ms. Maraj confirmed, **CONFIDENTIAL**

12 **CONFIDENTIAL** (UF 29, Frontera Decl., ¶ 16, Ex. 15 at p. 148.)

13 That same day, Ms. Maraj’s lead recording engineer, Aubry Delaine (“Mr.
14 Delaine”) texted David Castro at Chris Athens Masters, Inc. (“Chris Athens”), the
15 company that mastered Ms. Maraj’s songs for the Album. (UF 30, Frontera Decl. ¶
16 28, at Ex. 27.) Mr. Delaine informed Mr. Castro that he would send a version of the
17 Infringing Work and asked that Chris Athens master the song and return both clean
18 and explicit versions. (Frontera Decl. ¶ 19, Ex. 27.) Chris Athens mastered the
19 Infringing Work and sent Mr. Delaine links to download both a clean and an
20 explicit version of the Infringing Work the same day. (UF 30, 31, 32, Frontera
21 Decl., ¶ 19, Ex. 18 pp. ; *id.* at ¶ 20, Ex. 19 (Deposition of Aubry Delaine (“Delaine
22 Dep.”) at 206:16-208:4.)) The links only allowed for one download each. (UF 33,
23 Frontera Decl., ¶ 19, Ex. 18 pp.; *id.* at ¶ 20, Ex. 19 (Delaine Dep. at 206:16-
24 208:4.)) Mr. Delaine testified that he never “sen[t] out any [unreleased] recordings
25 of Ms. Maraj’s to a third party without [] receiving an instruction from Ms. Maraj to
26 send out that recording[.]” (UF 34, Frontera Decl., ¶ 20, Ex. 19 (Delaine Dep. at
27 203:16-23.))

28 On August 11, 2018, Mr. Taylor posted on his Instagram and Twitter

1 accounts promoting the debut of the Infringing Work on his show that night:

- 2
- 3 • “Shhhhhhh!!!! TONIGHT 7PM!!! NICKY GAVE ME
4 SOMETHING!!! @nickiminaj ft @nas !!! (NOT ON HER ALBUM!)
5 GONNA STOP THE CITY TONIGHT!!!!!!!!!!!!!!!!!!!!” (UF 35, Frontera
6 Decl., ¶ 21, Ex. 20; *id.* at ¶ 17, Ex. 16 (Taylor Dep. at 167:18-168:23).)
 - 7 • “Shhhhhhh!!!! TONIGHT 7PM!!! NICKI GAVE ME
8 SOMETHING!!! @nickiminaj ft @nas !!! (NOT ON HER ALBUM!)
9 GONNA STOP THE CITY TONIGHT!!!!!!!!!!!!!!!!!!!!” (UF 35, Frontera
10 Decl., ¶ 22, Ex. 21; *id.* at ¶ 17, Ex. 16 (Taylor Dep. at 170:1-171:12).)

11 Mr. Taylor received the Infringing Work via text sometime between (i)
12 August 10, 2018 when Ms. Maraj told him she would text it to him and (ii) his first
13 social media post promoting the show early afternoon the next day. (UF 36,
14 Frontera Decl., ¶ 17, Ex. 16, (Taylor Dep. at 164:22-165:14; *id.* at 169:5-18; *id.* at
15 158:11-22 (confirming that he received the Infringing Work via text.)) The name
16 of the file that Mr. Taylor received, “01 Sorry - 72518 - master.mp3” indicates that
17 he received a mastered version of the Infringing Work. (UF 37, Frontera Decl., ¶
18 23, Ex. 22 (Mr. Taylor emailing the file to one of his interns, DJ Heavy rotation);
19 *id.* at ¶ 17, Ex. 16, (Taylor Dep. at 172:25, 174:22-176:21.))

20 On August 11, 2018 at 7 PM EST, Mr. Taylor broadcast his radio show on
21 Hot 97 FM. (UF 38, Frontera Decl., ¶ 17, Ex. 16, (Taylor Dep. at 166:9-13,
22 173:17-23.)) Mr. Taylor played the Infringing Work during the broadcast. (UF 39,
23 *Id.*) Hot 97 also subsequently posted the broadcast on its website. (Frontera Decl.,
24 ¶ 24, Ex. 23.) Additionally, Hot 97 posted a link on its Instagram to listen to the
25 Infringing Work with a caption stating “If you missed it...hear it again”. (Frontera
26 Decl., ¶ 25, Ex. 24.)

27 In the following months, numerous copies of the Infringing Work were
28 posted on the Internet. (Frontera Decl., ¶ 29.) As a result, Ms. Chapman was
forced to incur significant expenses monitoring these improper postings and issuing
DMCA takedown notices. (*Id.*) To this day, copies of the Infringing Work remain

1 on the Internet despite various efforts by Ms. Chapman to have them taken down.
2 (*Id.*)

3 **III. LEGAL STANDARD**

4 Pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary
5 judgment is proper where “there is no genuine dispute as to any material fact and the
6 movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Celotex*
7 *Corp. v. Catrett*, 477 U.S. 317, 322 (1986). “Where the record taken as a whole
8 could not lead a rational trier of fact to find for the nonmoving party, there is no
9 ‘genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475
10 U.S. 574, 586-87 (1986) (citations omitted). Put differently, “[t]he district court
11 should grant summary judgment where the only reasonable conclusion to be drawn
12 from the record supports the moving party.” *Gregory v. United States*, 178 F.3d
13 1294 (6th Cir. 1999); *Miksad v. Dialog Info. Servs., Inc.*, 900 F.2d 263 (9th Cir.
14 1990). Once the moving party has met this standard, the burden shifts to the party
15 opposing summary judgment to demonstrate a genuine issue for trial. *Anderson v.*
16 *Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). The opposing party must do so with
17 specific facts. *Matsushita*, 475 U.S. at 586.

18 **IV. MS. MARAJ’S INFRINGING WILLFUL CONDUCT IS NOT** 19 **DISPUTED AND IS THEREFORE SUBJECT TO SUMMARY** 20 **JUDGMENT**

21 Ms. Chapman seeks partial summary judgment as to Ms. Maraj’s liability for
22 copyright infringement. Ms. Maraj committed copyright infringement when she
23 created a derivative work (*i.e.*, the Infringing Work) without authorization and
24 when she distributed it. Moreover, Ms. Maraj’s actions as to both creation and
25 distribution were willful.

26 Ms. Chapman is entitled to summary adjudication on the issue of liability for
27 copyright infringement because Ms. Maraj does not contest her use of the
28 Composition in the Infringing Work and the undisputed facts establish that Ms.
Maraj or one of her agents acting at her direction distributed the Infringing Work.

1 (See, *supra*, §§ II.B, II.D.) Further, the Court should summarily adjudicate the fact
2 that Ms. Maraj’s infringement “was committed willfully” within the meaning of 17
3 U.S.C.A. § 504(c)(2) because Ms. Maraj knew she needed clearance, was
4 affirmatively denied clearance numerous times, yet acted anyway. This is the very
5 definition of willful conduct.

6 To establish copyright infringement, a plaintiff must demonstrate: (1) that she
7 owns a valid copyright; and (2) that defendant copied protected aspects of the work.
8 *Rentmeester v. Nike, Inc.*, 883 F.3d 1111, 1116-17 (9th Cir. 2018) (citing *Feist*
9 *Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361, (1991)). “The word
10 ‘copying’ is shorthand for the infringing of any of the copyright owner’s five
11 exclusive rights” under 17 U.S.C. § 106. See *A&M Records, Inc. v. Napster, Inc.*,
12 239 F.3d 1004, 1013 (9th Cir. 2001) (quoting *S.O.S., Inc. v. Payday, Inc.*, 886 F.2d
13 1081, 1085 n.3 (9th Cir. 1989)). These exclusive rights include the right to
14 reproduce, distribute, publicly display, perform, or create derivative works of the
15 copyrighted work. 17 U.S.C. § 106.

16 A plaintiff need not demonstrate the defendant’s intent to infringe the
17 copyright in order to demonstrate copyright infringement. *UMG Recordings, Inc. v.*
18 *Disco Azteca Distribs., Inc.*, 446 F. Supp. 2d 1164, 1172 (E.D. Cal. 2006); see also
19 *Edu. Testing Serv. v. Simon*, 95 F. Supp. 2d 1081, 1087 (C.D. Cal. 1999) (copyright
20 infringement “is a strict liability tort”).

21 Here, Ms. Chapman is able to meet her burden.

22 **A. Ms. Chapman Owns a Valid Copyright in the Composition**

23 A certificate of registration validly obtained from the Copyright Office within
24 five years of first publication of a work constitutes *prima facie* evidence of the
25 originality of the work and of the facts stated therein, including ownership. See 17
26 U.S.C. § 410(c). In this case, Ms. Chapman is entitled to this statutory presumption
27 because she registered her copyright of the song with the Copyright Office within
28 five years of publication. *Marisa Christina, Inc. v. Bernard Chaus, Inc.*, 808 F.

1 Supp. 356, 357 (S.D.N.Y. 1992).

2 It is undisputed that Ms. Chapman has always maintained rights to the
3 Composition. (UF 1-3.) Ms. Chapman wrote the Composition in 1982, and
4 obtained a copyright registration for the work (and other musical compositions) –
5 PAu000556755 – from the United States Copyright Office on October 20, 1983.
6 (UF 1-2, Frontera Decl., ¶ 6, Ex. 5; Chapman Decl. ¶ 2.) Although Ms. Chapman
7 entered into a co-publishing agreement with SBK through which SBK obtained a
8 partial assignment of the copyright in the Composition, SBK’s rights in the
9 Composition transferred back to Ms. Chapman, on May 15, 2016. (Chapman Decl.,
10 ¶ 4, Ex. 1.) Accordingly, Ms. Chapman is the sole owner of the copyright in the
11 Composition. (UF 3, Chapman Decl., ¶ 4, Ex. 1.)

12 Ms. Maraj does not—and cannot—dispute Ms. Chapman’s ownership.
13 Therefore, Ms. Chapman is entitled to summary adjudication as to ownership.

14 **B. Ms. Maraj Willfully Created an Unauthorized Derivative Work**

15 The Copyright Act bestows on the owner of a copyright certain exclusive
16 rights, including the right to create and regulate derivative works. 17 U.S.C. §§
17 106(1)-(3), 17 U.S.C. § 602(a). Ms. Maraj violated this exclusive right by creating
18 a derivative work of Ms. Chapman’s copyrighted work without authorization.
19 Moreover, Ms. Maraj’s violation was willful under the law.

20 1. It is Undisputed That Ms. Maraj Created an Unauthorized
21 Derivative Work, i.e., the Infringing Work

22 To prove direct copyright infringement, a plaintiff must demonstrate both
23 ownership and “that the alleged infringers violated at least one exclusive right
24 granted to copyright holders under 17 U.S.C. § 106.” *A&M Records, Inc.*, 239 F.3d
25 at 1013. In addition, direct infringement requires the plaintiff to show causation, or
26 “volitional conduct”, by the defendant. *See Fox Broad. Co., Inc. v. Dish Network*
27 *L.L.C.*, 747 F.3d 1060, 1067 (9th Cir. 2013). The word “volition” in this context
28 does not mean an “act of willing or choosing” or an “act of deciding,” but rather

1 “simply stands for the unremarkable proposition that proximate causation
2 historically underlines copyright infringement liability no less than other torts.”
3 *Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d 657, 666 (9th Cir. 2017) (quoting
4 *Religious Tech. Ctr. v. Netcom On-Line Commc’n Servs., Inc.*, 907 F. Supp. 1361,
5 1370 (N.D. Cal. 1995)); *see also* 4 Melville B. Nimmer & David Nimmer, Nimmer
6 on Copyright, § 13.08[C][1] (2016).

7 Here, it is undisputed that Ms. Maraj created an unauthorized derivative work
8 of the Composition when she created the Infringing Work. Indeed, Ms. Maraj
9 *admitted* in her responses to Ms. Chapman’s requests for admissions (“RFA
10 Responses”) and deposition that the Infringing Work uses a majority of the
11 Composition’s lyrics and its vocal melody. (UF 6-8, Frontera Decl., ¶ 9, Ex. 8 at p.
12 81 (Suppl. Resp. to RFA No. 8) (“Admit that the Infringing Work uses a majority of
13 the Composition’s lyrics.” “...ADMIT.”).) In other words, Ms. Maraj *admits* that
14 she created a derivative work of the Composition that is substantially similar, if not
15 strikingly similar, to the original. (UF 6-8, Frontera Decl., ¶ 8, Ex. 7 at p. 71, ¶¶ 19,
16 20 (admitting that the Infringing Work was a “musical interpolation . . . that
17 incorporated music and lyrics from the Composition”).) Ms. Maraj further
18 admitted in her RFA Responses that she began recording the Infringing Work
19 *before* requesting a license from Ms. Chapman for use of the Composition. (UF 10,
20 Frontera Decl., ¶ 8, Ex. 7 at p. 71, ¶ 20.) These facts are undisputed. This is
21 copyright infringement.

22 Based on prior discussions, Ms. Chapman anticipates that Ms. Maraj may
23 argue that although she created an unauthorized derivative work when she created
24 the Infringing Work, such creation (and infringement) was innocent. But Ms.
25 Maraj’s position is a red herring; intent is irrelevant to the issue of copyright
26 infringement. *UMG Recordings, Inc.*, 446 F. Supp. 2d at 1172; *Educ. Testing Serv.*,
27 95 F. Supp. 2d at 1087 (copyright infringement “is a strict liability tort”). Ms.
28 Maraj’s actions speak for themselves. She directly infringed on Ms. Chapman’s

1 Composition. For this reason, Ms. Chapman is entitled to summary adjudication on
2 copyright infringement based on Ms. Maraj’s creation of an unauthorized derivative
3 work.

4 2. Ms. Maraj’s Actions in Creating an Unauthorized Derivative
5 Work Were Willful As a Matter of Law

6 To prove willfulness, “the plaintiff must show (1) that the defendant was
7 actually aware of the infringing activity, or (2) that the defendant’s actions were the
8 result of ‘reckless disregard’ for, or ‘willful blindness’ to, the copyright holder’s
9 rights.” *Washington Shoe Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 674 (9th
10 Cir. 2012), *abrogated on other grounds by Axiom Foods, Inc. v. Acerchem Int’l,*
11 *Inc.*, 874 F.3d 1064, 1067 (9th Cir. 2017). The determination of willfulness is
12 ordinarily a question of fact for the jury. *Hearst Corp. v. Stark*, 639 F. Supp. 970,
13 980 (N.D. Cal. Jun. 30, 1986). However, where the relevant facts are admitted or
14 otherwise undisputed, willfulness can be appropriately resolved on summary
15 judgment. *Peer Int’l Corp. v. Pausa Records, Inc.*, 909 F.2d 1332, 1335-36 (9th Cir.
16 1990); *Sega Enters. Ltd. v. MAPHIA*, 948 F. Supp. 923, 936 (N.D. Cal. 1996).

17 Ms. Maraj’s actions are exactly the type of willful infringement that can be
18 decided on summary judgment. By definition “[i]nfringement is willful if a record
19 reflects that a defendant was warned they needed a license or permission but
20 declined to do so and went ahead anyway.” *Broadcast Music, Inc. v. McDade &*
21 *Sons, Inc.*, 928 F. Supp. 2d 1120, 1134 (D. Ariz. Mar. 6, 2013); *Sega Enters. Ltd.*,
22 948 F.Supp. at 936 (granting summary judgment as to willfulness and finding that
23 there were knowing actions of infringement). Under these conditions, it is
24 appropriate to conclude that Ms. Maraj willfully infringed Ms. Chapman’s
25 copyright.

26 Here, the undisputed facts illustrate that Ms. Maraj’s copyright infringement
27 was willful. *First*, Ms. Maraj admitted in her RFA Responses and deposition that
28 her copying of the Composition was unauthorized, conceding that she (i) recorded

1 the Infringing Work before requesting a license from Ms. Chapman (UF 6-8,
2 Frontera Decl., ¶ 8, Ex. 7 at p. 71, ¶ 20); (ii) intended to include the Infringing Work
3 on the Album (Frontera Decl., ¶ 8, Ex. 7 at p. 71, ¶ 19); and (iii) knew she needed a
4 license to use the Composition in the Infringing Work in order to include the
5 Infringing Work on the Album (UF 9, Frontera Decl., ¶ 9, Ex. 8 at p. 80 (Suppl.
6 Resp. to RFA No. 5).) Ms. Maraj’s actions in the face of her knowledge that she
7 needed a license is precisely the type of willful conduct contemplated by *Broadcast*
8 *Music, Inc.*, 928 F. Supp. 2d at 1134.

9 *Second*, it also is undisputed that Ms. Maraj never received the requested –
10 and required – permission to use the Composition from Ms. Chapman. Instead, Ms.
11 Maraj and her representatives were *unequivocally informed* that the Composition
12 was not available for sampling on multiple occasions, and that Ms. Chapman was
13 not granting the requested permission. (*See, supra*, § II.C; *see also* UF 12, 14-15,
14 19, Frontera Decl., ¶ 11, Ex. 10 at p. 99; *id.* at ¶ 12, Ex. 11 (Mannis-Gardner Dep. at
15 111:9-24); *id.* at ¶ 15, Ex. 14; Chapman Decl., ¶ 6, Ex. 3.) Ms. Maraj’s creation of
16 the Infringing Work without Ms. Chapman’s permission despite acknowledging that
17 she knew she needed Ms. Chapman’s authorization establishes willful infringement.
18 *See Broadcast Music, Inc.*, 928 F. Supp. 2d at 1134.

19 *Third*, to the extent that Ms. Maraj argues that she did not willfully infringe
20 Ms. Chapman’s copyright because she allegedly created the Infringing Work *for the*
21 *purpose of* obtaining permission from Ms. Chapman to use it on her Album, that
22 argument is unsupported by the facts or law. Indeed, the fact that Ms. Maraj and
23 Nas continued working on the Infringing Work *after* Ms. Maraj knew that Ms.
24 Chapman had not cleared—and would not clear—the license request and Ms. Maraj
25 confirmed to Mr. Taylor that she would not be using the Infringing Work on her
26 Album demonstrates that Ms. Maraj’s post-hoc justification for the reason she
27 created the Infringing Work (*i.e.*, to obtain Ms. Chapman’s permission to use the
28 Composition) is unsupportable. (*See, supra*, § II.D; *see also* Frontera Decl., ¶ 18,

1 Ex. 17; *id.* at ¶ 16, Ex. 15 at p. 147.) Further, not only did Ms. Maraj continue
2 working on the Infringing Work after her requests to license the Composition were
3 denied, but she went a step further by asking Mr. Taylor to premiere the Infringing
4 Work on the radio the week her Album was released to the public. (UF 25, Frontera
5 Decl., ¶ 16, Ex. 15 at p. 147.)

6 Given these undisputed facts, no reasonable juror could conclude that Ms.
7 Maraj did not act willfully. Therefore, summary judgment is appropriate as to Ms.
8 Maraj’s willfulness in creating the unauthorized derivative work using the
9 Composition.

10 **C. Ms. Maraj Willfully Distributed the Infringing Work**

11 In addition to violating Ms. Chapman’s copyright by creating an infringing
12 derivative work, Ms. Maraj committed a second act of infringement by willfully
13 distributing the Infringing Work.

14 1. The Undisputed Facts Establish that Ms. Maraj Distributed the
15 Infringing Work

16 As discussed above, 17 U.S.C. § 106(3) grants a copyright holder the
17 exclusive right to distribute its copyrighted work. Ms. Chapman is the undisputed
18 copyright holder. (UF 1-3.) A common method of distribution is through licensing
19 agreements, which permit the copyright holder to place restrictions upon the
20 distribution of its products. “A licensee infringes the owner’s copyright if its use
21 exceeds the scope of its license.” *S.O.S., Inc*, 886 F.2d at 1087 (*citing Gilliam v.*
22 *American Broadcasting Cos.*, 538 F.2d 14, 20 (2nd Cir. 1976)).

23 Moreover, even if Ms. Maraj did not distribute the Infringing Work herself,
24 she is still liable for distribution and considered the distributor if the distribution
25 happened at her direction. The law is clear, “[a]n agent acting within his apparent
26 or ostensible authority binds the principal where the principal has intentionally or
27 negligently allowed others to believe the agent has authority.” *Brave New Films*
28 *501(c)(4) v. Weiner*, 626 F.Supp.2d 1013, 1016 (N.D. Cal. 2009); see also *Holley v.*

1 *Crank*, 400 F.3d 667, 673 (9th Cir. 2004) (“Principals are liable for the torts of their
 2 agents committed within the scope of their agency.”). Further, the existence of
 3 agency may be decided on summary judgment when there is only one conclusion
 4 that may be drawn. *C.A.R. Transp. Brokerage Co., Inc. v. Darden Restaurants,*
 5 *Inc.*, 213 F.3d 474, 481 (9th. Cir. 2000) (affirming grant of summary judgment on
 6 agency).

7 Here, the undisputed evidence demonstrates that Ms. Maraj distributed the
 8 Infringing Work without a license or other form of consent. After being told on
 9 numerous occasions she did not have permission to use the Composition in the
 10 Infringing Work, Ms. Maraj distributed the track anyway. (*See, supra*, § II.D; *see*
 11 *also* UF 12, 14, 19, 25-36, Frontera Decl., ¶ 11, Ex. 10; *id.* at ¶ 12, Ex. 11 (Mannis-
 12 Gardner Dep. at 111:9-24); *id.* at ¶ 15, Ex. 14; Chapman Decl., ¶ 6, Ex. 3.) Just a
 13 week before her Album was set to release, Ms. Maraj privately messaged Mr.
 14 Taylor:

15 **CONFIDENTIAL**

16
 17
 18 (UF 25, Frontera Decl., ¶ 16, Ex. 15 at p. 147 (emphasis added).) Mr. Taylor
 19 responded indicating that he would play the track. (Uf 26, Frontera Decl., ¶ 16, Ex.
 20 15 at p. 147; *id.* at ¶ 17, Ex. 16 (Taylor Dep. at 162:25-163:7).)

21 Ms. Maraj followed up with Mr. Taylor several days later (the day her Album
 22 released) telling him that the track featured her and Nas, *i.e.* the Infringing Work,
 23 and asking him for his number so she could send it over for Mr. Taylor to publicly
 24 broadcast. (UF 27, Frontera Decl., ¶ 16, Ex. 15 at p. 148.)² Mr. Taylor provided
 25 his number and Ms. Maraj confirmed she would text the Infringing Work to him.
 26 (UF 28, 29, Frontera Decl., ¶ 16, Ex. 15 at p. 148.)

27
 28 ² No other track that Maraj was working on for the Album featured Nas. (Delaine
 Dep. at 205:8-12.)

1 On August 11, 2018, Mr. Taylor posted to his Instagram and Twitter
2 accounts promoting the Infringing Work and confirming he received it from Ms.
3 Maraj:

- 4 • “Shhhhhhh!!!! TONIGHT 7PM!!! **NICKY GAVE ME**
5 **SOMETHING!!!** @nickiminaj ft @nas !!! (NOT ON HER ALBUM!)
6 GONNA STOP THE CITY TONIGHT!!!!!!!!!!!!!!!!!!!!” (UF 35, Frontera
7 Decl., ¶ 21, Ex. 20; *id.* at ¶ 17, Ex. 16 (Taylor Dep. at 167:18-168:23.)
8 (emphasis added).)

9 Then, the same day at 7 PM EST, Mr. Taylor broadcast his radio show on Hot 97
10 FM and played the Infringing Work. (UF 38, 39, Frontera Decl., ¶ 17, Ex. 16
11 (Taylor Dep. at 166:9-13).)

12 The chain of distribution is clear:

- 13 • Ms. Maraj asked Mr. Taylor to premiere the Infringing Work the week
14 her Album released (UF 25, Frontera Decl., ¶ 16, Ex. 15 at p. 147);
15 • Ms. Maraj confirmed with Mr. Taylor the day her album released that
16 Mr. Taylor was going to play the Infringing Work on his show (UF 27,
17 *id.*);
18 • Ms. Maraj asked Taylor for his number to send the Infringing Work to
19 him (UF 27, Frontera Decl., ¶ 16, Ex. 15 at p. 148);
20 • Ms. Maraj’s recording engineer requested that the Infringing Work be
21 mastered and a “clean” version be sent back to him (UF 30, Frontera
22 Decl. Frontera Decl., ¶ 28, at Ex. 27);
23 • Chris Athens sent Mr. Delaine a clean version that day (UF 32,
24 Frontera Decl., ¶ 19, Ex. 18 at pp. 189-90; Frontera Decl., ¶ 20, Ex. 19
25 (Delaine Dep. at 206:16-208:4)); and
26 • Between the time of Mr. Taylor’s and Ms. Maraj’s last message and
27 the next afternoon, Mr. Taylor received the Infringing Work via text
28 (UF 36, Frontera Decl., ¶ 17, Ex. 16 (Taylor Dep. at 164:22-165:8; *id.*,

1 at 169:5-18; *id.* at 158:11-22).)

2 Each of these facts is indisputable based on the documentary evidence. And
3 from these facts, the only reasonable conclusion is that Ms. Maraj or someone
4 acting at her direction distributed the Infringing Work to Mr. Taylor. Indeed, Ms.
5 Maraj's recording engineer confirmed that unreleased recordings such as the
6 Infringing Work are maintained in the strictest confidence and that he *never* sends
7 any unreleased recordings out to anyone without instructions from Ms. Maraj
8 directly. (UF 34, Frontera Decl., ¶ 20, Ex. 19 (Delaine Dep. at 200:23-202:6,
9 203:16-23; *id.* at 204:17-21).)

10 Thus, the only possible conclusion based on the undisputed facts and
11 evidence adduced in discovery is that Ms. Maraj, or someone acting at her
12 direction, distributed the Infringing Work to Mr. Taylor for public consumption.

13 2. The Undisputed Evidence Establishes that Ms. Maraj's
14 Distribution was Willful

15 Ms. Maraj's conduct with regard to distribution exemplifies the type of
16 willful conduct appropriately decided on summary judgment. The law is clear.
17 When an individual knows their conduct infringes on another's copyright and acts,
18 that conduct is willful. *Columbia Pictures Television v. Krypton Bd. of*
19 *Birmingham, Inc.*, 106 F.3d 284, 293 (9th Cir. 1997); *BWP Media USA, Inc. v. P3R,*
20 *LLC*, 2014 WL 3191160, at *4 (C.D. Cal. Jul. 3, 2014); *Basic Books, Inc. v. Kinko's*
21 *Graphics Corp.*, 758 F. Supp. 1522, 1543 (S.D.N.Y. 1991); *accord Peer Int'l Corp.*
22 *v. Pausa Records, Inc.*, 909 F.2d 1332, 1335 (9th Cir. 1990); *Warner Bros. Entm't*
23 *Inc. v. Duhy*, No. CV 09-5798-GHK (FMOx), 2009 WL 5177956, at *1 (C.D. Cal.
24 Nov. 30, 2009)(finding willfulness in a default judgment where plaintiff pled
25 defendant's willfulness in its complaint and buttressed this assertion with evidence
26 of defendant's knowledge of the unlawfulness of their actions).

27 *First*, as discussed above, it is undisputed that Ms. Maraj knew she was not
28 permitted to distribute the Infringing Work without permission. (UF 9, Frontera

1 Decl., ¶ 9, Ex. 8 at p. 80 (Supp. Resp. to RFA No. 5) (Ms. Maraj admitted “that
2 [she] needed a License to use the Composition in the Infringing Work in order to
3 include the Infringing Work on [her] album Queen.”); *id.* at p. 82 (Suppl. Resp. to
4 RFA No. 14).)

5 *Second*, the undisputed evidence establishes that Ms. Maraj intended to
6 distribute the Infringing Work to Mr. Taylor and either Ms. Maraj or someone
7 acting at her direction did in fact distribute the Infringing Work to Mr. Taylor. It
8 cannot be disputed that Ms. Maraj told Mr. Taylor she wanted him to world
9 premiere the Infringing Work the week her Album dropped. (UF 25, Frontera
10 Decl., ¶ 16, Ex. 15 at p. 147.) It further cannot be disputed that Ms. Maraj told Mr.
11 Taylor she would text him the Infringing Work less than 24 hours before he
12 received it via text. (UF 27-29, Frontera Decl., ¶ 16, Ex. 15 at p. 148.) Nor can it
13 be disputed that the day Ms. Maraj told Mr. Taylor that she would send him the
14 Infringing Work, Ms. Maraj’s sound engineer sent the song to Chris Athens to be
15 mastered and received a “clean” mastered version of the Infringing Work in return.
16 (UF 30-33, Frontera Decl., ¶ 28, Ex. 27; *id.* at ¶ 19, Ex. 18.) Mr. Taylor then posted
17 on social media that he got something from Ms. Maraj and testified that he received
18 the Infringing Work via text. (UF 35, Frontera Decl., ¶ 17, Ex. 16 (Taylor Dep. at
19 164:22-165:8; *id.* at 169:5-18; *id.* at 158:11-22) (confirming that Taylor received
20 the Infringing Work via text).) Further, Mr. Delaine testified that he has never
21 “sen[t] out any [unreleased] recordings of Ms. Maraj’s to a third party without []
22 receiving an instruction from Ms. Maraj to send out that recording[.]” (UF 34,
23 Frontera Decl., ¶ 20, Ex. 19 (Delaine Dep. at 203:16-23).)

24 As a result, any reasonable trier of fact would conclude that Ms. Maraj was
25 aware of the unlawfulness of the Infringing Work, and nevertheless willfully
26 distributed it. Ms. Chapman is entitled to summary judgment on this additional
27 prong of copyright infringement.
28

1 **V. CONCLUSION**

2 For all of the foregoing reasons, Ms. Chapman respectfully requests that the
3 Court grant her motion in its entirety and enter judgment in her favor as to the issue
4 of liability for Copyright Infringement, holding that: (1) Ms. Maraj committed
5 copyright infringement by creating the Infringing Work, (2) the creation of the
6 Infringing Work was willful, (3) Ms. Maraj committed copyright infringement by
7 distributing the Infringing Work, and (4) the distribution was willful.

8 Dated: August 17, 2020

Respectfully submitted,

9 MANATT, PHELPS & PHILLIPS, LLP

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By: /s/ John M. Gatti

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John M. Gatti
Attorney for Plaintiff
TRACY CHAPMAN

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