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7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 MARTYN ATKINS, an individual,
12 Plaintiff,

13 vs.

14 WMG PRODUCTIONS LLC, a
15 Delaware limited liability company;
16 GIRL ON LSD LLC, a South Carolina
17 limited liability company; and DOES 1-
10, inclusive,

18 Defendants.
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Case No.

COMPLAINT FOR

1. **PRIMARY COPYRIGHT INFRINGEMENT**
2. **CONTRIBUTORY COPYRIGHT INFRINGEMENT**
3. **CONVERSION**

DEMAND FOR TRIAL BY JURY

1 Plaintiff Martyn Atkins (“Atkins” or “Plaintiff”), for his complaint against
2 Defendants WMG Productions, LLC (“WMG”); Girl on LSD, LLC (“GOL”); and
3 DOES 1 through 10, inclusive (collectively, “Defendants”), alleges as follows:

4 **INTRODUCTION**

5 1. Plaintiff Martyn Atkins is a highly regarded longtime professional
6 filmmaker and artist. In 1994, Atkins was hired as the art director to create the album
7 art for Tom Petty’s solo album that would become *Wildflowers*. Petty and Atkins
8 became fast friends, and Atkins ended up spending many hours with Petty in and out
9 of the studio during the making of the album and the tour that came after.

10 2. Atkins often brought a camera and a roll of 16mm film. Ultimately,
11 Atkins, on his own volition and at his own cost, filmed and directed hours of footage
12 of Petty, supporting musicians, the album’s producers, sound engineers, and others.
13 For safekeeping, Atkins ended up storing his original film and audio elements in
14 storage facilities maintained by Warner Records, Petty’s record label, in Los Angeles,
15 though he later made digital copies of much of the footage. Over the years, Atkins
16 and Petty – who worked together on subsequent projects – would often discuss that
17 someday Atkins would make a documentary using his material from the *Wildflowers*
18 days; Petty loved the vision Atkins described for the film. Sadly, due to the untimely
19 passing of Petty in 2017, the project never materialized.

20 3. In 2020, Atkins was asked to a meeting with Petty estate managers and
21 Petty’s daughter, Adria Petty. He was told in the meeting the estate was considering
22 having a documentary about *Wildflowers* made and that, if it was to be, Atkins would
23 of course produce and direct the project. Indeed it was acknowledged at all times that
24 the original documentary idea was always Atkins’s. During the business discussion,
25 the location of the original materials came up. Atkins, having inventoried everything
26 years earlier, did not hesitate to share with Adria Petty and the Petty estate managers
27 where the materials were located. Atkins was never asked to another meeting.

28

1 9. Plaintiff is informed and believes, and on that basis alleges, that, at all
2 relevant times mentioned herein, Defendants, and each of them, were acting in concert
3 or participation with each other, or were joint participants and collaborators in the acts
4 complained of, and were the agents or employees of the others in doing the acts
5 complained of herein, each and all acting within the course and scope of the agency
6 of and/or employment by the others, each and all acting in concert one with the other
7 and all together.

8 10. Plaintiff is informed and believes, and on that basis alleges, that, at all
9 relevant times mentioned herein, Defendants, and each of them, were, and are, the
10 agents, servants, alter egos and/or employees of each of the other Defendants, and all
11 the things alleged to have been done by Defendants were done in the capacity of and
12 as agent, servant, alter ego and/or employee of and for the other Defendants, with
13 their knowledge approval, and ratification.

14 JURISDICTION AND VENUE

15 11. This court has subject matter jurisdiction over this matter pursuant to 28
16 U.S.C. § 1331, which provides district courts with jurisdiction over civil actions
17 arising under the United States Constitution or laws of the United States.

18 12. Federal courts have exclusive jurisdiction over copyright claims. 28
19 U.S.C. § 1338(a). Venue is proper where the defendants are found or where infringing
20 acts occur. 28 U.S.C. §1400(a).

21 13. This court has personal jurisdiction over Defendants because each
22 Defendant is located within the district or conducts extensive business within the
23 district. In addition, the events giving rise to this lawsuit occurred within this district
24 in that the misappropriation and infringement, as well as production and distribution
25 of the Film, occurred within and from this district.

26 14. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the events
27 giving rise to the allegations in this complaint occurred in this district and, upon
28 information and belief, both parties have offices and conduct business within this

1 district.

2 **GENERAL ALLEGATIONS**

3 15. Plaintiff Martyn Atkins is a professional artist and filmmaker with
4 decades of experience and numerous accolades under his belt. He has created and
5 won awards for art direction, design, photography, commercials and other film
6 projects for dozens of world famous artists and musicians, including the Bee Gees,
7 Depeche Mode, George Harrison, Lenny Kravitz, Johnny Cash, the Eagles, Eric
8 Clapton, and others.

9 16. Tom Petty and Atkins first met in 1989 while Atkins was art directing an
10 album cover for musician Jeff Lynne, a friend of Petty's. Petty was complimentary
11 of Atkins's work. Later, in 1994, after Petty saw Atkins' recent album artwork he
12 had created for Johnny Cash, Petty contacted Atkins and told him he was looking for
13 a fresh approach for the album art for Petty's new solo album, which would come to
14 be titled *Wildflowers*. Petty and Warner Records ultimately hired Atkins for the job
15 as an independent contractor.

16 17. Atkins and Petty quickly developed a friendship, and Atkins would go
17 on to attend multiple studio sessions at various studio locations during the making of
18 *Wildflowers*. He also accompanied Petty and others, including band members,
19 producers, engineers, and friends, to other locations or events during that stretch of
20 time. Atkins also joined Petty on the road following release of the *Wildflowers* album
21 in November 1994.

22 18. As a filmmaker, naturally Atkins brought his camera and some rolls of
23 16mm film along—and began recording almost immediately. Sensing the importance
24 of the album for Petty, he assured Petty that his footage might be meaningful to Petty
25 someday, even telling Petty “that in 20 years we could make a documentary about
26 *Wildflowers*.”

27 19. Atkins would go on to film not only what was unfolding in the studio,
28 but also many cuts of Petty outside in nature, the band and producers in and out of the

1 studio, Petty before and after concerts and on the road, and other various assorted
2 content. Over the course of the making of *Wildflowers* and in the months that
3 followed, Atkins would shoot and direct multiple hours of footage (collectively, the
4 “Works”).¹

5 20. Atkins initially raised the idea that potentially someday Atkins would
6 produce a documentary about Petty and the making of the *Wildflowers* album using
7 Atkins’ Works; Petty was enthusiastic about the concept. Over the years, Petty and
8 Atkins would revisit the idea. Petty made it clear to Atkins he wished for Atkins to
9 make the documentary based around the hours of film Atkins had directed and
10 captured during the making of the album and the months that followed.

11 21. The footage Atkins shot—the Works as defined herein—was not subject
12 to a work-for-hire or other such agreement. Atkins did not license the footage to
13 Petty, Warner Records, any Warner Records affiliate, or anybody else. He was not
14 acting as an employee of Petty or Warner Records, or any other party, during the
15 relevant period relating to the Works. There is no agreement in existence relating to
16 any of the film footage that is the subject of this infringement action.² Upon creation,
17 Atkins became author and owner of the Works for purposes of Copyright Law.

18 22. In or around 1995, as Atkins was moving residences and studios, Petty
19 offered to have Atkins store his 16mm film reels and audio elements in a secure
20 storage facility maintained by Warner Records in Los Angeles for safekeeping. They
21 had become good friends by then; so Atkins took Petty up on his offer and deposited
22 the raw film and audio materials at a facility containing other materials relating to or
23

24 ¹ The film slates that permeate Atkins’ footage identify Martyn Atkins as the
25 director. No other party is identified on the slates.

26 ² During this time, Atkins entered a separate agreement with Warner Records
27 relating to creation of an Electronic Press Kit (“EPK”) for the album. Pursuant to
28 that agreement, Atkins shot Petty during a two-day shoot at a single studio
location. Some of the footage in the Film is lifted from the EPK. Atkins is not
claiming infringement as to such footage.

1 belonging to Petty or Warner Records. Atkins maintained access to his materials in
2 the facility at all times.

3 23. Although Atkins had originally stored the materials at the Warner
4 Records storage facilities, Atkins had occasion to copy much of the footage – though
5 not all of the audio elements – into digital files. In or around 2014, Petty asked to see
6 some of the footage Atkins had captured back during the making of *Wildflowers* and
7 the months on the road following the album’s release. Atkins inventoried the raw
8 materials, copied large amounts of the footage and some of the audio onto digital
9 media, and brought selected materials to Petty’s home.

10 24. Petty was thrilled with what he saw, and the two again discussed that
11 Atkins should, when their schedules allowed, produce and direct a documentary about
12 *Wildflowers* and the subsequent tour—primarily featuring Atkins’ footage.

13 25. Tragically, in October 2017, Petty unexpectedly passed away. Atkins
14 would not have the chance to turn his documentary concept into a reality while Petty
15 was still alive.

16 26. In early 2020, Atkins was asked to attend an in-person meeting with
17 Petty’s daughter, Adria Petty, and the Petty estate manager. The meeting took place
18 in Van Nuys, California. Upon information and belief, Ms. Petty and the estate
19 manager were acting as agents for WMG, GOL and/or the Petty estate during the
20 meeting. At the meeting, Atkins was told the estate was considering developing
21 Atkins’ idea and creating a documentary about the making of *Wildflowers*. Atkins
22 was asked about his vision, concepts, and ideas for the project, which the parties
23 discussed at length.

24 27. Atkins was told he would be hired to direct and produce the film project
25 under discussion, but naturally he would ultimately need to identify where all of the
26 original 16mm film footage and audio elements from the mid-1990s were located at
27 the Warner Records storage facility—as such footage would, potentially, be used for
28 the making of the Film. Among the topics of conversation were the details regarding

1 Atkins' schedule and availability to begin the project and potential sources of
2 financing. Relying on the representations, Atkins disclosed where his raw footage
3 and the audio elements were located at the Warner Records storage facility (which he
4 had previously inventoried), enabling WMG, GOL and/or the Petty estate direct and
5 easy access to the materials.

6 28. Atkins left the meeting sincerely believing the next conversation would
7 be to discuss developing the project budget and schedule. It did not cross his mind
8 that anything nefarious was underway. He also expected that before any of his Works
9 would be used (let alone published) for any purpose, he would first be asked for his
10 consent and that a deal would be completed regarding his compensation for licensing
11 any or all of the assets.

12 29. However, Atkins was never asked to join any other meetings and never
13 received any formal offer to produce or direct the documentary project discussed
14 during the meeting.

15 30. Then, in November 2021, Defendants released a documentary film on
16 YouTube TV and Amazon Prime. The film is titled *Somewhere You Feel Free* (the
17 "Film"). It tells the story of the making of the *Wildflowers* album, eerily consistent
18 with the vision Atkins described during the January 2020 meeting, and features scores
19 of footage and stills of Petty and others during the making of *Wildflowers* and the
20 surrounding time period.

21 31. Of the Film's 90 minute run time, ***45 minutes are comprised of the***
22 ***Works***—footage that Atkins shot and directed with his camera and his 16mm film.³
23 The Works exploited in the Film – of which Atkins is the exclusive owner – include
24 many of the most compelling and iconic shots of Petty depicted, and numerous other
25 artistically directed cuts in and outside of the studio.

26 _____
27 ³ Plaintiff believes preliminary discovery will reveal which party or parties is
28 responsible for initially misappropriating the Works and delivering the Works to
the production team for incorporation into the Film.

1 32. Atkins simply could not believe it. While prior to the release Atkins
2 caught wind that another director may have been selected for the Film (which, in and
3 of itself, felt like a slap in the face), Atkins was not remotely aware of whether and
4 the extent to which his footage would be used in the documentary that apparently was
5 going to be made. Regardless, to the extent the producers wished to use his film or
6 audio assets, Atkins expected he would be asked first, so that he could either decline
7 or negotiate a license fee or other purchase agreement.

8 33. But that is not what happened. Rather, Atkins had been conned into
9 believing he would produce and direct the Film so that Atkins would reveal the
10 location of his footage to Defendants and/or those acting on their behalf. He was then
11 cut out completely – in every imaginable respect. He was not even told as a courtesy
12 that his Works would be misappropriated and featured, let alone asked his consent.
13 Defendants not only stole and misappropriated the Works, but also deprived Atkins
14 of the opportunity of creating (and thus becoming “the filmmaker who brought you”)
15 the project Atkins largely filmed and which he had always envisioned.

16 34. That the Film was made using so much of Atkins’ footage is not in
17 dispute. After the opening credits, a still shot appears that reads: “In early 2020, a
18 collection of 16mm film was discovered in the Tom Petty Archive. Shot between
19 1993 and 1995 by Petty’s longtime filmographer Marty Atkins while Petty was
20 recording the Wildflowers album and on the tour that followed, most of this material
21 has never been seen before.”

22 35. It is true that Atkins shot much of the footage, but the rest of this
23 statement is a lie. The 16mm film footage was not “discovered.” Atkins always knew
24 where it was and even located it for Defendants, believing he would both (i) sign on
25 as director and producer, and (ii) enter a license or other purchase agreement for the
26 footage itself.

27 36. Yet, compounding this false narrative, during the media circuit for the
28 Film—which, in no small part due to Atkins’ direction and filmography, has won

1 numerous industry awards, including at Sundance and SXSW—the Film’s promoters,
2 including Adria Petty and the director Mary Wharton, repeatedly misrepresented to
3 the press that Atkins’s footage was magically and unexpectedly discovered in the
4 Warner Records storage facilities.⁴ Upon information and belief, the Film’s
5 producers have systematically implemented this false narrative to manipulate the
6 viewing public and bolster the marketing of the Film.

7 37. Defendants’ actions have caused substantial and ongoing harm to Atkins.
8 In addition to Atkins’s direct economic damages, which Plaintiff will prove at trial,
9 Atkins was also robbed of the opportunity to produce and direct the documentary he
10 initially conceived, participate in the publicity for such a film, and enjoy the benefits
11 of featuring the project on his resume in the market, of which he is an active
12 participant.

13 **FIRST CAUSE OF ACTION**

14 **(Primary Copyright Infringement – Against Defendants)**

15 38. Plaintiff incorporates herein by reference the allegations contained in
16 Paragraphs 1 through 37, inclusive, as though set forth in full.

17 39. The Works are wholly original, and Plaintiff is the exclusive owner of
18 all right, title, and interest, including all rights under copyright, in the Works.

19 40. Plaintiff holds exclusive copyrights under 17 U.S. Code § 106 to
20 distribute and reproduce the Works, distribute copies of the Works, and display the
21 Works publicly.

22 41. Plaintiff is the owner of valid and subsisting United States Copyright
23

24 ⁴ For example, Wharton has been quoted as stating: “In the summer of 2020, I got a
25 call from an old friend that felt like a lifeline. I had recently left my home in New
26 York City, fleeing the terrifying first wave of the pandemic. It broke my heart to
27 leave the city, but it didn't make sense to stay. It was a strange time, and I really
28 didn’t know where I belonged. The phone call came from Adria Petty, who
explained that a treasure trove of archival footage of her father, Tom Petty, had
been discovered.”

1 Registration Nos. PAu004188721, PAu004188723, PAu004190160, PAu004221264,
2 PAu004221266, and PAu004222366 for the Works, issued by the United States
3 Copyright Office.

4 42. Pursuant to 17 U.S.C.A. § 501, Defendants have copied the Works
5 without Plaintiff's authorization, consent, or knowledge, and without any
6 remuneration to Plaintiff, and have produced, released, and publicly displayed the
7 Works without Plaintiff's consent, including through commercialized distribution on
8 streaming platforms such as YouTube TV and Amazon Prime.

9 43. The infringed Works consist of all of the footage displayed by the
10 Documentary that was extracted from Atkins' original film materials previously
11 maintained in storage, and which Atkins identified in January 2020, with the
12 exception of footage that was shot for the specific purpose of the EPK during the two-
13 day EPK shoot (*see supra* n.2).

14 44. As a result of Defendants' actions, Plaintiff has been damaged in an
15 amount to be proven at trial, and is continuing to be damaged, by the unauthorized
16 reproduction, distribution, public display, and sale of the Film.

17 **SECOND CAUSE OF ACTION**

18 **(Contributory Copyright Infringement – Against Defendants)**

19 45. Plaintiff incorporates herein by reference the allegations contained in
20 Paragraphs 1 through 44, inclusive, as though set forth in full.

21 46. Defendants have contributorily infringed on Plaintiff's copyrights by
22 intentionally inducing or encouraging direct infringement of Plaintiff's Works.
23 Through the conduct alleged herein, Defendants knowingly induced, caused, and
24 materially contributed to and participated in the infringement of Plaintiff's Works.

25 47. Upon information and belief, Defendants' inducement and contribution
26 include, but is not limited to, providing copies of the Works for production of the Film
27 and permitting the marketing and distribution of the Film throughout the United
28 States.

1 48. Defendants had knowledge of the infringing activity, and nonetheless
2 induced and/or materially contributed to the infringing conduct of the direct
3 infringer(s) of Plaintiff’s Works.

4 49. As a result of Defendants’ actions, Plaintiff has been damaged in an
5 amount to be proven at trial, and is continuing to be damaged, by the unauthorized
6 reproduction, distribution, public display, and sale of the Film.

7 **THIRD CAUSE OF ACTION**

8 **(Conversion – Against Defendants)**

9 50. Plaintiff incorporates herein by reference the allegations contained in
10 Paragraphs 1 through 49, inclusive, as though set forth in full.

11 51. Plaintiff owns and has the right to possess the original physical audio and
12 film materials from which the Works were extracted by Defendants to carry out their
13 infringement (“Personal Property”). Upon information and belief, Defendants
14 substantially interfered with and wrongfully exercised dominion over the Personal
15 Property by knowingly and intentionally misappropriating – including by physically
16 removing the Personal Property from the storage facilities to which Plaintiff
17 previously had access – and retaining the Personal Property without Plaintiff’s
18 consent.

19 52. As a result of Defendants’ actions, Plaintiff has been damaged in an
20 amount to be proven at trial and/or is entitled to an order requiring Defendants to turn
21 over the Personal Property to Plaintiff.

22 **PRAYER**

23 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of
24 them, as follows:

- 25 1. For actual and compensatory damages in an amount to be proven at trial;
26 2. That an order be entered compelling Defendants to account for all gains,
27 profits, and advantages derived by each Defendant by its infringement of Plaintiff’s
28 copyrights;

- 1 3. For disgorgement in an amount to be proven at trial;
- 2 4. For restitution in an amount to be proven at trial;
- 3 5. For an order compelling the delivery to Plaintiff of the original film and
- 4 audio materials owned by Plaintiff;
- 5 6. For attorneys' fees and costs as permitted by applicable law;
- 6 7. For pre-judgment and post-judgment interest at the maximum legal rate;
- 7 and
- 8 8. For such other and further relief as the Court may deem just and proper.

10 DATED: June 18, 2024

EISNER, LLP

12 By: 

13 ASHLEE N. LIN
 14 BENJAMIN KASSIS
 15 Attorneys for Plaintiff
 16 Martyn Atkins

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff hereby demands a trial by jury on all issues and causes of action triable
 19 by a jury.

21 DATED: June 18, 2024

EISNER, LLP

23 By: 

24 ASHLEE N. LIN
 25 BENJAMIN KASSIS
 26 Attorneys for Plaintiff
 27 Martyn Atkins