

1 MANATT, PHELPS & PHILLIPS, LLP
ROBERT A. JACOBS (State Bar No. 160350)
2 E-mail: rjacobs@manatt.com
MAURA K. GIERL (State Bar No. 287430)
3 E-mail: mgierl@manatt.com
11355 West Olympic Boulevard
4 Los Angeles, California 90064-1614
Telephone: (310) 312-4000
5 Facsimile: (310) 312-4224

6 *Attorneys for Plaintiff*
TRACY CHAPMAN
7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 TRACY CHAPMAN,
12

Plaintiff,
13

vs.
14

15 ONIKA TANYA MARAJ p/k/a
NICKI MINAJ and DOES 1-10,
16

Defendants.
17

No. 2:18-cv-9088

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

1 Plaintiff Tracy Chapman (“Chapman”) alleges as follows:

2 **Nature Of The Action**

3 1. Chapman brings this copyright infringement action to address the
4 willful infringement by Onika Tanya Maraj p/k/a Nicki Minaj (“Maraj”) and Does
5 1-10 (collectively, “Defendants”) of Chapman’s exclusive copyright in and to her
6 well-known musical composition *Baby Can I Hold You* (the “Composition”).

7 2. Beginning in June 2018, Maraj and her representatives and/or agents
8 made multiple requests to license the Composition for use in Maraj’s recording
9 (featuring Nas), *Sorry* (the “Infringing Work”), which, on information and belief,
10 Maraj had already made without the requested license for inclusion on her recently
11 released album, *Queen*.

12 3. Chapman, through her own agents and representatives, repeatedly
13 denied Maraj’s after-the-fact requests to use the Composition. Notwithstanding
14 those denials, Maraj, on information and belief, provided a copy of the Infringing
15 Work to Aston George Taylor, Jr. p/k/a Funkmaster Flex (“Taylor”), a well-known
16 disc jockey at the popular New York City radio station HOT 97, who then teased
17 the Infringing Work on his Twitter and Instagram accounts, stating that Maraj had
18 given him something “ft @nas” that is “not on her [*Queen*] album”. Taylor then
19 played the Infringing Work on HOT 97, and, possibly, through other outlets.

20 4. This action is necessary to redress Maraj’s disregard and willful
21 infringement of Chapman’s rights under the Copyright Act, and to ensure that her
22 misconduct is not repeated.

23 **Jurisdiction And Venue**

24 5. This action arises under the United States Copyright Act, 17 U.S.C. §§
25 101 *et seq.*

26 6. This Court has exclusive jurisdiction over this action under 28 U.S.C.
27 §§ 1331 and 1338 in that this action involves claims arising under the Copyright
28 Act.

1 won, and many other awards. At every turn, Chapman’s music has been critically
2 acclaimed and respected.

3 **The Composition**

4 16. Chapman wrote the Composition between 1982 and 1983, and
5 obtained a copyright registration for the work (and other musical compositions) –
6 PAu000556755 – from the United States Copyright Office on October 20, 1983.

7 17. After entering into a publishing administration agreement with
8 Chapman and receiving a partial assignment of the copyright in the Composition,
9 SBK April Music, Inc. (“SBK”) obtained a copyright registration for the
10 Composition – PA0000417830 – on or about May 5, 1989, listing it and Purple
11 Rabbit Music, Chapman’s publishing designee, as the copyright claimants in
12 Composition.

13 18. In or around May 2016, SBK’s rights in the Composition transferred
14 back to Chapman, making her the sole owner of the copyright in the Composition.

15 **The Infringing Work**

16 19. Upon information and belief, Maraj recorded the Infringing Work with
17 the intention of including it on her album *Queen*, which she released on or about
18 August 10, 2018.

19 20. The Infringing Work incorporates the lyrics and vocal melody of the
20 Composition, its most recognizable and memorable parts. Maraj recorded the
21 Infringing Work using these parts of the Composition without first seeking the
22 authorization to do so.

23 21. The Composition’s lyrics and vocal melody comprise approximately
24 half of the Infringing Work, and are easily recognizable and identifiable as
25 Chapman’s.

26 22. The amount and substantiality of the use as compared to the
27 Composition is significant. Indeed, the Infringing Work uses almost all of the
28

1 Composition’s lyrics, demonstrating that the two works are strikingly similar.¹

2 23. It was only after Maraj recorded the Infringing Work that she and/or
3 her representatives sought Chapman’s consent to use the Composition.

4 24. On or around June 26, 2018, a representative from DMG Clearances,
5 Inc. (“DMG”) sent Chapman’s business managers and administrators of her
6 publishing rights an e-mail informing them that she had an “A LIST artist” who
7 wanted to use the Composition, and asking if Chapman was still on a “do not
8 sample or interpolate list”.

9 25. On or around July 10, 2018, in response to a request for more
10 information regarding the request, the representative from DMG e-mailed a letter to
11 Chapman’s business manager, stating that she was “working on a sample clearance
12 for . . . recording artist Nicki Minaj”.

13 26. In the same letter, the representative admitted, “In the song . . . [Maraj]
14 *has used interpolations from [the Composition].*” (Emphasis added) The
15 representative continued, “Because of the nature of this clearance, the rights that we
16 are looking to secure include the right to use this sample in our new composition in
17 all audio configurations, now known or hereinafter devised, throughout the world,
18 in perpetuity including music video rights and digital downloads and ring tones/ring
19 tunes.”

20 27. On or around July 16, 2018, Chapman, through her business managers,
21 notified DMG that she would not consent to the use of the Composition in the
22 Infringing Work.

23 28. Notwithstanding the clear and unequivocal denial of the requested
24 license, on or around July 27, 2018, Gee Roberson, who identified himself as
25 Maraj’s manager, e-mailed Chapman’s business managers, requesting that they
26 connect Chapman with Maraj to discuss an “idea [of Maraj’s] that is one of the

27 ¹ A chart comparing the lyrics of the Composition with the lyrics of the Infringing
28 Work is appended hereto as **Exhibit 1**.

1 most personal for her that was inspired by [Chapman’s] art that [Maraj] would like
2 the opportunity to touchbase (sic) with [Chapman] about.” Roberson followed up
3 on his e-mail with a phone call to Chapman’s business manager.

4 29. Despite the communications between DMG and Roberson, on the one
5 hand, and Chapman’s representatives, on the other hand, and the blatant use of the
6 Composition in the Infringing Work, on or around July 31, 2018, Maraj tweeted
7 that she “had no clue [the Infringing Work] sampled the legend #Tracy Chapman –
8 do I keep my date & lose the record? Or do I lose the record & keep my date? [D]o
9 we push #Queen back 1 week (sic)? Ugh! I’m torn, y’all help”. The tweet has since
10 been deleted.

11 30. On information and belief, on the same day, Maraj published another
12 tweet in which she reached out to Chapman to ask her to clear the license to use the
13 Composition in the Infringing Work.

14 31. On information and belief, on the same day, Maraj also asked her
15 Twitter followers to vote on whether to delay the release of the then-forthcoming
16 album *Queen* in order to obtain the necessary license for the Infringing Work, or to
17 release *Queen* without the Infringing Work.

18 32. On or around August 8, 2018, Peter Bittenbender called Chapman’s
19 attorney to discuss the Infringing Work and *Queen*. On the call, Bittenbender noted
20 that he was asked to telephone Chapman’s attorney on behalf of the producer of the
21 Infringing Work.

22 33. Following that conversation, Chapman’s attorney sent a confirmatory
23 e-mail to Bittenbender, copying Roberson, to confirm (again) that Chapman had not
24 licensed the use of the Composition.

25 34. On August 10, 2018, Maraj commercially released *Queen* without the
26 Infringing Work.

27 35. On or around the same day, and in response to Chapman’s attorney’s
28 e-mail, Roberson confirmed that he already had been “made aware of the denied

1 use” of the Composition in the Infringing Work.

2 36. On information and belief, on August 11, 2018, Maraj again took to
3 Twitter, this time tweeting, “Sis said no”, apparently referring to Chapman’s
4 continued denial of Maraj’s request to use the Composition.

5 37. Nevertheless, on information and belief, Maraj, or someone acting at
6 her direction, reproduced and distributed the Infringing Work to Taylor with the
7 understanding and expectation that Taylor would play the Infringing Work and
8 thereby promote both it and *Queen*.

9 38. On August 11, 2018, Taylor published a series of tweets on Twitter,
10 teasing the Infringing Work’s public release on his HOT 97 radio show, repeatedly
11 indicating that Maraj gave him a copy of the Infringing Work.

12 39. Specifically, at 10:55 a.m. (PT) on August 11, 2018, Taylor tweeted,
13 “Shhhhhhhh!!!! TONIGHT 7PM!!! NICKY GAVE ME SOMETHING!!!
14 @nickiminaj ft @nas !!! (NOT ON HER ALBUM!) GONNA STOP THE CITY
15 TONIGHT!!!!!!!!!!!!!!!!!!!!”

16 40. At 11:34 a.m. (PT) on August 11, 2018, Taylor tweeted,
17 “Shhhhhhhh!!!! TONIGHT 7PM!!! NICKI GAVE ME SOMETHING!!!
18 @nickiminaj ft @nas !!! (NOT ON HER ALBUM!) GONNA STOP THE CITY
19 TONIGHT!!!!!!!!!!!!!!!!!!!!”

20 41. At 12:29 p.m. (PT) on August 11, 2018, Taylor tweeted,
21 “Shhhhhhhh!!!! TONIGHT 7PM!!! I GOT SOMETHING!!! @nickiminaj ft @nas
22 !!! (NOT ON HER ALBUM!) GONNA STOP THE CITY TONIGHT!!!!!!!!!!!!!!!!!!!!”
23 At the end of the tweet, Taylor included an link to his Instagram account, where he
24 had an identical Instagram post.

25 42. At 2:36 p.m. (PT) on August 11, 2018, Taylor responded to a tweet in
26 which a user asked, “Anyone have a link or know how to listen to @funkflex
27 tonight at 7pm live for when that @NICKIMINAJ and @Nas song drops?” by
28 saying, “Hot97 App!!!!”

1 43. At 7:32 p.m. (PT) on August 11, 2018, Taylor again tweeted,
2 “EXCLUSIVE: @FunkFlex Debuts NEW @NickiMinaj Ft. Nas - Sorry -
3 <http://tinyurl.com/y9shont9> #IFWT”. The link provided in the tweet connects to
4 Taylor’s website, which, until recently, included an embedded video player that
5 played the Infringing Work.

6 44. On information and belief, Taylor played the Infringing Work on air
7 on his radio show on HOT 97 on the evening of August 11, 2018.

8 45. After Taylor played the Infringing Work, many Internet users
9 reproduced the Infringing Work, and published it on several different websites.

10 46. Additionally, on information and belief, on August 13, 2018, portions
11 of the Infringing Work, including portions that use the Composition, were played
12 on the “Breakfast Club” radio show on another popular New York City radio
13 station, Power 105.1.

14 **The Harm Caused By Maraj**

15 47. The decision to grant or not grant a license for the use of a
16 composition in a derivative work is multi-faceted. Among other considerations that
17 factor into such a decision are (1) whether the author whose composition would be
18 used wants to be associated with the derivative work or the artists featured on the
19 work; (2) the amount of compensation offered; and (3) the proposed use’s likely
20 effect on the market, including whether it will positively or negatively affect future
21 demand for the use of the composition in question.

22 48. As a result of the unauthorized use of the Composition in the
23 Infringing Work and the subsequent distribution of the Infringing Work despite
24 Chapman’s clear and repeated denials of Maraj’s license requests, Maraj
25 wrongfully deprived Chapman of the right and opportunity to decide whether to
26 allow the use of the Composition, and, if so, on what terms. Maraj, thus, has
27 caused Chapman to incur substantial injury, loss and damage as a result of her
28 wrongdoing.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIRST CLAIM FOR RELIEF
(Copyright Infringement Against Maraj and Does 1-10)

49. Chapman repeats and realleges each and every allegation contained in Paragraphs 1 through 48 of the Complaint as if fully set forth herein.

50. Chapman is the exclusive owner of the copyright in the Composition, and, as such, has the exclusive rights under the Copyright Act, among other things, to reproduce, distribute, prepare derivative works from and otherwise exploit the Composition, and to allow or not allow third parties to exercise such rights.

51. Chapman never authorized Maraj or anyone working with her, for her, on her behalf, or at her direction to use the Composition in any manner. To the contrary, Chapman, through her representatives, denied Maraj’s requests to license the Composition for use in the Infringing Work.

52. Despite the foregoing, Maraj, among other things, prepared the Infringing Work using the Composition, thereby infringing Chapman’s exclusive right under the Copyright Act to prepare derivative works from the Composition.

53. Additionally, upon information and belief, Maraj thereafter reproduced the Infringing Work and distributed it, thereby infringing Chapman’s exclusive rights under the Copyright Act to reproduce and distribute the Composition.

54. Maraj’s infringement of Chapman’s rights under the Copyright Act was deliberate and willful.

55. The fact that the Infringing Work does not appear on *Queen* does not relieve Maraj of liability to Chapman for her infringement or make Maraj’s wrongdoing any less deliberate and willful.

56. By reason of Maraj’s infringement, Chapman has sustained substantial injury, loss and damage in an amount to be determined at trial, and, upon information and belief, Maraj has derived income and profits to which she is not entitled.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Chapman hereby demands her right to trial by jury of all claims in this Action triable by jury.

Dated: October 22, 2018

MANATT, PHELPS & PHILLIPS, LLP

By: s/ Robert A. Jacobs

Robert A. Jacobs
Maura K. Gierl

Attorneys for Plaintiff
TRACY CHAPMAN

EXHIBIT 1
Comparison Chart
(Identical lyrics bolded)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<i>Baby Can I Hold You</i> (the Composition)	<i>Sorry</i> (the Infringing Work)
Sorry	Hey, baby
Is all that you can't say	Even though you break my heart
Years gone by and still	I still love you
Words don't come easily	Sorry
Like sorry like sorry	Is all that you can't say
	Years gone by and still
Forgive me	Words don't come easily
Is all that you can't say	Like forgive me (forgive me)
Years gone by and still	And you can say, baby (baby)
Words don't come easily	My baby, can I hold you tonight?
Like forgive me forgive me	And maybe if I told you the right words
	Ooh, at the right time
But you can say baby	You'd be Nas
Baby can I hold you tonight	Ayo
Maybe if I told you the right words	That bitch is always flippin'
At the right time you'd be mine	You n****s never listen
I love you	We make a perfect team
Is all that you can't say	Balling Jordan and Scottie Pippen
Years gone by and still	But I'ma let you dip in
Words don't come easily	That wax sauce drippin'
Like I love you I love you	Said that when you with a boss bitch,
	now you can tell the difference
But you can say baby	You be like jungle digger
Baby can I hold you tonight	I don't want another n****a
Maybe if I told you the right words	I wanna make you 'bout a legend, but I
Ooh, at the right time you'd be mine	make you bigger
	Tinkerbell, Peter Pan
Baby can I hold you tonight	No bitches badder than me when I pull
Maybe if I told you the right words	up
At the right time you'd be mine	Got 'em screaming like a temper tan'
	Ayo, DJ, drop the beat
You'd be mine	My gun didn't fall but I drop the heat
	I love how we kept it on the low, mad
You'd be mine	discreet (I'm in a rush!)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<i>Baby Can I Hold You</i> (the Composition)	<i>Sorry</i> (the Infringing Work)
	Pass me the keys to my jeep (truck) I hit ‘em with it, I’ma kill ‘em with that wine wine Ain’t losin’ watches, but with me, he always find time We keep it classy when we eatin’ it’s that fine dine But between love and hate, baby, it’s a fine line Sorry Is all that you can’t say Years gone by and still Words don’t come easily Like forgive me (forgive me) And you can say, baby (baby) My baby, can I hold you tonight? And maybe if I told you the right words Ooh, at the right time You’d be Nas A mack I used to mack with the MAC on me Project parties, lights off, mad horny Dutty wine and feel the gun I’m hidin’ She still grindin’ on me, smilin’ at me I’m like “Hi, I’m Nasty” “God bless ya, met ya” Thought you were sexy as ever Flexing with your ex, I couldn’t disrespect ya’ Later on, I undress ya, couldn’t wait to sex ya’ Made a n***a wait so long, but it was special Light travel faster than sound Lightning strike one second every point two miles So when you first saw me emerge from a weed cloud

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<i>Baby Can I Hold You</i> (the Composition)	<i>Sorry</i> (the Infringing Work)
	Electricity touch your soul, that's how I get down Gangsta love Completing each other Touching tongues so close, we could breathe for each other Untouchable boy with the illustrious girl But maybe being together's too much for the world, sorry Sorry Is all that you can't say Years gone by and still Words don't come easily Like forgive me (forgive me) And you can say, baby (baby) My baby, can I hold you tonight? And maybe if I told you the right words Ooh, at the right time You'd be Nas