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10 SYMETTRICA ENTERTAINMENT, LTD.

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 SYMETTRICA ENTERTAINMENT, ) Case No.: 2:19-cv-1192  
14 LTD., a United Kingdom limited )  
15 company, ) **PLAINTIFF SYMETTRICA**  
16 ) **ENTERTAINMENT, LTD.’S COMPLAINT**  
17 ) **FOR:**  
18 ) **1. DECLARATORY RELIEF – FAIR USE;**  
19 ) **2. 17 U.S.C. § 512(F)**  
20 ) **MISREPRESENTATION; and**  
21 ) **3. INTENTIONAL INTERFERENCE**  
22 ) **WITH CONTRACTUAL RELATIONS**  
23 ) **DEMAND FOR JURY TRIAL**  
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112 Plaintiff,  
v.  
113 UMG RECORDINGS, INC., a  
114 Delaware corporation,  
115 Defendant.

1 Plaintiff SYMETTRICA ENTERTAINMENT, LTD. (“Symettrica” or “Plaintiff”),  
2 by and through its undersigned counsel, hereby files its Complaint against Defendant  
3 UMG RECORDINGS, INC. (“Universal” or “Defendant”), and in support thereof, states  
4 as follows:

5 **NATURE OF ACTION**

6 1. This action arises out of Universal’s unlawful efforts to censor free speech  
7 through the intentional misuse of copyright law.

8 2. Plaintiff produced and owns the rights to a documentary film documenting  
9 the life and career of the global musical icon Aubrey Drake Graham p/k/a Drake  
10 (“Drake”) entitled *Drake: Rewriting the Rules* (the “Documentary”).

11 3. Universal has attempted to suppress the Documentary by serving bad faith  
12 and misleading takedown notices to Netflix®, iTunes® and Amazon Prime Video®,  
13 unlawfully demanding that those platforms cease exhibiting the Documentary.

14 4. Coerced by Universal’s baseless blanket threats of liability, Netflix®,  
15 iTunes® and Amazon Prime Video® have in fact removed the Documentary from their  
16 platforms as a matter of course.

17 5. Universal served these baseless takedown notices under the guise of alleged  
18 copyright infringement because the Documentary uses short clips of Drake’s music and  
19 videos.

20 6. However, as Universal is well aware, Plaintiff’s use of brief excerpts of  
21 Drake’s music and videos to illustrate points and commentary in the Documentary clearly  
22 falls within the parameters of the fair use laws and constituted fair use.

23 7. In reality, Universal’s actual motivation in sending the takedown notices was  
24 not its manufactured and spurious claims of “copyright infringement”. Rather, Universal  
25 intentionally misused the takedown process to silence and suppress viewpoints and  
26 speech in the Documentary with which Universal and/or Drake apparently disagree.

27 8. As Universal’s singular intention in reflexively dispatching the takedown  
28 notices was to suppress Plaintiff’s expressive activities in distributing the Documentary

1 to the public, Universal did not undertake the requisite good faith inquiry into whether  
2 Plaintiff's use of brief excerpts and short clips of Drake's music in the Documentary  
3 constituted fair use prior to serving the takedown notices.

4 9. Aware that it did not conduct or intend to conduct the requisite fair use  
5 analysis before serving the takedown notices, Universal's takedown notices were served  
6 in bad-faith and solely to cause Netflix<sup>®</sup>, iTunes<sup>®</sup> and Amazon Prime Video<sup>®</sup> to remove  
7 the Documentary from public exhibition for purposes of suppressing Plaintiff's free  
8 speech.

9 10. Universal's censorious misuse of copyright law to subvert free speech has  
10 effectively removed the Documentary from meaningful public exhibition, causing  
11 substantial harm and damage to Plaintiff while further interfering with Plaintiff's  
12 contractual rights and obligations.

### 13 **THE PARTIES**

14 11. Plaintiff Symettrica is a company organized and existing under the laws of  
15 the United Kingdom.

16 12. Plaintiff Symettrica is an international media production company  
17 specializing in drama-documentaries and factual shows for a global audience with  
18 particular emphasis on crime, music & entertainment, history and education.

19 13. Defendant Universal is a corporation organized and existing under the laws  
20 of the State of Delaware that conducts substantial business in the State of California.

21 14. Defendant Universal is global music corporation that is a subsidiary of the  
22 French media conglomerate Vivendi SA.

23 15. Defendant Universal's global corporate headquarters are located in Santa  
24 Monica, California.

25 16. Defendant Universal is considered one of the "Big Three" record labels,  
26 along with Sony Music and Warner Music Group.

### 27 **JURISDICTION AND VENUE**

28 17. This Court has original subject matter jurisdiction over this claim pursuant to

1 the Copyright Act (17 U.S.C. §§ 101 *et seq.*), 28 U.S.C. §§ 1331, 1338 and 2201(a).

2 18. Defendant is subject to the general and specific jurisdiction of this Court.

3 19. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b)(1),  
4 28 U.S.C. § 1391(c), and pursuant to 28 U.S.C. § 1391(b)(2) as a substantial part of the  
5 events or omissions giving rise to the claims asserted in this action occurred in this  
6 Judicial District, including with respect to Defendant's tortious interference with  
7 Plaintiff's contractual dealings and exploitation of its intellectual property, and Defendant  
8 resides and conducts ongoing and continuous business activities in this State and District.

9 **FACTUAL ALLEGATIONS**

10 20. In or around 2018, Plaintiff developed and produced the Documentary.

11 21. The Documentary documents and depicts the life and career of Drake,  
12 chronicling Drake's rise and transition from a child actor to become one of today's most  
13 popular musical artists.

14 22. The Documentary sparingly utilizes short music video clips, song clips, and  
15 stills from Drake's oeuvre to demonstrate specific points of commentary and criticism in  
16 the Documentary.

17 23. Prior to allowing the Documentary to be released to the public, Plaintiff  
18 retained the services of one of the most prominent, reputable and experienced clearance  
19 and copyright law firms in the United States to provide a fair use analysis.

20 24. That law firm performed a comprehensive fair use analysis of the  
21 Documentary, including reviewing the Documentary itself, the time coded video file of  
22 the Documentary, and a fair use log that systematically catalogued all uses of any  
23 third-party music, video or other creative or expressive works contained in the  
24 Documentary.

25 25. After conducting this rigorous and through analysis, the law firm  
26 memorialized the results of its analysis in an opinion letter, which set forth well sourced  
27 and cited legal analysis opining that Plaintiff's use of short music video clips, song clips,  
28 and stills from Drake's oeuvre to illustrate points and commentary in the Documentary

1 fell within the parameters of the fair use laws and constituted fair use (the “Fair Use  
2 Opinion Letter”).

3 26. The Fair Use Opinion Letter noted that the Documentary sparingly uses  
4 unlicensed materials to illustrate different points being made in the Documentary by the  
5 narration and various interview subjects, and that the Documentary used no more of the  
6 unlicensed materials than was needed to illustrate the points being made in the  
7 Documentary.

8 27. The Fair Use Opinion Letter also noted that the Documentary caused no  
9 damage to the potential market for the underlying works because there is no damage to  
10 underlying works for highly transformative uses.

11 28. Upon receipt of the Fair Use Opinion Letter and other efforts to ensure that  
12 the Documentary did not infringe any third-party rights, Plaintiff caused the  
13 Documentary to be distributed and ultimately exhibited and/or offered for sale or license  
14 on the Netflix<sup>®</sup>, iTunes<sup>®</sup> and Amazon Prime Video<sup>®</sup> platforms.

15 29. Upon information and belief, Universal owns and/or administers the  
16 copyrights in Drake’s musical compositions and videos.

17 30. Upon information and belief, Universal is a sophisticated music industry  
18 company with extensive experience with copyright law, employing attorneys and other  
19 staff who are well-versed in and deeply familiar with copyright law, including the Digital  
20 Millennium Copyright Act’s Section 512 “good faith” requirements and corresponding  
21 obligation to submit Section 512 notices under penalty of perjury, as well as the  
22 principles and application of the fair use doctrine.

23 31. Universal knew, or should have known, the precise contours of the fair use  
24 analysis it was required to undertake prior to issuing the takedown notices.

25 32. Indeed, in 2016, Universal engaged in similar bad-faith conduct and was a  
26 party to the case in which the Ninth Circuit admonished that copyright holders cannot  
27 shirk their duty “to consider - in good faith and prior to sending a takedown notification -  
28 whether allegedly infringing material constitutes fair use, a use which the DMCA plainly

1 contemplates as authorized by the law.” See *Lenz v. Universal Music Corp.*, 815 F.3d  
2 1145, 1157 (9th Cir. 2016).

3 33. Nonetheless, based upon what would appear, upon information and belief, to  
4 be blind obedience to Drake’s directive to suppress the Documentary at all costs, the  
5 lessons the Ninth Circuit sought to impart upon Universal in *Lenz* have since been cast  
6 aside. Only a few years later, Universal has once again failed to undertake the requisite  
7 good faith analysis of fair use before reflexively issuing bad-faith takedown notices  
8 strategically designed to suppress disfavored speech.

9 34. On or around January 16, 2019, the Documentary was publicly released on  
10 Netflix®, iTunes® and Amazon Prime Video®.

11 35. Upon information and belief, the very next day, on or around January 17,  
12 2019, Universal served, or caused to be served, takedown notices and related legal  
13 demands to Netflix®, iTunes® and Amazon Prime Video®, demanding that those  
14 platforms immediately remove the Documentary from exhibition under the guise of  
15 copyright infringement.

16 36. Universal served these takedown notices despite its knowledge that the  
17 Documentary’s sparing use of limited, brief excerpts of music and videos featuring Drake  
18 was non-infringing fair use.

19 37. Specifically, on January 17, 2019, Universal’s Director of Business & Legal  
20 Affairs, Nicholas Tardif, sent a demand letter to Netflix® demanding the immediate  
21 removal of the Documentary “from all platforms, including the Netflix website and any  
22 apps” (the “Netflix Takedown Request”). A true and correct copy of the Netflix®  
23 Takedown Request is attached hereto as Exhibit “A”.

24 38. On or around the same date, another Universal representative, Jerry Suarez,  
25 served a takedown request to iTunes® demanding the immediate removal of the  
26 Documentary from the iTunes® platform (the “iTunes® Takedown Request”).

27 39. At the same time, a different Universal representative, Spencer Meade, also  
28 served a takedown request to Amazon Prime Video®, demanding the immediate removal

1 of the Documentary from the Amazon Prime Video<sup>®</sup> platform (the “Amazon Prime  
2 Video<sup>®</sup> Takedown Request”) (collectively, with the Netflix<sup>®</sup> Takedown Request and  
3 iTunes<sup>®</sup> Takedown Request, the “Takedown Requests”).

4 40. Before dispatching three different people to concurrently send three  
5 independent Takedown Requests, Universal failed to consider in good faith the issue of  
6 fair use. Indeed, it appears Universal took deliberate actions to avoid learning that the  
7 Documentary’s concurrent use of brief excerpts of certain music video clips and  
8 recording clips with commentary or criticism constituted paradigmatic forms of  
9 transformative fair use.

10 41. Around the time Universal issued the Takedown Notices, Universal  
11 contacted the attorneys who issued the Fair Use Opinion Letter a single time. However,  
12 despite repeated attempts by the fair use and clearance attorneys to respond to  
13 Universal’s single communication, all such overtures were ignored.

14 42. As such, seemingly by design, Universal never spoke or coordinated with  
15 the attorneys who issued the Fair Use Opinion Letter, never requested a copy of the Fair  
16 Use Opinion Letter, and did not review the Fair Use Opinion Letter before serving the  
17 Takedown Requests. Similarly, Universal never even afforded Plaintiff an opportunity to  
18 address any of Universal’s purported concerns before serving the Takedown Requests.

19 43. Universal’s perfunctory attempt to contact the fair use and clearance  
20 attorneys, on a single occasion, coupled with its subsequent refusal to respond to those  
21 same attorneys’ responsive communications, strongly indicates that Universal’s single  
22 communication was nothing more than a sham attempt at superficial compliance with its  
23 duties to inquire as to fair use.

24 44. In sum, Universal did not conduct the requisite good faith analysis of the fair  
25 use issues here before serving the Takedown Requests. Indeed, it is unclear from the  
26 Takedown Notices as to whether Universal had even watched the Documentary prior to  
27 issuing the wrongful Takedown Notices. If Universal had watched the Documentary, it  
28 could not have formed a subjective good faith belief that the Documentary’s use of the

1 video and recording clips constitutes copyright infringement.

2 45. This is likely because Universal's motivation has nothing to do with  
3 purported "copyright infringement", and everything to do with placating its artist Drake  
4 by attempting to suppress any commentary or criticism of Drake that does not emanate  
5 from Universal and/or have Universal's express imprimatur and approval.

6 46. This is quintessential censorship of free speech, with Universal's bad-faith  
7 Takedown Requests embodying a censorious abuse of the takedown notice process.

8 47. In issuing these bad faith Takedown Requests for the purpose of censorship  
9 and suppression of free speech, Universal also purposefully and knowingly interfered  
10 with Plaintiff's contractual relations with its distributor, thereby causing substantial harm  
11 and damage to Plaintiff.

12 48. Upon information and belief, by authorizing the Takedown Requests,  
13 Universal affirmed under penalty of perjury that its notices of infringement were accurate  
14 and that it was authorized to make the infringement claims thereunder.

15 49. Upon information and belief, the iTunes® Takedown Request and the  
16 Amazon Prime Video® Takedown Request precisely tracked the language specified for a  
17 notice of claimed infringement under Section 512(c)(3) of the DMCA.

18 50. Upon information and belief, iTunes® and Amazon Prime Video® treated the  
19 demands as a request for takedown pursuant to the Section 512(c)(3) of the DMCA.

20 51. As a result, on or around January 18, 2019, Netflix, iTunes and Amazon  
21 advised Plaintiff that they had received the Takedown Requests, each informing Plaintiff  
22 that because these platforms cannot be involved with or injected into intellectual property  
23 disputes, they had no choice but to suspend the exhibition of the Documentary on their  
24 respective platforms.

25 52. On or around January 21, 2019, Plaintiff and its distributor causes responses  
26 to be sent to Netflix®, iTunes® and Amazon Prime Video®, advising each that Plaintiff  
27 was completely within its rights to distribute the Documentary and that the producers of  
28 the Documentary had secured all necessary rights and clearances for the Documentary.



1 53. However, based upon Defendant's bad faith threats, each of Netflix®,  
2 iTunes® and Amazon Prime Video® complied with Universal's Takedown Requests and  
3 completely removed the Documentary from their respective platforms.

4 54. Upon information and belief, Drake himself demanded that Universal seek  
5 the removal of the Documentary from Netflix®, iTunes® and Amazon Prime Video®.

6 55. Upon information and belief, Universal sent the Takedown Requests at  
7 Drake's behest, based not on the particular characteristics of the Documentary or any  
8 good-faith belief that the Documentary actually infringed a copyright, and certainly not  
9 based on any analysis that this was not fair use, but solely out of a desire to suppress and  
10 censor this unauthorized Documentary from the public.

11 **COUNT I**  
12 **DECLARATORY RELIEF – FAIR USE**  
13 **(17 U.S.C. §§ 101, *et seq.*)**

14 56. Plaintiff repeats and re-alleges each and every allegation contained in  
15 paragraphs 1 through 55 as if fully set forth herein.

16 57. Pursuant to 28 U.S.C. § 2201 and 17 U.S.C. § 101 *et seq.*, this Court may  
17 declare the rights and other legal relations of any interested party seeking such  
18 declaration, whether or not further relief is or could be sought. Any such declaration shall  
19 have the force and effect of a final judgment or decree and shall be reviewable as such.

20 58. An actual controversy has arisen and now exists between Plaintiff and  
21 Defendant as to whether Plaintiff's use in the Documentary of brief excerpts of certain  
22 music video clips and recording clips featuring the musical performance of Drake to  
23 illustrate various viewpoints asserted in the Documentary by the narration and also as  
24 expressed by various interview subjects, which copyrights are, upon information and  
25 belief, owned by Universal, constitutes fair use.

26 59. Plaintiff's use of all unlicensed music video clips and song clips in the  
27 Documentary falls within the parameters of the fair use laws and therefore constitutes fair  
28 use.



1 68. Universal had, or should have had, actual subjective knowledge that the  
2 contents of the Documentary did not infringe any copyrights on the date it sent the  
3 Takedown Requests.

4 69. With this actual subjective knowledge, Universal acted in bad faith when it  
5 sent the Takedown Requests, knowingly and materially misrepresenting that it had  
6 definitively concluded that the video was infringing.

7 70. In the alternative, Universal should have known, if it had acted with  
8 reasonable care or diligence, or would have had no substantial doubt, had it been acting  
9 in good faith, that the Documentary did not infringe any copyrights on the date it sent the  
10 Takedown Requests.

11 71. Universal violated 17 U.S.C. § 512(f) by knowingly and materially  
12 misrepresenting that the Documentary infringed its copyrights.

13 72. As a direct and proximate result of Universal's actions, Plaintiff has been  
14 injured substantially and irreparably. Such injury includes, but is not limited to, lost  
15 revenues and profits associated with the suspension of its distribution of the  
16 Documentary, and harm to its free speech rights under the First Amendment.

17 **COUNT III**  
18 **INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS**

19 73. Plaintiff repeats and re-alleges each and every allegation contained in  
20 paragraphs 1 through 72 as if fully set forth herein.

21 74. Plaintiff licensed the Documentary to Netflix<sup>®</sup> and listed the Documentary  
22 for purchase on iTunes<sup>®</sup> and Amazon Prime Video<sup>®</sup> pursuant to valid contracts with its  
23 distributors.

24 75. Universal knew of the existence of these contracts.

25 76. Universal intentionally induced a breach or disruption of the contractual  
26 relationship by disingenuously issuing its Takedown Requests, falsely asserting that the  
27 Documentary infringed its copyrights.

28 77. As a result, Netflix<sup>®</sup>, iTunes<sup>®</sup> and Amazon Prime Video<sup>®</sup> have improperly

1 suspended their exhibition of the Documentary and, in turn, suspended making their  
2 license payments to Plaintiff's distributor and to Plaintiff, thereby interfering with  
3 Plaintiff's rights under its contracts with its distributor and depriving Plaintiff of the  
4 benefit of the bargain of its distributor's contracts with Netflix<sup>®</sup>, iTunes<sup>®</sup> and Amazon  
5 Prime Video<sup>®</sup>.

6 78. Universal's wrongful interference with the exhibition of the Documentary  
7 has interfered with, and harmed, Plaintiff's contractual relations with its distributor.

8 79. Universal's wrongful interference with the exhibition of the Documentary  
9 has caused substantial harm and damage to Plaintiff. Plaintiff has been and is likely to  
10 continue to be injured as a result of Universal's bad-faith actions.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiff SYMETTRICA ENTERTAINMENT, LTD. respectfully  
13 requests that this Court enter judgment in its favor and as against Defendant UMG  
14 RECORDINGS, INC. as follows:

- 15 i. That the Court enter Declaratory Judgment, pursuant to the Federal  
16 Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 and the Copyright  
17 Act 17 U.S.C. §§ 101, *et seq.*, that Plaintiff's use of copyrighted works in its  
18 Documentary is fair use;
- 19 ii. Damages according to proof;
- 20 iii. For costs and reasonable attorney's fees pursuant to 17 U.S.C. § 512(f),  
21 other portions of the Copyright Act including Section 505, or otherwise as  
22 allowed by law; *and*
- 23 iv. For such other and further relief as the Court deems just and proper.

24 **DEMAND FOR JURY TRIAL**

25 Plaintiff hereby demands a trial by jury on all issues so triable.  
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1 **DATED:** February 15, 2019

Respectfully submitted,

2 **SINGH, SINGH & TRAUBEN, LLP**  
3 **MICHAEL A. TRAUBEN**

4  
5 By:  /s/ Michael A. Trauben  
6 Michael A. Trauben

7 *Attorneys for Plaintiff*  
8 SYMETTRICA ENTERTAINMENT, LTD.

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