UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 17-6882-MWF (ASx) **Date: December 9, 2021**
Title: Sean Hall et al. v. Taylor Swift et al.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Rita Sanchez	Not Reported
Attorneys Present for Plaintiff:	**Attorneys Present for Defendants:**
None Present	None Present

Proceedings (In Chambers): ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [92]

Before the Court is Defendants Taylor Swift, Karl Martin Sandberg, Karl Johan Schuster, Sony/ATV Music Publishing, LLC, Kobalt Music Publishing America, Inc., Big Machine Label Group, LLC, and Universal Music Group, Inc.'s Motion for Summary Judgment (the "Motion"), filed July 19, 2021. (Docket No. 92, 92-1). Plaintiffs Sean Hall d.b.a. Gimme Some Hot Sauce Music and Nathan Butler d.b.a. Faith Force Music filed an Opposition on August 23, 2021. (Docket No. 98). Defendants filed a Reply on September 13, 2021. (Docket No. 99).

For the reasons below, the Motion is **DENIED**. Alhough Defendants have made a strong closing argument for a jury, they have not shown that there are no genuine issues of triable fact such that Defendants are entitled to judgment as a matter of law.

The Request for Judicial Notice (Docket No. 92-113) is **GRANTED**.

The Evidentiary Objections (Docket Nos. 98-25, 99-13) are **OVERRULED**.

I. BACKGROUND

A. Factual Background

This Court has previously summarized the background of this case in connection with Defendants' motion to dismiss. (Docket No. 65). The following background is substantially the same and as such will be condensed.

In 2001, Plaintiffs co-authored the song entitled *Playas Gon' Play* ("*Playas*"). (Defendants' Statement of Uncontroverted Facts ("DSUF") No. 31 (Docket No. 92-2)). The song *Playas* was released to the public as a single from the female group 3LW's album in May 2001. (DSUF No. 32; Defendants' Response to Plaintiff's Statement of Genuine Disputes ("DRPD") No. 32 (Docket No. 99-12)). *Playas* became "a hit" following the release, including appearing on Billboard's Hot 100 chart for weeks along with being on video countdowns on television channels such as TRL and MTV. (Docket No. 1 ("Complaint")) ¶¶ 15–19).

In 2014, Defendants co-authored the musical combinations entitled *Shake it Off* ("*Shake*"), which Swift performed and recorded before it was released to the public in August 2014. (*Id.* ¶ 26; DSUF No. 34). *Shake* debuted at number one on Billboard's Hot 100 chart, remained there for 50 weeks, and has sold more than 9,000,000 copies to date. (Complaint ¶¶ 35–36).

A comparison of the lyrics at issue can be found below:

Playas	***Shake***
Playas, they gon' play	'Cause the players gonna play, play, play, play, play
And haters, they gonna hate	And the haters gonna hate, hate, hate, hate, hate
Ballers, they gon' ball	Baby, I'm just gonna shake, shake, shake, shake, shake
Shot callers, they gonna call	Shake it off
That ain't got nothing to do	Shake it off
With me and you	
That's the way it is	
That's the way it is	

> Heartbreakers gonna break, break, break, break, break
>
> And the fakers gonna fake, fake, fake, fake, fake
>
> Baby, I'm just gonna shake, shake, shake, shake, shake
>
> Shake it off
>
> Shake it off

(Motion at 9–10; Complaint ¶¶ 19–25, 27–28 (stating the original words are "Playas, they gonna play / And haters, they gonna hate", rather than using "gon'")).

This suit arises by way of Plaintiffs' allegation that Defendants have collectively infringed on Plaintiffs' musical composition copyright in *Playas* in creating *Shake,* based upon alleged lyrical and structural similarities between the compositions underlying the two songs. (Complaint ¶¶ 23–25, 27–30, 41–50; DSUF No. 36.; Plaintiffs' Genuinely Disputed Facts No. 43–69 (Docket No. 98-1 ("PGDF"))). Notably, Plaintiffs acknowledge that the concepts for *Playas'* chorus was firmly rooted in pop culture at the time *Playas* was released but nonetheless claim that Plaintiffs' combination of the words in question was an original work that was then copied by Swift in Defendants' creation of *Shake's* chorus. (Complaint ¶¶ 20, 25, 27–28, 42–50).

B. Procedural Background

Plaintiffs filed their Complaint before the Court on September 18, 2017. (*See generally* Docket No. 1). The Complaint alleges copyright infringement of the musical composition underlying *Playas* and seeks: (1) a judicial determination that Defendants have infringed on Plaintiffs' copyright, (2) damages, and (3) attorneys fees (*Id.*).

On January 3, 2018, Defendants filed a motion to dismiss Plaintiffs' claim on the ground that the disputed lyrics lacked originality to enjoy copyright protection. (Docket No. 20). Plaintiffs opposed the motion to dismiss and Defendants replied. (Docket Nos. 25, 28). The Court heard oral argument from the parties and subsequently granted the motion. (Docket Nos. 29–30).

After declining the opportunity to amend their Complaint, Plaintiffs appealed the dismissal to the Ninth Circuit. (Docket No. 38). The Ninth Circuit reversed the dismissal on the ground that the lyrics, as alleged in the Complaint, "plausibly alleged originality." (9th Circuit Memorandum (Docket No. 49) at 2). Based on the 9th Circuit Memorandum and additional briefings (Docket Nos. 59, 62–64), the Court denied Defendants' motion to dismiss, holding that Plaintiffs had "sufficiently alleged a protectable selection and arrangement or a sequence of creative expression." (Docket No. 65 at 2).

After Defendants filed their answer (Docket No. 66), the parties engaged in discovery and accumulated expert testimony pursuant to the Court's respective scheduling orders. (Docket Nos. 67–74, 79–81, 85–87). Defendants then filed this Motion on July 19, 2021. (Docket No. 92). Plaintiffs replied to the Motion on August 23, 2021, and Defendants replied to it on September 13, 2021. (Dockets No. 98–99).

II. LEGAL STANDARD

In deciding a motion for summary judgment under Rule 56, the Court applies *Anderson*, *Celotex*, and their Ninth Circuit progeny. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

The Ninth Circuit has defined the shifting burden of proof governing motions for summary judgment where the non-moving party bears the burden of proof at trial:

> The moving party initially bears the burden of proving the absence of a genuine issue of material fact. Where the non-moving party bears the burden of proof at trial, the moving party need only prove that there is an absence of evidence to support the non-moving party's case. Where the moving party meets that burden, the burden then shifts to the non-moving party to designate specific facts demonstrating the existence of genuine issues for trial. This burden is not a light one. The non-moving party must show more than the mere existence of a scintilla of evidence. The non-moving party must do more than show there is some "metaphysical doubt" as to the material facts at issue. In fact, the non-moving party must come forth with evidence from which a jury could reasonably render a verdict in the non-moving party's favor.

Coomes v. Edmonds Sch. Dist. No. 15, 816 F.3d 1255, 1259 n.2 (9th Cir. 2016) (quoting *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010)).

"A motion for summary judgment may not be defeated, however, by evidence that is 'merely colorable' or 'is not significantly probative.'" *Anderson*, 477 U.S. at 249-50.

"When the party moving for summary judgment would bear the burden of proof at trial, 'it must come forward with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at trial.'" *C.A.R. Transp. Brokerage Co. v. Darden Restaurants, Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (quoting *Houghton v. South*, 965 F.2d 1532, 1536 (9th Cir. 1992)).

III. DISCUSSION

A. Infringement

Defendants argue that they are entitled to summary judgment because Plaintiffs have failed to establish that *Shake* and *Playas* are substantially similar with respect to their musical compositions, as alleged in the Complaint. (Motion at 7; Complaint ¶¶ 42–43). Defendants argue that Plaintiffs' claims pertain to phrases and sequences in

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