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4

5 Plaintiff *in pro per*

6 **UNITED STATES DISTRICT COURT**
7 **SOUTHERN DISTRICT OF NEW YORK**

8 Betty Bynum, an individual,
9 Plaintiff,
10 v.

11 Penguin Random House LLC, a Delaware
12 company; Nancy Paulson Books; DOES 1-50,
inclusive
13 Defendants

Case No.

COMPLAINT FOR DAMAGES FOR:
1. COPYRIGHT INFRINGEMENT

DEMAND FOR JURY TRIAL

1 PLAINTIFF in the above-captioned action hereby alleges as follows:

2 **PARTIES**

3 1. Plaintiff Betty Bynum is, and at all times herein relevant was, an individual residing in
4 Los Angeles County, California, and the author of a wholly original book entitled "*I'm a Brilliant Little*
5 *Black Boy!*" Plaintiff is an avid and successful writer, having penned other works belonging to the same
6 collection of illustrated children's books designed to inspire youths of specified demographics, including
7 "*I'm a Pretty Little Black Girl!*" and "*I'm a Lovely Little Latina!*"

8 2. Defendant Penguin Random House, LLC is, and at all times herein relevant was, a
9 Delaware Limited Liability Company with its primary place of business in New York, New York.

10 3. Defendant Nancy Paulsen Books is, and at all times herein relevant was, a business
11 entity, form unknown, doing business in New York, New York.

12 4. Plaintiff is unaware of the true names and capacities of the Defendants sued herein as
13 DOES 1 through 50, inclusive, and for that reason, sues such Defendants under such fictitious names.
14 Plaintiff is informed, believes, and thereon alleges that such fictitiously named Defendants are
15 responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages as herein
16 alleged were proximately caused by the conduct of said Defendants. Plaintiff will seek to amend the
17 complaint when the names and capacities of such fictitiously named Defendants are ascertained. As
18 alleged herein, "Defendants" shall mean all named Defendants and all fictitiously named Defendants.

19 5. Plaintiff is informed, believes, and thereon alleges that Defendants at all times relevant to
20 this action were the agents, servants, partners, joint venturers and employees of each of the other
21 Defendants and in doing the acts alleged herein were acting with the knowledge and consent of each of
22 the other Defendants in this action. Alternatively, at all times herein relevant, each of the Defendants
23 conspired with each other to commit the wrongful acts complained of herein. Although not all of the
24 Defendants committed all of the acts of the conspiracy or were members of the conspiracy at all times
25 during its existence, each Defendant knowingly performed one or more acts in direct furtherance of the
26 objectives of the conspiracy. Therefore, each Defendant is liable for the acts of all of the other
27 conspirators.

JURISDICTION AND VENUE

6. This action arises under the Copyright Laws of the United States (Title 17, U.S.C. §101 *et seq.*).

7. This court has exclusive jurisdiction over this action under 28 U.S.C. §§1331 and 1338 in that this action involves claims arising under the Copyright Laws of the United States. To the extent that this action is based on related state claims, the Court has supplemental jurisdiction thereto under 28 U.S.C. §1367.

8. Venue is proper in this district pursuant to 28 U.S.C. §§1391 and 1400 in that Defendants transact business in New York County, New York.

STATEMENT OF FACTS

9. Plaintiff repeats, re-alleges, and incorporates by reference paragraphs 1 through 8 as though fully set forth herein.

10. In or about 2016, Plaintiff authored the wholly original book entitled *I'm a Brilliant Little Black Boy* ("the Work") with contribution by her son, Joshua B. Drummond, and illustrator Brian McGee. Mr. Drummond and Mr. McGee's contributions to the work are pursuant to valid work-made-for-hire agreements.

11. The Work was published in or about November 2016, and distributed by DreamTitle Publishing, an independent and community-based publishing house that Plaintiff runs out of her home.

12. The Work is the latest in Plaintiff's "*I'm a Girl!*" collection ("Collection"), following her first book published in 2013, "*I'm a Pretty Little Black Girl!*" and "*I'm a Lovely Latina!*," which was published in 2015.

13. The Collection is comprised of illustrated children's' books designed to inspire youths of a specified demographic and promote pride in children's' cultural identities.

14. Plaintiff registered the Work with the U.S. Copyright Office on September 4, 2020, (reg. no. TX0008893956).

15. Plaintiff is the owner of all copyright rights in and to the original creative work, *I'm a Brilliant Little Black Boy*, in all of its advancing, original, unique and protected permutations, and has

1 never assigned licensed, or otherwise transferred its copyright protection to any of the Defendants, nor
2 to any other third party.

3 16. Prior to the Work's publication, Plaintiff promoted the Work on several media channels,
4 most notably an appearance on the *Steve Harvey Show* on November 9, 2016. On information and belief,
5 at that time, average viewership for the *Steve Harvey Show* was approximately 3.5 million viewers per
6 episode.

7 17. A review of the Work was featured in *Kirkus Reviews* December 1, 2016 issue, and on its
8 website.

9 18. The Work received critical acclaim and celebrity endorsements from well-known figures
10 such as Denzel Washington and Samuel L. Jackson as part of the ##BBRilliant campaign in 2016.

11 19. The Work was even optioned for adaption to an animated series by Regina Hudlin,
12 producer of *The Boondocks*.

13 20. In addition to the above-mentioned critical acclaim, Plaintiff has enjoyed the success of
14 the Work in the marketplace. From Plaintiff's own Shopify account alone, the Work has sold about
15 15,780 copies.

16 21. The Work has also been available for purchase on major online retailers such as Target
17 and Amazon since shortly after its publication.

18 22. Upon information and belief, Defendants became aware of Plaintiff's work, had access to
19 it, and substantially imitated it.

20 23. On or about September 1, 2020, Defendants published *I Am Every Good Thing*, an
21 illustrated childrens' book that is strikingly similar to the Work.

22 24. *I am Every Good Thing* contains *inter alia*, the same copyrightable expression as the
23 Work in addition to numerous other similarities in the selection and arrangement of both protected and
24 non-protected elements.

25 25. The similarities between the Work and *I am Every Good Thing* are so striking that it is a
26 statistical impossibility that the former could have been created independently from the latter. These
27 similarities include, but are not limited to, the following:

- i. Size: both Works are 11 ½ x 9 ¼ inches in size;
 - ii. Length: both Works are 32 pages long;
 - iii. Cover: both works feature glossy covers with foil embossing.
- b. Theme, tone, and mood:
- i. Theme:
 1. The major theme of both works is the promotion of self-esteem and the conviction that young black boys have the potential to become anything they want in the world.
 2. Both works seek to build up and boost the self-esteem of young black boys by use of the themes of affirmation and self-empowerment, which are strong throughout both works. Even the titles start the same way, with a declaration of “I am” and a positive message.
 - ii. Tone and mood:
 1. Both works take on celebratory, earnest tones deliberately designed to uplift readers and empower them to live fully in the world.
 2. Both works share the desire to promote positive cultural representations of young black boys and do so effectively through text and illustration.
- c. Character, plot, and sequence of events:
- i. Character:
 1. The Work follows a young black boy named Joshua, who narrates his own story in the first person, and conveying the lessons he has learned about life, himself, and his Blackness, in short prose episodes accompanied by cartoon-like visual images. The story is not a conventional narrative with a beginning, middle, and end, but stand-alone segments that combine to provide a more expansive portrait of Joshua.
 2. *I am Every Good Thing* similarly presents a sequence of panels incorporating text and illustration. While there is no major protagonist, it

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