IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

TERESA LA DART, Plaintiff, v. TAYLOR SWIFT, TAYLOR SWIFT PRODUCTIONS, INC., Defendants.	)	Case No. 2:22-cv-02552-JTF-cgc

DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants Taylor Swift and Taylor Swift Productions, Inc. (collectively, "Defendants") move this Court for an Order dismissing with prejudice Plaintiff Teresa La Dart's Complaint containing a single count of copyright infringement for failure to state a claim upon which relief can be granted. In support of their Motion, Defendants state as follows.

INTRODUCTION

This is a lawsuit that never should have been filed, as it is legally and factually baseless. Put simply, the elements Plaintiff Teresa La Dart claims were infringed are neither covered by her copyright registration nor are they protectable under copyright law to begin with. Plaintiff claims that Defendants' work, *Lover Deluxe Album Version 4*—a book/diary accompanying Ms. Swift's 2019 album titled *Lover*—infringes Plaintiff's copyright in her book of poetry, titled *Lover*, by allegedly copying Plaintiff's book's format, cover format, introduction page format, inner book design, and back cover format. However, these allegedly-infringing elements, each a generic design format, are not subject to copyright protection. Thus, Defendants could not possibly have

infringed Plaintiff's copyright. Even if these elements were protectible under the Copyright Act, Plaintiff's copyright registration does not cover them and she does not have any rights to assert in those allegedly-infringing elements. These flaws are incurable, and no amendment or attempt to plead around these deficiencies can save Plaintiff's claim.

Further, even if the elements Plaintiff asserts were protectible (they are not), and Plaintiff had a copyright covering them (she does not), Plaintiff has not and cannot plead a plausible claim of access by Defendants to Plaintiff's work or substantial similarity between the two works—both required elements of the Sixth Circuit's test to establish unlawful copying. Indeed, Plaintiff has not identified a single instance where her book of poetry was available for Defendants to see and has not alleged that Defendants had any awareness of or access to her work prior to this lawsuit. Moreover, a comparison of the two at-issue works shows that there is no substantial similarity between them. Essentially, all Plaintiff has done in her Complaint is recite the elements of a claim for copyright infringement without any factual or legal bases to support them. This is woefully insufficient to adequately plead a cause of action and this case should be dismissed with prejudice.

FACTUAL BACKGROUND[1]

La Dart is the author and copyright claimant of her book of poetry, titled *Lover* (the "TLD Work"). Compl. ¶ 1. The TLD Work is a compilation of poems written by Plaintiff with pictures from Plaintiff's life scattered throughout. *See* **Exhibit A** (scan of entire TLD Work).[2] The TLD

[1] While Defendants deny many of the allegations in the Complaint, for purposes of this Motion only, non-conclusory factual allegations are taken as true.

[2] Plaintiff attached limited excerpts of the TLD Work and Swift Work to her Complaint. *See* Dkt. 1-3. For completeness, and because the intervening pages are pertinent to this Motion, Defendants have attached scans of the entirety of the TLD Work and Swift Work at Exhibits A and B, respectively. This Court may consider documents referred to in the Complaint, documents central to the Complaint, "public records, matters of which a court may take judicial notice, and letter decisions of governmental agencies." *Taylor v. Victoria's Secret Stores, Inc.*, No. 10-cv-2334, 2011 WL 13097641, at *3 (W.D. Tenn. Sept. 29, 2011) (citations omitted).

Work was published by AuthorHouse on January 12, 2010, and received copyright registration on February 5, 2010, under registration number TX0007143843. Compl. ¶¶ 1, 2. The TLD Work is registered as a literary work with the authorship being "text," and accordingly, Plaintiff's copyright registration is limited solely to the text of her book. *See* Dkt. 1-2. Plaintiff alleges that Ms. Swift's *Lover Deluxe Album Version 4* (the "Swift Work") infringes the TLD Work. However, Plaintiff does not allege Defendants copied any of the text in the TLD Work. *See* Compl. ¶¶ 8–9. Rather, Plaintiff alleges Defendants copied the TLD Work's format, including its cover format, introduction page format, inner book design, and back cover format, amounting to an "overall impression" of substantial similarity. *Id.*

Taylor Swift released her seventh studio album titled *Lover* on August 23, 2019. In conjunction with the *Lover* album release, Defendants released four versions of the *Lover Deluxe Album*. *See, e.g.*, TAYLOR SWIFT STORE, https://store.taylorswift.com/pages/deluxe-us (last visited February 3, 2023). Together, all four versions contain 120 pages (30 unique pages in each version) of Ms. Swift's personal diary entries from over the years. In addition to different diary entries, each version also has different photographs of Ms. Swift, organized in a collage format before and after the diary entries; different photographs used and placed beside the foreword; and different color themes used for the inner cover and introduction pages (pastel pink, purple, green, or blue). All four versions have the same front and back cover formats, same foreword, and same title font and placement throughout the works.[3] Plaintiff has limited her copyright claim only to Version 4 of the *Lover Deluxe Album*. *See* Compl.; *see also* Dkt. 1-3.

Ms. Swift is the author and copyright claimant of the Swift Work. The Swift Work consists of a foreword that Ms. Swift wrote, 30 unique pages of Ms. Swift's scanned entries from her

[3] Defendants are happy to provide copies of the four versions to the Court upon request.

personal diary over several years, pictures that Ms. Swift drew, and photographs from Ms. Swift's past. **Exhibit B** (scan of entire Swift Work). The Swift Work also includes several blank pages for the owner of that copy to write their own diary entries and a CD of the *Lover* album. *See* Ex. B. The Swift Work received copyright registration on September 3, 2019, under registration number SR0000856458. **Exhibit C**. The Swift Work is registered as a "unit of publication containing collective work(s) and other component element(s)," and accordingly, Defendants' copyright registration of the Swift Work protects the included sound recordings, photographs, front and back cover photographs, liner notes, and compilation of content. *See* Ex. C.

LEGAL STANDARD

A Rule 12(b)(6) motion permits Defendants "to test whether, as a matter of law, the plaintiff is entitled to legal relief even if everything alleged in the complaint is true." *Campbell v. Nationstar Mortg.*, 611 Fed. App'x 288, 291 (6th Cir. 2015). Plaintiff must plead "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *see Siefert v. Hamilton Cnty.*, 951 F.3d 753, 759 (6th Cir. 2020) (noting that factual allegations cannot "merely recite the elements of a cause of action"). Rather, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*quoting Twombly*, 550 U.S. at 570). "The complaint will be found plausible on its face only when 'the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Griham v. City of Memphis*, No. 2:21-cv-02506, 2022 WL 989175, at *1 (W.D. Tenn. Mar. 31, 2022) (citing *Iqbal*, 556 U.S. at 678). "The Sixth Circuit Court of Appeals has recognized that "[c]opyright infringement . . . lends itself readily to abusive litigation . . . . Therefore, greater particularity in pleading, through showing 'plausible grounds,' is required." *Taylor v. Victoria's Secret Stores, Inc.*, No. 10-2334, 2011 WL 13097641,

at *3 (W.D. Tenn. Sept. 29, 2011) (citing *Nat'l Bus. Dev. Servs., Inc. v. American Credit Educ. & Consulting, Inc.*, 299 Fed. Appx. 509, 512 (6th Cir. 2008)). Plaintiff has not met this standard. Plaintiff's Complaint, even taken as true, fails to establish a legal claim that is plausible on its face, and consequently, dismissal is required. *See Twombly*, 550 at 570; *Iqbal*, 556 U.S. at 678.

ARGUMENT

I. The Court Should Dismiss Plaintiff's Copyright Infringement Claim with Prejudice Under Rule 12(b)(6) Because Plaintiff Failed to Plead a Plausible Infringement Claim Under the Copyright Act and No Amendment Will Fix these Fatal Flaws.

A. *The Allegedly-Infringing Elements Are Not Protected Elements of Expression.*

The elements Plaintiff claims are infringed are not protected elements of expression. This is fatal to her claim. An actionable copyright infringement claim must establish that defendants copied elements of a work that are original. *See Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991); *Kohus v. Mariol*, 328 F.3d 848, 853 (6th Cir. 2003); *Murray Hill Publ'ns, Inc. v. Twentieth Century Fox Film Corp.*, 361 F.3d 312, 316 (6th Cir. 2004). Although for the purposes of this Motion, Defendants do not contest that Plaintiff is the owner of the registered copyright in the TLD Work, the "mere fact that a work is copyrighted does not mean that every element of the work may be protected." *Feist Publ'ns, Inc.*, 499 U.S. at 348. Copyright protection is afforded only to elements in a work that were "independently created by the author" and "possess[] at least some minimal degree of creativity." *Kohus*, 328 F.3d at 853. "In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work." 17 U.S.C. § 102(b). The Sixth Circuit and the Register of Copyrights have both made it clear that the "format, book design, and the arrangement of material on the printed page . . . cannot constitute the subject of copyright registration because they are merely 'ideas or concepts' and therefore not subject to copyright."

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