

1 Stephen M. Doniger (SBN 179314)
 2 stephen@donigerlawfirm.com
 3 Scott Alan Burroughs (SBN 235718)
 4 scott@donigerlawfirm.com
 5 Trevor W. Barrett (SBN 287174)
 6 tbarrett@donigerlawfirm.com
 7 DONIGER / BURROUGHS
 8 603 Rose Avenue
 9 Venice, California 90291
 10 Telephone: (310) 590-1820
 11 Attorneys for Plaintiff
 12 MICHAEL MILLER

13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

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

MICHAEL MILLER, an Individual,
 Plaintiff,
 v.
 KENDALL JENNER, INC., a California
 corporation; KENDALL + KYLIE, INC.,
 a business entity of form unknown;
 KENDALL JENNER, an individual;
 KYLIE JENNER, an individual; and
 DOES 1-10,
 Defendants.

Case No.:

PLAINTIFF’S COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT
2. VICARIOUS AND/OR CONTRIBUTORY COPYRIGHT INFRINGEMENT
3. VIOLATION OF THE DIGITAL MILLENNIUM COPYRIGHT ACT (17 U.S.C. §1202)
4. VIOLATION OF CAL. CIV. CODE 3344

Jury Trial Demanded

Plaintiff, Michael Miller (“Miller”), by and through his undersigned attorneys, hereby prays to this honorable Court for relief based on the following:

1 **INTRODUCTION**

2 Miller is a renowned professional photographer with a remarkable body of
3 work, having created numerous compelling and intimate images of artists,
4 performers, and celebrities, amongst other subjects. A\$AP Rocky, Jack Nicholson,
5 Eazy E, Angelina Jolie, and Tupac Shakur are some of the personalities depicted in
6 his portfolio. He has also collaborated with high-level brands such as Ferrari and
7 Puma, published two books of his work, and will exhibit his Shakur photographs at
8 the California African American Museum, the Getty Institute Museum, and the New
9 York Public Library.

10 Defendants Kendall Jenner (“Kendall”) and Kylie Jenner (“Kylie”) are internet
11 and reality television personalities who are known for their ostentations displays of
12 wealth on social media. Miller at no time sought to associate his work with Kendall
13 or Kylie or any of their companies.

14 And with good reason – an association with Kendall is particularly problematic
15 given that she was complicit in not one but two of the worst public relations disasters
16 in recent memory. First, she appeared to resolve certain issues of racial and societal
17 strife through the conveyance of a carbonated beverage in an ad campaign that the
18 *New York Times* noted “trivialized the widespread protests against the killings of
19 black people by the police.”¹ Then, she was engaged to promote a disastrous music
20 festival that is now the subject of numerous lawsuits and at least one Federal
21 indictment and which “could be the biggest scam of the year[.]”²

22 Now, Kendall and Kylie have misappropriated and wrongfully exploited at
23 least two original photographs of late hip hop artist Tupac Shakur, slapping the iconic
24

25 ¹ <https://www.nytimes.com/2017/04/05/business/kendall-jenner-pepsi-ad.html>

26 ² [http://www.vanityfair.com/news/2017/06/fyre-festival-billy-mcfarland-millennial-](http://www.vanityfair.com/news/2017/06/fyre-festival-billy-mcfarland-millennial-marketing-fiasco)
27 [marketing-fiasco](http://www.vanityfair.com/news/2017/06/fyre-festival-billy-mcfarland-millennial-marketing-fiasco)

1 photographs on garments and overlaying them with dubious imagery and text.
2 Kendall and Kylie then offered these garments for sale to their fans for more than a
3 hundred dollars per item.

4 Miller created two of the Shakur photographs that were misappropriated by
5 Kendall and Kylie, who at no times notified Miller that they intended to exploit his
6 photography, let alone obtained his authorization. This unauthorized usage
7 constituted copyright infringement, amongst other things, as set forth below.

8 **JURISDICTION AND VENUE**

9 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., §§
10 101, *et seq*, and Cal. Civ. Code 3344(a).

11 2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and
12 1338 (a) and (b).

13 3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and
14 1400(a) in that this is the judicial district in which a substantial part of the acts and
15 omissions giving rise to the claims occurred.

16 **PARTIES**

17 4. Miller is an individual residing in the state of California in the United
18 States.

19 5. Plaintiff is informed and believes and thereon alleges that Defendant
20 Kendall Jenner, Inc. (“KJI”) is a California corporation, with its principal place of
21 business located at 21731 Ventura Boulevard, Suite 300, Woodland Hills, California
22 91364.

23 6. Plaintiff is informed and believes and thereon alleges that Kendall +
24 Kylie, Inc. (“KKI”) is a business entity of form unknown doing business in
25 California.

26 7. Plaintiff is informed and believes and thereon alleges that Defendant
27 Kendall is a California resident.

1 8. Plaintiff is informed and believes and thereon alleges that Defendant
2 Kylie is a California resident.

3 9. Defendants DOES 1 through 10, inclusive, are other parties not yet
4 identified who have infringed Plaintiff's copyrights, have contributed to the
5 infringement of Plaintiff's copyrights, or have engaged in one or more of the
6 wrongful practices alleged herein. The true names, whether corporate, individual or
7 otherwise, of Defendants 1 through 10, inclusive, are presently unknown to Plaintiff,
8 which therefore sue said Defendants by such fictitious names, and will seek leave to
9 amend this Complaint to show their true names and capacities when same have been
10 ascertained.

11 10. Plaintiff is informed and believes and thereon alleges that at all times
12 relevant hereto each of the Defendants was the agent, affiliate, officer, director,
13 manager, principal, alter-ego, and/or employee of the remaining Defendants and was
14 at all times acting within the scope of such agency, affiliation, alter-ego relationship
15 and/or employment; and actively participated in or subsequently ratified and adopted,
16 or both, each and all of the acts or conduct alleged, with full knowledge of all the
17 facts and circumstances, including, but not limited to, full knowledge of each and
18 every violation of Plaintiff's rights and the damages to Plaintiff proximately caused
19 thereby.

20 **CLAIMS RELATED TO SUBJECT PHOTOGRAPHS**

21 11. Miller created and owns all rights in two original photographs of Shakur
22 ("Subject Photographs"). The Subject Photographs are set forth in the tables below.

23 12. The Subject Photographs were registered with the United States
24 Copyright Office, with all formalities satisfied, before the infringement at issue.

25 13. Plaintiff is informed and believes and thereon alleges that Defendants
26 accessed the Subject Photographs and then exploited them without the authorization
27 of Plaintiff. Defendants, and each of them, exploited the Subject Photographs by

1 incorporating same into products such as apparel (collectively the “Accused
2 Product”). A non-inclusive exemplar of the Accused Products is set forth below
3 alongside the corresponding photograph. These exemplars are not meant to
4 encompass all Accused Products; the claims made herein are as to any product
5 licensed, distributed and/or sold by Defendants, and/or each of them, that incorporate
6 without permission, in whole or in part, one or both of the Subject Photographs. The
7 Subject Photographs are referred to below as Subject Photograph A and Subject
8 Photograph B, and the corresponding Accused Product style is identified as Accused
9 Product A and Accused Product B:

Subject Photograph A:	Accused Product A:
	

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Subject Photograph B:



Accused Product B:



14. A comparison of the Subject Photographs with the corresponding images on the Accused Product reveals that the elements, composition, colors, arrangement, subject, lighting, angle, and overall appearance of the images are identical or at least substantially similar.

15. On information and belief, Plaintiff alleges that KKI, KJI, Kendall, and Kylie, along with DOE Defendants, were involved in creating and/or developing the Accused Product, and/or supplying, marketing distributing, selling, and otherwise providing the Accused Product to third parties, including without limitation, the public.

16. Plaintiff at no time authorized Defendants, or any of them, to use the Subject Photographs as complained of herein.

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

(For Copyright Infringement – Against all Defendants, and Each)

17. Miller repeats, re-alleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs of this Complaint.

18. Miller is informed and believes and thereon alleges that Defendants, and each of them, had access to the Subject Photographs, including, without limitation, through viewing the Subject Photographs in or on Miller publications, profiles, exhibitions, websites and/or through other authorized channels, over the internet, including without limitation as accessed via a search engine, or through a third-party source. Access is also established by the striking similarity of the Subject Photographs and the photographs on the Accused Product.

19. Miller is further informed and believes and thereon alleges that certain Defendants have an ongoing business relationship with one or more of the other Defendants, and that those parties conspired to traffic in the Accused Product.

20. Miller is informed and believes and thereon alleges that, without Plaintiff’s authorization, Defendants, and each of them, distributed, marketed and sold product bearing images that are identical to, or substantially similar to, the Subject Photographs.

21. Miller is informed and believes and thereon alleges that Defendants, and each of them, infringed Miller copyrights by creating an infringing works from the Subject Photographs and then marketing, distributing, and selling the Accused Products to the public.

22. Defendants, and each of them, infringed Miller’s rights by copying the Subject Photographs, and distributing the Accused Products, without Miller’s authorization or consent.

1 23. Due to Defendants', and each of their, acts of infringement, Miller has
2 suffered actual, general and special damages in an amount to be established at trial.

3 24. Due to Defendants' acts of copyright infringement as alleged herein,
4 Defendants, and each of them, have obtained direct and indirect profits they would
5 not otherwise have realized but for their infringement of Miller's rights in the Subject
6 Photographs. As such, Miller is entitled to disgorgement of Defendants' profits
7 directly and indirectly attributable to Defendants' infringement of his rights in the
8 Subject Photographs in an amount to be established at trial.

9 25. Miller registered the Subject Photographs with the U.S. Copyright Office
10 before the commission of the infringement at issue and on that basis seeks statutory
11 damages in an amount up to \$150,000.00 per photograph per the Copyright Act.

12 26. Miller is informed and believes and thereon alleges that Defendants, and
13 each of their, conduct as alleged herein was willful, reckless, and/or with knowledge,
14 subjecting Defendants, and each of them, to enhanced statutory damages, claims for
15 costs and attorneys' fees, and/or a preclusion from deducting certain costs when
16 calculating disgorgeable profits.

17 **SECOND CLAIM FOR RELIEF**

18 (For Vicarious and/or Contributory Copyright Infringement – Against all Defendants,
19 and Each)

20 27. Miller repeats, re-alleges, and incorporates herein by reference as
21 though fully set forth, the allegations contained in the preceding paragraphs of this
22 Complaint.

23 28. Miller is informed and believes and thereon alleges that Defendants
24 knowingly induced, participated in, aided and abetted in and profited from the illegal
25 reproduction and distribution of the Subject Photographs as alleged hereinabove.
26 Specifically, the retailer Defendant transacted with the wholesaler Defendant, and the
27 wholesaler Defendant transacted with its suppliers, in a concerted effort to create,

1 distribute, and sell the Accused Product. And, Defendants, and each of them, realized
2 profits through their respective obtainment, sales and distribution of the Accused
3 Products.

4 29. Miller is informed and believes and thereon alleges that Defendants,
5 and each of them, are vicariously liable for the infringement alleged herein because
6 they had the right and ability to supervise the infringing conduct and because they
7 had a direct financial interest in the infringing conduct. Specifically, each Defendant
8 in the supply chain had the ability to oversee the development and distribution of the
9 product as engaged in by the party from which it obtained the Accused Products, or
10 component thereof. And, Defendants, and each of them, realized profits through their
11 respective obtainment, sales and distribution of the Accused Products.

12 30. By reason of Defendants', and each of their, acts of contributory and
13 vicarious infringement as alleged above, Miller has suffered and will continue to
14 suffer substantial damages to his business in an amount to be established at trial, as
15 well as additional actual, general and special damages in an amount to be established
16 at trial.

17 31. Miller registered the Subject Photographs with the U.S. Copyright Office
18 before the commission of the infringement at issue and on that basis seeks statutory
19 damages in an amount up to \$150,000.00 per photograph per the Copyright Act.

20 32. Due to Defendants' acts of copyright infringement as alleged herein,
21 Defendants, and each of them, have obtained direct and indirect profits they would
22 not otherwise have realized but for their infringement of Miller's rights in the Subject
23 Photographs. As such, Miller is entitled to disgorgement of Defendants' profits
24 directly and indirectly attributable to Defendants' infringement of his rights in the
25 Subject Photographs, in an amount to be established at trial.

26 33. Miller is informed and believes and thereon alleges that Defendants, and
27 each of their, conduct as alleged herein was willful, reckless, and/or with knowledge,
28

1 subjecting Defendants, and each of them, to enhanced statutory damages, claims for
2 costs and attorneys’ fees, and/or a preclusion from deducting certain costs when
3 calculating disgorgeable profits.

4 **THIRD CLAIM FOR RELIEF**

5 (For Violations of the Digital Millennium Copyright Act (17 U.S.C. §1202 –
6 Against all Defendants, and Each))

7 34. Miller repeats, re-alleges, and incorporates herein by reference as though
8 fully set forth, the allegations contained in the preceding paragraphs of this
9 Complaint.

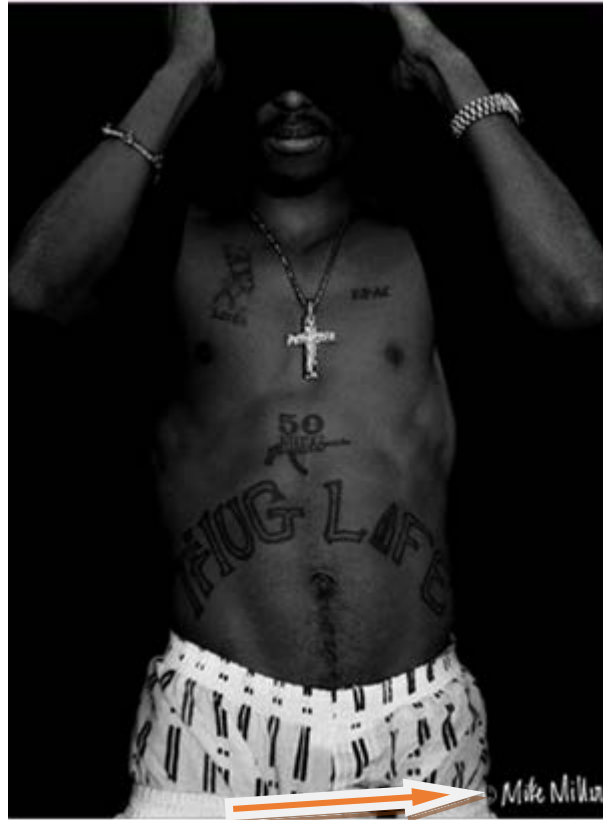
10 35. Miller is informed and believes and thereon alleges that Defendants, and
11 each of them, violated 17 U.S.C. §1202(b) by intentionally removing and/or altering
12 the copyright management information on the copy of at least one Subject
13 Photograph (“Mislabeled Copy”), and distributing copyright management
14 information for the Mislabeled Copy with knowledge that the copyright management
15 information had been removed or altered without authority of the copyright owner or
16 the law, and distributing and publicly displaying the Mislabeled Copy, knowing that
17 copyright management information had been removed or altered without authority of
18 the copyright owner or the law, and knowing, or, with respect to civil remedies under
19 section 1203, having reasonable grounds to know, that the conduct would induce,
20 enable, facilitate, or conceal an infringement of any right under this title.

21 36. The removal of Miller’s name authorship information and addition of
22 Kylie’s name and information can be can be seen in the comparison below:

23
24
25
26
27
28

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

Subject Photograph A:



Accused Product A:



1 37. Miller is informed and believes and thereon alleges that Defendants, and
2 each of them, knowingly removed and altered the copyright management information
3 on the Mislabeled Copy.

4 38. The above conduct is in violation of the Digital Millennium Copyright
5 Act and exposes Defendants, and each of them, to additional and enhanced common
6 law and statutory damages and penalties pursuant to 17 USC § 1203 and other
7 applicable law.

8 39. Miller is informed and believes and thereon alleges that Defendants, and
9 each of their, conduct as alleged herein was willful, reckless, and/or with knowledge,
10 and Plaintiff resultantly seeks enhanced damage and penalties.

11 **FOURTH CLAIM FOR RELIEF**

12 (Misappropriation of Likeness in Violation of Cal. Civ. Code 3344(a))

13 40. Miller repeats, re-alleges, and incorporates herein by reference as though
14 fully set forth, the allegations contained in the preceding paragraphs of this
15 Complaint.

16 41. Miller is informed and believes and thereon alleges that Defendants, and
17 each of them, knowingly used Miller's name for purposes of advertising or selling,
18 or soliciting purchases of, Defendants', and each of their, products, merchandise,
19 goods, or services, and did so without Plaintiff's consent. Such usage is illustrated
20 below:

21 **Accused Product B:**



1 42. Miller is informed and believes and thereon alleges that Defendants, and
2 each of them, knowingly used Miller's name in order to advertise and market KKI
3 and their products and services in violation of this law, exposing Defendants, and
4 each of them, to damages, costs, and attorneys' fees. Such use resulted in injury to
5 Miller.

6 43. Miller is informed and believes and thereon alleges that Defendants, and
7 each of their, conduct as alleged herein was willful, reckless, and/or with knowledge.

8 44. The above-referenced use of the Miller name violates Cal. Civ. Code
9 3344(a) and subjects Defendants, and each of them to statutory damages and
10 penalties, including punitive damages.

11 **PRAYER FOR RELIEF**

12 Wherefore, Plaintiff prays for judgment as follows:

13 **Against All Defendants**

14 **With Respect to Each Claim for Relief**

- 15 a. That Defendants, their affiliates, agents, and employees be enjoined
16 from infringing Plaintiff's copyrights in and to the Subject Photographs.
- 17 b. That Plaintiff be awarded all profits of Defendants, and each, plus all
18 losses of Plaintiff, plus any other monetary advantage gained by the
19 Defendants through their infringement, the exact sum to be proven at the
20 time of trial, or, if elected before final judgment, statutory damages to
21 the extent they are available under the Copyright Act, 17 U.S.C. §§ 504,
22 *et seq.*;
- 23 c. That Plaintiff be awarded its costs and attorneys' fees to the extent they
24 are available under the Copyright Act U.S.C. §§ 505, 1203, *et seq.*, and
25 Cal. Civ. Code 3344(g).
- 26 d. That a trust be entered over all Accused Products, and all profits realized
27 through the sales and distribution of said product;

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

- e. That Defendants, and each of them, be enjoined from any further use of the photography at issue and/or the distribution of any production incorporating same.
- f. That Plaintiff be awarded pre-judgment interest as allowed by law;
- g. That Plaintiff be awarded the costs of this action; and
- h. That Plaintiff be awarded such further legal and equitable relief as the Court deems proper.

A TRIAL BY JURY PURSUANT TO FED. R. CIV. P. 38 AND
CONSTITUTIONAL AMENDMENT SEVEN IS HEREBY DEMANDED.

Respectfully submitted,

Dated: July 7, 2017

By: /s/ Scott Alan Burroughs
Scott Alan Burroughs, Esq.
DONIGER / BURROUGHS
Attorneys for Plaintiff
MICHAEL MILLER