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8  
9 Attorneys for Plaintiffs,  
DAVID LLOYD MARCUS

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

12 DAVID LLOYD MARCUS, an ) CASE NO.  
13 individual, )  
14 Plaintiffs, ) COMPLAINT FOR:  
15 vs. ) 1. COPYRIGHT INFRINGEMENT;  
2. UNFAIR COMPETITION;  
16 ABC SIGNATURE STUDIOS, INC., a ) 3. FRAUD;  
Delaware corporation; KHALABO ) 4. DECLARATORY RELIEF;  
17 INK SOCIETY, a Delaware ) 5. INJUNCTIVE RELIEF.  
corporation, OVERBROOK )  
18 ENTERTAINMENT, INC., a California )  
corporation, WILL SMITH, an )  
19 individual, KENYA BARRIS, an ) DEMAND FOR JURY TRIAL  
individual, and DOES 1 through )  
20 10, inclusive, )  
21 Defendants. )  
22

23 Plaintiff, DAVID LLOYD MARCUS, an individual (hereinafter  
24 "MARCUS) complain, aver, and allege as follows:

25 PARTIES

26 1. Plaintiff, DAVID LLOYD MARCUS, is an individual, and a  
27 resident in the state of Maryland.

1 2. Defendant, ABC SIGNATURE STUDIOS, INC., (hereinafter referred  
2 to as "ABC") is a Delaware corporation, admitted and authorized to  
3 conduct business in the State of California, with offices in the  
4 County of Los Angeles, State of California.

5 3. Defendant, OVERBROOK ENTERTAINMENT, INC. (hereafter referred  
6 to as "OVERBROOK"), is a California corporation admitted and  
7 authorized to conduct business in the State of California, with  
8 offices in the County of Los Angeles, State of California.

9 4. Defendant, WILL SMITH, (hereinafter referred to as "SMITH",  
10 is an individual, resident in the City of Los Angeles, and State  
11 of California. Plaintiff is further informed and believes and  
12 thereon alleges that SMITH is a principal, shareholder, officer,  
13 and director of Defendant OVERBROOK ENTERTAINMENT, INC.

14 5. Defendant, KHALABO INK SOCIETY, (hereafter referred to as  
15 "KHALABO INK") is a Delaware corporation, admitted and authorized  
16 to conduct business in the State of California, and with offices  
17 in the County of Los Angeles, State of California.

18 6. Defendant, KENYA BARRIS, (hereinafter referred to as  
19 "BARRIS", is an individual, resident in the City of Los Angeles,  
20 and State of California. Plaintiff is further informed and  
21 believes and thereon alleges that BARRIS is a principal,  
22 shareholder, officer, and director of Defendant KHALABO INK.

23 JURISDICTION AND VENUE

24 7. Plaintiff, MARCUS, alleges that this is an action for  
25 copyright infringement arising under the Copyright Act of 1976, 17  
26 U.S.C. Sections 101 et seq., and a claim for unfair competition  
27 arising under the Lanham Act of 1946, (as amended), 15 U.S.C.  
28 Section 1125(a). This Court has subject matter jurisdiction over

1 these federal question claims under both the Copyright Act of  
2 1976, 17 U.S.C. Sections 101 et seq., the Lanham Act of 1946, (as  
3 amended), 15 U.S.C. Section 1125(a). The Complaint further seeks  
4 relief in the form of a Declaratory Judgment, and the court has  
5 jurisdiction of these claims pursuant to the Declaratory Judgment  
6 Act, 28 U.S.C. Section 2201. This Court further has jurisdiction  
7 of the state law claims pursuant to its supplemental and pendant  
8 jurisdiction under 28 U.S.C. Sections 1338(a), 1338(b), and  
9 1367(a).

10 8. Venue is proper in this district pursuant to 28 U.S.C.  
11 Sections 1391(b) and (c); and Section 1400(a) and, as the  
12 copyright infringement, unfair competition and other wrongful acts  
13 occurred in this district, and Defendants are located in this  
14 district.

15 FACTUAL BACKGROUND

16 9. Plaintiff MARCUS alleges that in or about February 2013,  
17 Defendant's OVERBROOK and ANA ALLIANCE sponsored a script writing  
18 contest called "Search for America's Newest Screenwriter"  
19 (hereinafter referred to as "Contest")

20 10. Plaintiff MARCUS alleges that upon learning of the  
21 Contest he drafted a script called "Across The Tracks", and in or  
22 about March 20, 2013, he submitted such script to the Contest. The  
23 script "Across The Tracks" shall hereinafter be called the  
24 "Script".

25 11. Plaintiff alleges that the Script Across the Tracks  
26 detailed in humorous fashion the lives and experiences of an  
27 upwardly mobile middle class African American family as they  
28 navigated living the American dream. The central theme, which

1 separated Across the Tracks from all other comedic representations  
2 depicting African American families, was the depictions of how the  
3 members of the family are viewed by the larger society, their  
4 reactions to such views, and how the family perpetually feels as  
5 if they are oddities and out of place.

6 12. Plaintiff alleges that after he submitted the script to  
7 the Contest he never heard from the creators of the contest again.

8 13. Plaintiff further alleges that he learned of the  
9 ultimate winner of the context via the Contest website, however,  
10 Plaintiff is informed and believes and thereon alleges that the  
11 script which allegedly won the Contest was never developed into  
12 either a pilot or television show.

13 14. Plaintiff is informed and believes and thereon alleges  
14 that the creators of the Contest never intended to develop the  
15 script which ultimately won the Contest into a pilot or television  
16 series, but rather the true intention of the Contest was to  
17 acquire new and fresh ideas, and character treatments from  
18 creative young script-writers such as himself, and develop such  
19 ideas without compensating any of the contestants.

20 15. Plaintiff is informed and believes and thereon alleges  
21 that Defendant, Barris, is and was a close business associate of  
22 Will Smith the principal and owner of Defendant, Overbrook.  
23 Plaintiff is further informed and believes and thereon alleges  
24 that Defendant Barris has been employed by Will Smith and/or  
25 Defendant Overbrook, and after such formal employment ended they  
26 maintained a close personal and professional relationship.

27 16. Plaintiff is further informed and believes and thereon  
28 alleges that Defendant Barris was specifically employed by

1 Overbrook on a show entitled *Girlfriends*, and that Plaintiff is  
2 further informed and believes Defendant worked on developing one  
3 or more pilots for television series with Defendant Overbrook.

4 17. Plaintiff alleges that in or about November 2014, he  
5 submitted the *Script Across the Tracks* to the registrar of  
6 copyrights of the United States Copyright Office, and as such  
7 Plaintiff secured and received the exclusive rights and privileges  
8 in and to *Across the Tracks*. A true and correct copy of the  
9 copyright registration is attached hereto as Exhibit 1.

10 18. Plaintiff alleges that he learned in the early fall of  
11 2014, that Defendant ABC was showing a pilot for a show entitled  
12 *Blackish* for the 2014-2015 television season. The show *Blackish*  
13 was said to have been created by Defendant Barris, and produced by  
14 defendant Khalabo Ink.

15 19. Plaintiff watched the pilot for *Blackish*, and was  
16 shocked to realize that all the major characters, thematic points,  
17 and plot turns were virtually identical to those of the *Script*  
18 *Across the Tracks* which he submitted to the Contest in the spring  
19 of 2013.

20 20. Plaintiff is informed and believes and alleges thereon  
21 that the show *Blackish* appeared on the project development slate  
22 for Defendant ABC in October 2013, which is less than six (6)  
23 months after Plaintiff Marcus submitted the *Script Across the*  
24 *Tracks* to the Contest.

25 21. Plaintiff alleges that specific aspects of *Blackish* and  
26 *Across the Tracks* are virtually identical including but not  
27 limited to the overarching theme of the juxtaposition of an  
28 upwardly mobile African American family moving into a

1 predominately Anglo community, and the comedic treatment issues  
2 faced by each member of the family in that community and the main  
3 characters and their characteristics and personality traits are  
4 virtually identical.

5 FIRST CAUSE OF ACTION

6 (Copyright Infringement

7 DAVID MARCUS against ABC, KHALABO and BARRIS)

8 22. Plaintiff realleges and incorporate by reference each  
9 and every allegation contained in Paragraphs 1 through 21,  
10 inclusive, of the Complaint as though set forth in full.

11 23. Across the Tracks contains material wholly original with  
12 Plaintiff MARCUS, and is copyrightable subject matter under the  
13 laws of the United States.

14 24. In or about November 2014, Plaintiff MARCUS secured the  
15 exclusive rights and privileges in and to Across the Tracks by  
16 registering a copyright with the United States Copyright Office  
17 bearing registration certificate number PAu003748868. A true and  
18 correct copy of the copyright registration is attached hereto as  
19 Exhibit 1.

20 25. Plaintiff MARCUS is currently and has always been the  
21 sole proprietor of all right, title and interest in and to Across  
22 the Tracks.

23 26. Plaintiff MARCUS as the sole proprietor of all right,  
24 title and interest in and to the copyright in Across the Tracks  
25 has the exclusive right to among other things, prepare derivative  
26 works based on this book or transfer this right to someone else.



1 33. Plaintiffs reallege and incorporate by reference each  
2 and every allegation contained in Paragraphs 1 through 32,  
3 inclusive, of the Complaint as though set forth in full.

4 34. Defendants, and each of them, by failing to credit  
5 Plaintiff Marcus and Across the Tracks, the Script upon which  
6 Blackish is actually based, Defendants, and each of them, have  
7 made, and will continue to make a false and misleading designation  
8 about the origin of this television series in violation of the  
9 Lanham Act, 15 U.S.C Sections 1117 and 1125(a).

10 35. As a result of this false and misleading designation, it  
11 is likely that the public who watch the television series on  
12 television, DVD, video streaming services, and elsewhere will be  
13 confused about the source upon which Blackish is based.

14 36. Plaintiff Marcus is informed and believes and thereon  
15 alleges that Blackish has been placed in the stream of commerce  
16 via television broadcast in all 50 states and throughout the  
17 world, and that Defendants, will distribute the series in markets  
18 throughout the world through DVD compilation sales, and video  
19 streaming services.

20 37. As a direct and proximate result of Defendants unfair  
21 trade practices and unfair competition, Plaintiff Marcus has  
22 suffered and will continue to suffer injuries and damage, much of  
23 which cannot be reasonably or adequately measured or compensated  
24 in damages. Such injuries and damage include, but are not limited  
25 to, the fact that Plaintiff Marcus has been unfairly deprived of  
26 (1) just compensation, including income from selling the rights to  
27 Across the Tracks and receiving a percentage of the profits of  
28 Blackish that he deserves as the creator of the television show;



1 and(2) the appropriate recognition, including a screen credit, to  
2 which he is undeniably entitled. Plaintiff Marcus exact amount of  
3 damages will be proven at trial, but they are in no event less  
4 than \$5,000,000.00.

5 38. Plaintiff Marcus is informed and believes, and on that  
6 basis alleges, that in doing the acts described above, Defendants  
7 acted with oppression, fraud, malice, and ill will toward  
8 Plaintiff Marcus, and in wanton disregard for the rights of Marcus  
9 and with the intent to injure him or cause damage. Accordingly,  
10 Plaintiff Marcus is entitled to receive treble damages and his  
11 reasonable attorneys fees.

12 THIRD CAUSE OF ACTION

13 (FRAUD - DAVID MARCUS against OVERBROOK and SMITH)

14 39. Plaintiff realleges and incorporate by reference each  
15 and every allegation contained in Paragraphs 1 through 38,  
16 inclusive, of the Complaint as though set forth in full.

17 40. Defendants Overbrook Entertainment and Will Smith  
18 participated in creating the Contest with ANA Alliance for the  
19 express purpose of inducing new, unknown, and unrepresented  
20 screenwriters to submit their ideas, treatments, and scripts to  
21 the Contest entitled "Search for America's Newest Screenwriter".

22 41. Defendants, Overbrook Entertainment and Will Smith in  
23 collaboration with ANA Alliance advertised and marketed the  
24 Contest throughout the entertainment community through websites,  
25 online advertisements, and print media to publicize the Contest.

26 42. The published official rules of the Contest stated that  
27 an unnamed panel of judges would evaluate the scripts submitted to  
28 the Contest, and that the top ten (10) finalists would be reviewed

1 and evaluated by Defendant Overbrook Entertainment, and Defendant  
2 Overbrook Entertainment in its sole discretion would determine the  
3 grand prize winners in the two stated categories. The official  
4 rules further provided that the grand prize winners would be  
5 announced on June 24, 2013.

6 43. The Contest was designed to specifically exclude any  
7 sophisticated screenwriters familiar with the entertainment  
8 industry as no entrants in the contest could be members of any  
9 professional writer's guild or professional writing union.  
10 Furthermore, the Contest provided only a nominal grand prize of  
11 \$5,000 for each of the eventual winners, and an additional \$1,000  
12 when the Contest winners signed a "Rights/Writer/Producer  
13 Agreement" granting ANA Alliance an 18 month option to develop the  
14 scripts.

15 44. Plaintiff alleges that neither of the two winning  
16 scripts were ever developed into a pilot or television series, as  
17 that was not the actual purpose of the contest.

18 45. Plaintiff alleges that the actual undisclosed purpose of  
19 the Contest was to allow Overbrook Entertainment and Will Smith to  
20 gain uncompensated access to a treasure trove of new script  
21 material, with fresh ideas, new character treatments, and creative  
22 plot lines from unrepresented writers, and to exploit such scripts  
23 without compensating the writers.

24 46. Plaintiff is further informed and believes and thereon  
25 alleges that Overbrook Entertainment and Will Smith allowed  
26 defendant Kenya Barris access to the scripts which were submitted  
27 to the Contest and ultimately Defendant Kenya Barris exploited  
28 Plaintiff script Across The Tracks under the title "Blackish".

1           47.       Plaintiff further alleges that the true intentions of  
2 the sponsors of the Contest is made manifest in the illusory  
3 nature of the copyright protections in the contest rules which  
4 should be deemed void on the grounds of public policy as such  
5 rules actually authorize the theft, misappropriation, and  
6 infringement of the copyrights in the scripts submitted to the  
7 contest as well as the theft and misappropriation of the concepts,  
8 ideas, plots, themes, and story lines of any of the submitted  
9 scripts, to wit the contest rules state: "Sponsor, by virtue of  
10 its position in the entertainment industry, may receive or may  
11 have already received submissions of ideas, formats, stories,  
12 scripts, screenplays, synopses, treatments, suggestions and the  
13 like, whether as part of the Contest or not. Furthermore, many  
14 such submissions received by Sponsor may be similar to or  
15 identical to those developed by the Entrant, in furtherance of his  
16 acknowledgement, Entrants agree that they will not be entitled to  
17 any compensation based on the use by Sponsor or any party  
18 affiliated with Sponsor of materials that contain similar of  
19 identical ideas, formats, storylines, etc. as those contained in  
20 the Script submitted by the Entrant."

21           48.       Plaintiff alleges that Overbrook Entertainment in co-  
22 sponsoring the Contest specifically insured that the language  
23 cited in the foregoing paragraph was included in the Contest rules  
24 to facilitate their ultimate purpose with was to acquire access to  
25 new scripts, and to be able to exploit such scripts, without  
26 paying, crediting, or otherwise acknowledging or compensating the  
27 creators and writers of such scripts.

1 49. Plaintiff alleges that he relied upon the false  
2 representations in the Contest Rules that an actual winner would  
3 be selected and the winners' scripts would be developed, and in  
4 reliance upon these representations submitted a script to the  
5 Contest.

6 50. Plaintiff alleges that had he known that the true  
7 intention of Defendants Overbrook Entertainment and Will Smith was  
8 to collect scripts for future exploitation without compensation,  
9 he would not have submitted his Script to the Contest.

10 51. Plaintiff alleges that as a result of the acts of  
11 Defendants Overbrook Entertainment and Will Smith, he has  
12 sustained damages in excess of five million (\$5,000,000.00)  
13 dollars.

14 52. Plaintiff further alleges that the acts alleged herein  
15 by Defendants, Overbrook Entertainment and Will Smith were  
16 willful, malicious, and fraudulent, and was intended to oppress  
17 and cause injury to plaintiff. Plaintiff is therefore entitled to  
18 an award of punitive damages.

19 FOURTH CAUSE OF ACTION

20 (DECLARATORY RELIEF against all defendants)

21 53. Plaintiff realleges and incorporate by reference each  
22 and every allegation contained in Paragraphs 1 through 40,  
23 inclusive, of the Complaint as though set forth in full.

24 54. An actual controversy has arisen and now exists between  
25 Plaintiff Marcus and Defendants in that Plaintiff contends and  
26 Defendants deny that they have infringed on Marcus' copyright in  
27 Across the Tracks and made use of his idea for a television  
28 series.

1 55. Plaintiff desires a judicial determination of this  
2 issue.

3 56. Such a declaration is necessary and appropriate at this  
4 time in order that Plaintiff may ascertain his rights to  
5 compensation and credit for his contributions to Blackish.

6 FIFTH CAUSE OF ACTION

7 (INJUNCTIVE RELIEF against all defendants)

8 57. Plaintiff realleges and incorporate by reference each  
9 and every allegation contained in Paragraphs 1 through 56,  
10 inclusive, of the Complaint as though set forth in full.

11 58. Defendants wrongful conduct described above, unless and  
12 until enjoined and restrained by order of this Court, will cause  
13 great and irreparable injury to Plaintiff in that such conduct,  
14 among other things, may prevent him from receiving appropriate  
15 credit for his contributions to Blackish.

16 59. Plaintiff has no adequate remedy at law for many of the  
17 injuries that are threatened in that it will be impossible for  
18 Plaintiff to determine the precise amount of damage he will suffer  
19 if Defendants conduct is not restrained.

20 WHEREFORE, Plaintiff prays for judgment against Defendants, and  
21 each of them, as follows:

22 On The First Cause of Action:

- 23 1. For a judicial determination and order that Plaintiffs  
24 copyright has been infringed upon by Defendants;
- 25 2. For an order that Defendants account for and pay to  
26 Plaintiff for all damages sustained by Plaintiff from  
27 the infringement of his copyright interest in an amount  
28 no less than \$5,000,000.;

1 3. For an enhanced award of statutory damages in accordance  
2 with 17 U.S.C. § 504(c)(2) due to Defendants willful  
3 conduct.

4 4. For an award of attorneys' fees and costs of suit  
5 pursuant to 17 U.S.C. § 505.

6 On The Second Cause of Action:

7 5. For Damages for unfair competition under Section 43(a)  
8 of the Lanham Act in an amount to be proven at trial,  
9 but in no event not less than \$5,000,000.

10 6. For an injunction ordering that Defendants, and each of  
11 them, and their agents and employees be permanently  
12 enjoined from designating anything other than Across the  
13 Tracks as the source script, and Plaintiff Marcus as the  
14 creator of Blackish;

15 On the Third Cause of Action:

16 7. For Damages for fraud in an amount to be proven at  
17 trial, but in no event not less than \$5,000,000.

18 8. For an award of exemplary and punitive damages in an  
19 amount sufficient to punish and deter Defendants from  
20 such action in the future.

21 On The Fourth Cause of Action:

22 9. For a declaration that Defendants BARRIS, KHALABO INK,  
23 and ABC infringed on Plaintiff MARCUS copyright in  
24 Across the Tracks, and made use of his Script for the  
25 show Blackish;

26 On The Fifth Cause of Action

27 10. For a preliminary injunction and permanent injunction  
28 ordering that ABC, KHALABO INK, and BARRIS and their

1 agents and employees be enjoined from (1) infringing on  
2 MARCUS' copyright in Across the Tracks in any manner,  
3 including distributing or showing Blackish with MARCUS  
4 consent; and (2) designating anyone other than MARCUS as  
5 the creator of Blackish;

6 On All Causes of Action:

7 11. For attorney's fees incurred according to proof;

8 12. For all costs incurred;

9 13. For such further and other relief as the court may deem  
10 proper.

11 DEMAND FOR JURY TRIAL

12 Demand for a Jury Trial is hereby demanded by plaintiffs  
13 pursuant to the Local Rule 38-1 of the Local Rules of Court for  
14 the Central of District of California.

15 Dated: January 6, 2017

16 LAW OFFICES OF  
HARRY E. DOUGLAS IV

17 /s/ HARRY E. DOUGLAS IV

18 Harry E. Douglas IV, Esq.  
19 Attorneys for Plaintiffs