

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X	
JOANNA LEVESQUE p/k/a "JOJO",	:
	:
Plaintiff,	:
	:
-against-	:
	:
	:
DA FAMILY RECORDS, LLC.; and	:
BACKGROUND RECORDS, LLC	:
	:
Defendants.	:
-----X	

Index No.: 652643/2013

**ANSWER
OF BACKGROUND
RECORDS, LLC**

Defendant Blackground Records, LLC ("Blackground" or "Defendant"), by its attorneys, Stewart Occhipinti, LLP, for its Answer to the Complaint of Plaintiff Joanna Levesque, professionally known as "JoJo" ("JoJo" or "Plaintiff"), respectfully alleges as follows:

GENERAL OBJECTIONS

General Objection No. 1:

The Complaint fails to comply with the requirements of the New York Civil Practice Law and Rules ("CPLR"), and therefore Blackground objects to the nonconforming pleading in its entirety. Pursuant to CPLR §3013, "[s]tatements in a pleading shall be sufficiently particular..." CPLR Rule 3014 states "[e]very pleading shall consist of plain and concise statements in consecutively numbered paragraphs. Each paragraph shall contain, as far as a practicable, a single allegation." Here, the Complaint consists of 26 pages containing 54 numbered paragraphs, along with subparagraphs and numerous lengthy footnotes, each of which contain convoluted, narrative statements more akin to an argument in a memo of law, and only occasionally include specific allegations, if at all.

It is well settled in New York that the Court should not be “compelled to wade through a mass of verbiage and superfluous matter in order to pick out an allegation here and there, which, pieced together with other statements taken from another part of the complaint, will state a cause of action. The time of the court should not be taken in a prolonged study of a long, tiresome, tedious, prolix, involved and loosely drawn complaint in an effort to save it.” *Barsella v. City of New York*, 82 A.D.2d 747, 440 N.Y.S.2d 12 (1st Dep’t 1981). Defendants should not be faced with this same burden either. Indeed, Plaintiff’s Complaint consists of a rambling narrative which does not permit Blackground to frame a reasonable response and should be dismissed in its entirety pursuant to CPLR §3024(a). *Aetna Casualty & Surety Co. v. Merchants Mutual Insurance Co.*, 84 A.D.2d 736, 444 N.Y.S.2d 79 (dismissing complaint that is “loosely drawn, verbose and poorly organized pleading and is totally at variance with the requirements of CPLR 3014”); *Della Villa v. Constantino*, 246 A.D.2d 867, 668 N.Y.S.2d 724 (3rd Dep’t 1998) (affirming decision of trial court to strike complaint comprised of “a rambling narrative of wrongdoing” pursuant to CPLR 3024[a]).

General Objection No. 2:

To the extent that the allegations in the Complaint are directed to defendant Da Family Records, LLC (“Da Family”), Blackground is not required to provide responses thereto. To the extent any such responses are required, Blackground does not have information or knowledge sufficient to form a belief as to the truth or falsity of such allegations and, as such, they are denied.

General Objection No. 3:

The Complaint contains numerous footnotes, mostly setting forth legal argument, as if the Complaint was a memorandum of law. The CPLR does not provide for, authorize, or permit the

pleading of allegations by footnote. Accordingly, this Answer does not respond to the footnotes in the Complaint and regards them as a nullity. To the extent a response is required, Blackground denies each and every allegation contained in the footnotes to the Complaint.

RESPONSES

1. In response to paragraph “1” of the Complaint, Blackground incorporates the General Objections Nos. 1 and 2 set forth above as if fully set forth herein, and as such a response is not required. To the extent a response may be required, Blackground denies each and every allegation contained in paragraph “1” except admits that JoJo is a musical recording artist and further respectfully refers the Court to the documents cited in paragraph “1” of the Complaint for their full content.

2. In response to paragraph “2” of the Complaint, Blackground incorporates the General Objections Nos. 1 and 2 set forth above as if fully set forth herein, and as such a response is not required. To the extent a response may be required, Blackground denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph “2” and accordingly each and every allegation is denied. Blackground further denies the allegations contained in paragraph “2” of the Complaint on the ground that it calls for a legal conclusion and respectfully refers the Court to the statute cited therein for its entirety, if applicable.

3. In response to paragraph “3” of the Complaint, Blackground incorporates the General Objections Nos. 1 and 2 set forth above as if fully set forth herein, and as such a response is not required. To the extent a response may be required, Blackground denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations

contained in paragraph “3” and respectfully refers the Court to the documents cited therein for their complete content.

4. In response to paragraph “4” of the Complaint, Blackground incorporates the General Objections Nos. 1, 2, and 3 set forth above as if fully set forth herein, and as such a response is not required. To the extent a response may be required, Blackground denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph “4” and accordingly each and every allegation is denied. Blackground further denies the allegations contained in paragraph “4” on the ground that it calls for a legal conclusion and respectfully refers the Court to the document and statute cited therein for their complete content and applicability, if any.

5. In response to paragraph “5” of the Complaint, Blackground incorporates the General Objections Nos. 1, 2, and 3 set forth above as if fully set forth herein, and as such a response is not required. To the extent a response may be required, Blackground denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph “5” and accordingly each and every allegation is denied, except avers that JoJo was indeed represented by legal counsel (Dina LaPolt, Esq.), and admits that JoJo continued to render her recording services well after March 17, 2011 for consideration provided by Defendant Blackground; and Blackground further denies the allegations contained in paragraph “5” on the ground that they call for a legal conclusion and respectfully refers the Court to the documents cited therein for their complete content.

6. In response to paragraph “6” of the Complaint, Blackground incorporates the General Objections Nos. 1, 2, and 3 set forth above as if fully set forth herein, and as such a response is not required. To the extent a response may be required, Blackground denies

knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph “6” and accordingly each and every allegation is denied. Blackground further:

- a) Denies the allegations contained in paragraph “6(a)” of the Complaint.
- b) Denies the allegations contained in paragraph “6(b)” of the Complaint.
- c) Denies the allegations contained in paragraph “6(c)” of the Complaint.

7. In response to paragraph “7” of the Complaint, Blackground incorporates the General Objections Nos. 1 and 2 set forth above as if fully set forth herein, and as such a response is not required. To the extent a response may be required, Blackground denies the allegations contained in paragraph “7”. Blackground further denies any and all allegations contained in paragraph “7” of the Complaint to the extent that they call for a legal conclusion and respectfully refers the Court to the statute cited therein for its complete content and applicability, if any. Blackground further:

- a) Denies the allegations contained in paragraph “7(a)” of the Complaint.
- b) Denies the allegations contained in paragraph “7(b)” of the Complaint.
- c) Denies the allegations contained in paragraph “7(c)” of the Complaint.
- d) Denies the allegations contained in paragraph “7(d)” of the Complaint.
- e) Denies the allegations contained in paragraph “7(e)” of the Complaint.

8. In response to paragraph “8” of the Complaint, Blackground denies that Plaintiff is entitled to the relief sought in paragraph “8”.

9. In response to paragraph “9” of the Complaint, Blackground admits Joanna Levesque is the Plaintiff in this action, and denies knowledge or information sufficient to form a

belief as to the truth or falsity of the remaining allegations contained in paragraph “9” of the Complaint.

10. In response to paragraph “10” of the Complaint, Blackground incorporates General Objection Nos. 1 and 2 set forth above as if fully set forth herein, and as such a response is not required. To the extent a response may be required, Blackground denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph “10”.

11. In response to paragraph “11” of the Complaint, Blackground incorporates General Objection No. 2 set forth above as if fully set forth herein, and as such a response is not required. To the extent a response may be required, Blackground denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph “11”.

12. In response to paragraph “12” of the Complaint, Blackground admits the allegations contained in paragraph “12”.

13. In response to paragraph “13” of the Complaint, Blackground admits the allegations contained in paragraph “13” to the extent they pertain to Blackground, and denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations pertaining to co-defendant Da Family Records, LLC.

14. In response to paragraph “14” of the Complaint, Blackground incorporates the General Objections Nos. 1 and 2 set forth above as if fully set forth herein, and as such a response is not required. To the extent a response may be required, Blackground denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations

contained in paragraph “14” and accordingly each and every allegation is denied. Blackground further respectfully refers the Court to the document cited therein for its complete content.

15. In response to paragraph “15” of the Complaint, Blackground incorporates the General Objections Nos. 1 and 2 set forth above as if fully set forth herein, and as such a response is not required. To the extent a response may be required, Blackground denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph “15” and accordingly each and every allegation is denied. Blackground further respectfully refers the Court to the documents cited therein their complete content.

16. In response to paragraph “16” of the Complaint, Blackground incorporates the General Objections Nos. 1 and 2 set forth above as if fully set forth herein, and as such a response is not required. To the extent a response may be required, Blackground denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph “16” and accordingly each and every allegation is denied. Blackground further respectfully refers the Court to the documents cited therein for their complete content.

17. In response to paragraph “17” of the Complaint, Blackground incorporates the General Objections Nos. 1, 2, and 3 set forth above as if fully set forth herein, and as such a response is not required. To the extent a response may be required, Blackground admits two albums were released and avers that payment and other consideration were made to Plaintiff and/or on her behalf in consideration of her agreement to further record for Blackground.

18. In response to paragraph “18” of the Complaint, Blackground incorporates the General Objections Nos. 1 and 2 set forth above as if fully set forth herein, and as such a response is not required. To the extent a response may be required, Blackground denies the

allegations contained in paragraph “18” and respectfully refers the Court to the document cited therein for its full content

19. In response to paragraph “19” of the Complaint, Blackground incorporates the General Objections Nos. 1 and 2 set forth above as if fully set forth herein, and as such a response is not required. To the extent a response may be required, Blackground admits that Blackground signed an Assent Agreement on or about April 16, 2003, and respectfully refers the Court to the document cited therein for its complete content.

20. In response to paragraph “20” of the Complaint, Blackground incorporates the General Objections Nos. 1 and 2 set forth above as if fully set forth herein, and as such a response is not required. To the extent a response may be required, Blackground denies the allegations contained in paragraph “20” and respectfully refers the Court to the document cited therein for its complete content.

21. In response to paragraph “21” of the Complaint, Blackground respectfully refers the Court to the document cited therein for its complete content.

22. In response to paragraph “22” of the Complaint, Blackground respectfully refers the Court to the document cited therein for its complete content.

23. In response to paragraph “23” of the Complaint, Blackground incorporates General Objection No. 2 set forth above as if fully set forth herein, and as such a response is not required. To the extent a response may be required, Blackground denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph “23” and accordingly each and every allegation is denied. Blackground further respectfully refers the Court to the document cited therein for its full content.

24. In response to paragraph “24” of the Complaint, Blackground incorporates General Objection No. 2 set forth above as if fully set forth herein, and as such a response is not required. To the extent a response may be required, Blackground denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph “24” and accordingly each and every allegation is denied. Blackground further respectfully refers the Court to the document cited therein for its complete content.

25. In response to paragraph “25” of the Complaint, Blackground incorporates the General Objections Nos. 1 and 2 set forth above as if fully set forth herein, and as such a response is not required. To the extent a response may be required, Blackground denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph “25” and accordingly each and every allegation is denied. Blackground further respectfully refers the Court to the documents cited therein for their complete content.

26. In responsive to paragraph “26” of the Complaint, Blackground incorporates the General Objections Nos. 1 and 2 set forth above as if fully set forth herein, and as such a response is not required. To the extent a response may be required, Blackground admits that there were two amendments to the Recording Contract, as that considerable sums or monies were paid to Plaintiff and/or on her behalf to perform under the terms of the agreement.

27. In response to paragraph “27” of the Complaint, Blackground incorporates the General Objections Nos. 1 and 2 set forth above as if fully set forth herein, and as such a response is not required. To the extent a response may be required, Blackground admits that the referenced Petition was approved by the Surrogate Court and respectfully refers the Court to the documents cited therein for their complete content.

28. In response to paragraphs “28” of the Complaint, which purports to cite a court Order, Blackground respectfully refers the Court to the entire Order for a true and correct statement thereof.

29. In response to paragraph “29” of the Complaint, which purports to cite a court Decree, Blackground respectfully refers the Court to the entire Decree for a true and correct statement thereof.

30. In response to paragraph “30” of the Complaint, which purports to cite a statute, Blackground respectfully refers the Court to the entire statute for a true and correct statement thereof.

31. In response to paragraph “31” of the Complaint, which purports to cite a statute, Blackground respectfully refers the Court to the entire statute for a true and correct statement thereof.

32. In response to paragraph “32” of the Complaint, which purports to cite a statute, Blackground respectfully refers the Court to the entire statute for a true and correct statement thereof.

33. In response to paragraph “33” of the Complaint, which purports to cite a published decision, Blackground respectfully refers the court to the entire decision for a true and correct statement thereof.

34. In response to paragraph “34” of the Complaint, which purports to cite a published decision, Blackground respectfully refers the court to the entire decision for a true and correct statement thereof.

35. In response to paragraph “35” of the Complaint, which purports to cite a published decision, Blackground respectfully refers the Court to the entire decision for a true and correct statement thereof.

36. In response to paragraph “36” of the Complaint, which purports to cite a statute, Blackground respectfully refers the Court to the entire statute for a true and correct statement thereof.

37. In response to paragraph “37” of the Complaint, Blackground denies knowledge or information sufficient to form a belief of the truth or falsity of the allegations contained in paragraph “37”, and respectfully refers the Court to the documents cited therein for their complete content.

38. In response to paragraph “38” of the Complaint, Blackground denies knowledge or information sufficient to form a belief of the truth or falsity of the allegations contained in paragraph “38”, and respectfully refers the Court to the document cited therein for its complete content.

39. In response to paragraph “39” of the Complaint, Blackground denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph “39”, and respectfully refers the Court to the documents cited therein for their complete content.

40. In response to paragraph “40” of the Complaint, Blackground denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph “40”, and respectfully refers the Court to the document cited therein for its complete content.

41. In response to paragraph “41” of the Complaint, Blackground denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph “41”, and respectfully refers the Court to the documents cited therein for their complete content.

42. In response to paragraph “42” of the Complaint, Blackground incorporates the General Objections Nos. 1 and 2 set forth above as if fully set forth herein, and as such a response is not required. To the extent a response may be required, Blackground denies the allegations contained in paragraph “42”.

43. In response to paragraph “43” of the Complaint, Blackground admits only that Plaintiff had filed this action seeking declaratory and injunctive relief, but denies knowledge or information sufficient to form a belief as to the reasons alleged by Plaintiff.

44. In response to paragraph “44” of the Complaint, Blackground repeats and realleges its Responses to paragraphs “1” through “43” of the Complaint as if set forth fully herein.

45. In response to paragraph “45” of the Complaint, Blackground denies the allegations contained in paragraph “45”, except admits that Plaintiff has alleged a controversy exists between JoJo and Blackground.

46. In response to paragraph “46” of the Complaint, Blackground denies the allegations contained in paragraph “46”, except admits that Plaintiff contends that the Recording Contract expired on March 17, 2011.

47. In response to paragraph “47”, Blackground incorporates General Objections No. 2 set forth above as if fully set forth herein, and as such a response is not required. To the extent a response may be required, Blackground avers that Plaintiff is required to continue providing her recording services as she previously agreed.

48. In response to paragraph “48” of the Complaint, Blackground denies that Plaintiff is entitled to the relief she seeks in paragraph “48” of the Complaint.

49. Blackground denies the allegations contained in paragraph “49” of the Complaint.

50. Blackground repeats and reallages its Responses to paragraphs “1” through “49” of the Complaint as if fully set forth herein.

51. Blackground denies the allegations contained in paragraph “51” of the Complaint.

52. Blackground denies the allegations contained in paragraph “52” of the Complaint.

53. Blackground denies the allegations contained in paragraph “53” of the Complaint.

54. Blackground denies that Plaintiff is entitled to the relief requested paragraph “54” of the Complaint.

FIRST DEFENSE

1. That all causes of action as alleged in Plaintiff’s Complaint fail to properly state, specify or allege a cause of action upon which relief can be granted, as a matter of law, against Blackground.

SECOND DEFENSE

2. Plaintiff reaffirmed her agreement and willingness to be bound by the Recording Agreement by accepting payments and other consideration; Blackground has and continues to be ready, willing, and able to fulfill all of its obligations under its agreement with Plaintiff.

THIRD DEFENSE

3. That all causes of action as alleged in Plaintiff's Complaint, or parts thereof, are barred by Plaintiff's release of such claims when, after she obtained the age of majority and while represented by legal counsel, she discontinued her 2009 action and agreed to continue to record for Blackground.

FOURTH DEFENSE

4. That all causes of action as alleged in Plaintiff's Complaint, or parts thereof, are barred by the doctrine of waiver and/or estoppel.

FIFTH DEFENSE

5. That all causes of action as alleged in Plaintiff's Complaint, or parts thereof, are barred by the doctrine of laches.

SIXTH DEFENSE

6. That all causes of action as alleged in Plaintiff's Complaint, or parts thereof, are barred by the doctrine of ratification.

SEVENTH DEFENSE

7. That all causes of action as alleged in Plaintiff's Complaint, or parts thereof, are barred by the statute of limitations.

EIGHTH DEFENSE

8. That all causes of action as alleged in Plaintiff's Complaint, or parts thereof, are barred by the doctrine of unclean hands.

WHEREFORE, Defendant Blackground respectfully demands judgment:

- (1) dismissing the Plaintiff's Complaint against Blackground; and
- (2) for costs, disbursements and reasonable attorney's fees in defending the action, as

allowed at law and/or under contract.

Dated: New York, New York
September 6, 2013

Respectfully submitted,

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