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

11 CLEVELAND CONSTANTINE
12 BROWNE, an individual; ANIKA
13 JOHNSON as personal representative of
the Estate of WYCLIFFE JOHNSON,
14 deceased; and STEELY & CLEVIE
PRODUCTIONS LTD.,

15 Plaintiffs,

16
17 v.

18 LUIS ALFONSO RODRÍGUEZ LÓPEZ-
19 CEPERO, an individual; MAURICIO
20 RENGIFO, an individual; ANDRÉS
21 TORRES, an individual; MICHAEL
22 ANTHONY TORRES MONGE, an
individual; JUAN CARLOS OZUNA
23 ROSADO, an individual; ERIKA MARÍA
ENDER SIMOES, an individual; RAMÓN
24 LUIS AYALA RODRÍGUEZ, an
individual; OLADAYO OLATUNJI, an
25 individual; STEPHANIE VICTORIA
26 ALLEN, an individual; NICK RIVERA
27 CAMINERO, an individual; SEBASTIÁN
OBANDO GIRALDO, an individual;

Case No.: 2:21-cv-08295-AB-E
Hon. André Birotte Jr. Presiding

**FIRST AMENDED COMPLAINT
FOR:**

1. DIRECT COPYRIGHT
INFRINGEMENT;
- AND
2. VICARIOUS AND/OR
CONTRIBUTORY
COPYRIGHT INFRINGEMENT

JURY TRIAL DEMANDED

1 PABLO AREVALO LLANO, an
2 individual; CARLOS EFRÉN REYES
3 ROSADO, an individual; RAÚL
4 ALEJANDRO OCASIO RUIZ, an
5 individual; JUSTIN BIEBER, an
6 individual; JASON PAUL DOUGLAS
7 BOYD, an individual; UNIVERSAL
8 MUSIC LATIN ENTERTAINMENT, a
9 Delaware general partnership; UMG
10 RECORDINGS, INC., a Delaware
11 corporation; SONY/ATV MUSIC
12 PUBLISHING, an English private limited
13 company; UNIVERSAL MUSIC
14 PUBLISHING, INC., a California
15 corporation; WARNER CHAPPELL
16 MUSIC, INC., a California corporation;
17 WARNER CHAPPELL OVERSEAS
18 HOLDINGS LIMITED, an English private
19 limited company; KOBALT MUSIC
20 PUBLISHING LIMITED, an English
21 private limited company and DOES 1
22 through 10;

23 Defendants.

24 Plaintiffs by and through their undersigned attorneys, hereby pray to this
25 honorable Court for relief based on the following:

26 **Jurisdiction & Venue**

- 27 1. This action arises under the Copyright Act of 1976, 17 U.S.C. §§ 101, *et*
28 *seq.*
2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331,
1338(a) and (b), & 1367(a).
3. Venue in this judicial district is proper under 28 U.S.C. § 1391 (c) and §
1400(a).

Parties

1
2 4. Plaintiff Cleveland Constantine Browne is an individual residing in
3 Kingston, Jamaica.

4 5. Plaintiff Anika Johnson is a resident of Jamaica, and joins in the action
5 not individually, but solely in her capacity as the personal representative of the Estate
6 of Wycliffe Johnson, pursuant to grant of administration by the Supreme Court of
7 Judicature of Jamaica, Case No. 2015-P-00576. Mr. Johnson died on September 1,
8 2009 and was a resident of the City of Kingston, parish of Saint Andrew, state of
9 Jamaica, West Indies. As such, Ms. Johnson is a successor-in-interest to all personal
10 property of Wycliffe Johnson, including any intellectual property rights.

11 6. Plaintiff Steely & Clevie Productions Ltd. is a limited company
12 organized and existing under the laws of Jamaica.

13 7. Plaintiffs are informed and believe and thereon allege that Defendant
14 Luis Alfonso Rodríguez López-Cepero p/k/a Luis Fonsi (“Luis Fonsi”) is an
15 individual residing in Miami, Florida and doing business in and with the state of
16 California, including in this judicial district.

17 8. Plaintiffs are informed and believe and thereon allege that Defendant
18 Mauricio Rengifo p/k/a El Dandee (“El Dandee”) is an individual residing in Cali,
19 Colombia and doing business in and with the state of California, including in this
20 judicial district.

21 9. Plaintiffs are informed and believe and thereon allege that Defendant
22 Andrés Torres (“Torres”) is an individual residing in Bogotá, Colombia and doing
23 business in and with the state of California, including in this judicial district.

24 10. Plaintiffs are informed and believe and thereon allege that Defendant
25 Michael Anthony Torres Monge p/k/a Myke Towers (“Myke Towers”) is an
26 individual residing in San Juan, Puerto Rico and doing business in and with the state
27 of California, including in this judicial district.

1 11. Plaintiffs are informed and believe and thereon allege that Defendant
2 Juan Carlos Ozuna Rosado p/k/a Ozuna (“Ozuna”) is an individual residing in San
3 Juan, Puerto Rico and doing business in and with the state of California, including in
4 this judicial district.

5 12. Plaintiffs are informed and believe and thereon allege that Defendant
6 Erika María Ender Simoes (“Simoes”) is an individual residing in Miami, Florida and
7 doing business in and with the state of California, including in this judicial district.

8 13. Plaintiffs are informed and believe and thereon allege that Defendant
9 Ramón Luis Ayala Rodríguez p/k/a Daddy Yankee (“Daddy Yankee”) is an
10 individual residing in San Juan, Puerto Rico and doing business in and with the state
11 of California, including in this judicial district.

12 14. Plaintiffs are informed and believe and thereon allege that Defendant
13 Justin Bieber (“Bieber”) is an individual residing in Los Angeles, California and
14 doing business in and with the state of California, including in this judicial district.

15 15. Plaintiffs are informed and believe and thereon allege that Defendant
16 Jason Paul Douglas Boyd p/k/a Poo Bear (“Boyd”) is an individual residing in San
17 Juan, Puerto Rico and doing business in and with the state of California, including in
18 this judicial district.

19 16. Plaintiffs are informed and believe and thereon allege that Defendant
20 Oladayo Olatunji p/k/a Dyo (“Dyo”) is an individual residing in London, England
21 and doing business in and with the state of California, including in this judicial
22 district.

23 17. Plaintiffs are informed and believe and thereon allege that Defendant
24 Stephanie Victoria Allen p/k/a Stefflon Don (“Stefflon Don”) is an individual
25 residing in London, England and doing business in and with the state of California,
26 including in this judicial district.

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1 18. Plaintiffs are informed and believe and thereon allege that Defendant
2 Nick Rivera Caminero p/k/a Nicky Jam (“Nicky Jam”) is an individual residing in
3 Miami, Florida and doing business in and with the state of California, including in
4 this judicial district.

5 19. Plaintiffs are informed and believe and thereon allege that Defendant
6 Sebastián Obando Giraldo p/k/a Sebastian Yatra (“Sebastian Yatra”) is an individual
7 residing in Colombia and doing business in and with the state of California, including
8 in this judicial district.

9 20. Plaintiffs are informed and believe and thereon allege that Defendant
10 Pablo Arevalo Llano (“Llano”) is an individual residing in Miami, Florida and doing
11 business in and with the state of California, including in this judicial district.

12 21. Plaintiffs are informed and believe and thereon allege that Defendant
13 Carlos Efrén Reyes Rosado p/k/a Farruko (“Farruko”) is an individual residing in San
14 Juan, Puerto Rico and doing business in and with the state of California, including in
15 this judicial district.

16 22. Plaintiffs are informed and believe and thereon allege that Defendant
17 Raúl Alejandro Ocasio Ruiz p/k/a Rauw Alejandro (“Rauw Alejandro”) is an
18 individual residing in Miami, Florida and doing business in and with the state of
19 California, including in this judicial district.

20 23. Plaintiffs are informed and believe and thereon allege that Defendant
21 UMG Recordings, Inc. (“UMG”) is a Delaware corporation, with offices in Santa
22 Monica, California.

23 24. Plaintiffs are informed and believe and thereon allege that Defendant
24 Universal Music Latin Entertainment (“UMLE”) is an American record label/music
25 industry conglomerate and a Delaware General Partnership with offices in Santa
26 Monica, California.

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1 25. Plaintiffs are informed and believe and thereon allege that Defendant
2 Sony/ATV Music Publishing (UK) Limited (“Sony”) is a private limited company
3 registered in England, with offices in Santa Monica, California.

4 26. Plaintiffs are informed and believe and thereon allege that Defendant
5 Universal Music Publishing, Inc. (“UMP”) is a California corporation, with offices in
6 Santa Monica, California.

7 27. Plaintiffs are informed and believe and thereon allege that Defendant
8 Kobalt Music Publishing Ltd (“Kobalt”) is a private limited company registered in
9 England and doing business in and with the state of California, including in this
10 judicial district.

11 28. Plaintiffs are informed and believe and thereon allege that Defendant
12 Warner Chappell Music, Inc. individually and doing business as Warner Chappell
13 North America Limited (collectively “Warner”) is a Delaware corporation with
14 offices in Los Angeles, California.

15 29. Plaintiffs are informed and believe and thereon allege that Defendant
16 Warner Chappell Overseas Holdings Limited (“WCOH”) is a private limited
17 company registered in England, with offices in Los Angeles, California.

18 30. Defendants Does 1 through 10, inclusive, are other parties not yet
19 identified who have infringed Plaintiffs’ copyrights, have contributed to the
20 infringement of Plaintiffs’ copyrights, or have engaged in one or more of the
21 wrongful practices alleged herein. The true names, whether corporate, individual or
22 otherwise, of Defendants 1 through 10, inclusive, are presently unknown to Plaintiff,
23 which therefore sue said Defendants by such fictitious names, and will seek leave to
24 amend this Complaint to show their true names and capacities when same have been
25 ascertained.

26 31. Plaintiffs are informed and believes and thereon alleges that at all times
27 relevant hereto each of the Defendants was the agent, affiliate, officer, director,
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1 manager, principal, alter-ego, and/or employee of the remaining Defendants and was
2 at all times acting within the scope of such agency, affiliation, alter-ego relationship
3 and/or employment; and actively participated in or subsequently ratified and adopted,
4 or both, each and all of the acts or conduct alleged, with full knowledge of all the
5 facts and circumstances, including, but not limited to, full knowledge of each and
6 every violation of Plaintiffs' rights and the damages to Plaintiffs proximately caused
7 thereby.

8 **Factual Background**

9 32. This case involves the repeated infringement of Plaintiffs' copyrights in
10 the *Fish Market* song by international recording artist Luis Fonsi and his assorted
11 record labels, producers, publishers, co-writers and other co-creators as follows.

12 33. Plaintiff Cleveland Constantine Browne, p/k/a Clevie, is a world-
13 renowned influential and innovative composer, musician and producer known for,
14 inter alia, pioneering the use of drum machines in reggae.

15 34. Wycliffe Anthony Johnson, p/k/a Steely, was a visionary and innovative
16 composer, musician and producer.

17 35. Together, Mr. Browne and Mr. Johnson formed the writing, musical and
18 producing duo Steely & Clevie, and worked on numerous genre-defining projects.
19 Mr. Browne and Mr. Johnson worked with a plethora of high profile and
20 internationally famous artists including reggae legends Bob Marley, Bunny Wailer,
21 Jimmy Cliff, Gregory Isaacs, Ziggy Marley and Lee "Scratch" Perry.

22 36. The Estate of Wycliffe Johnson, is the successor-in-interest to Mr.
23 Johnson's intellectual property rights.

24 37. Plaintiff Steely & Clevie Productions Ltd. is the production company of
25 Mr. Browne and Mr. Johnson.

1 38. In 1989 Mr. Browne and Mr. Johnson wrote and recorded the
2 instrumental song entitled *Fish Market* (the “Song” or “*Fish Market*”). The recording
3 and composition for the Song are registered with the United States Copyright Office.

4 39. *Fish Market* is an original work including an original drum pattern that
5 gives it a unique sound that differentiates it from prior works. The combination of
6 instruments in *Fish Market* includes a programmed kick, snare, and hi hat. These
7 instruments are playing a one bar pattern. *Fish Market* also includes percussion
8 instruments, namely a tambourine playing through the entire bar and a synthesized
9 ‘tom’ playing on beats one and three. A lower-pitched timbale roll occurs at the end
10 of every second bar. Higher and lower pitched timbales also play a free improvisation
11 over the pattern for the duration of the song. Additionally, *Fish Market* includes a
12 synthesized Bb (b-flat) bass note on beats one and three of each bar, which follows
13 the aforementioned synthesized ‘tom’ pattern. And the combination of the foregoing
14 elements is protectable.

15 40. In 1990, Mr. Browne and Mr. Johnson co-authored the song titled *Dem*
16 *Bow* (roughly “They Bow” in English) with Shabba Ranks. *Dem Bow* was a massive
17 club hit and garnered worldwide acclaim in the international reggae dancehall scene.
18 *Dem Bow’s* instrumental (which is an alternative mix of *Fish Market*, based on the
19 same multi-track recording) is iconic and has been acknowledged as foundational to
20 reggaeton music.

21 41. In 1990, subsequent to the release and success of Shabba Ranks’ *Dem*
22 *Bow*, Denis Halliburton p/k/a “Dennis the Menace” replayed *Dem Bow’s*
23 instrumental to create a sound recording of an instrumental that was used to record a
24 Spanish Language cover version of *Dem Bow* entitled *Ellos Benia* (a rough Spanish
25 translation of *Dem Bow*) by the artist Fernando Brown p/k/a “Nando Boom” and
26 *Pounder* by the duo Patrick Bernard p/k/a “Bobo General” and Wayne Archer p/k/a
27 “Sleepy Wonder”.

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1 42. Both *Ellos Benia* and *Pounder* were released on vinyl 12 inch singles on
2 the Shelly's Records label in New York. The "B Side" to *Pounder* featured an
3 instrumental mix of Mr. Halliburton's sound recording, titled on the record label as
4 *Dub Mix II* by Dennis The Menace. This instrumental has been sampled widely in
5 Reggaeton and is commonly known and referred to as the "Pounder" riddim. The
6 "Pounder" riddim is substantially similar if not virtually identical to *Fish Market*.
7 Transcripts of portions of *Fish Market* and the "Pounder" riddim are shown below

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9 **Fish Market**

Steely & Clevie

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hi hat
tambourine
timbale 1
timbale 2
tom
snare
kick

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19 **Pounder Rhythm**

As played by Denis Halliburton

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♩ = 100
A
hi hat
timbale 1
timbale 2
tom 1
snare 1
kick
bass line 1

1 43. On or about June 3, 2021, UMG and/or UMLE released the Luis Fonsi
2 single entitled *Bésame*. Plaintiffs are informed and believe and thereon allege that
3 *Bésame* was written, recorded, produced, distributed and/or exploited by Defendants
4 UMG, UMLE, Warner, Luis Fonsi, Myke Towers, Cali, and Torres.

5 44. On or about June 14, 2018, UMG and/or UMLE released the Luis Fonsi
6 single entitled *Calypso*. Plaintiffs are informed and believe and thereon allege that
7 *Calypso* was written, recorded, produced, distributed and/or exploited by Defendants
8 UMG, UMLE, Warner, Sony, Luis Fonsi, Cali, Torres, Dyo, and Stefflon Don.

9 45. On or about April 23, 2019, UMG and/or UMLE released the single
10 *Date La Vuelta*. Plaintiffs are informed and believe and thereon allege that *Date La*
11 *Vuelta* was written, recorded, produced, distributed and/or exploited by Defendants
12 UMG, UMLE, Warner, Sony, UMP, Luis Fonsi, Cali, Torres, Llano, Nicky Jam, and
13 Sebastian Yatra.

14 46. On or about January 12, 2017, UMG and/or UMLE released the Luis
15 Fonsi single *Despacito*. Plaintiffs are informed and believe and thereon allege that
16 *Despacito* was written, recorded, produced, distributed and/or exploited by
17 Defendants UMG, UMLE, Sony, Luis Fonsi, Simoes, and Daddy Yankee.

18 47. Subsequently, in or about April 2017, UMG and/or UMLE released a
19 remix of *Despacito* featuring Justin Bieber (the "*Despacito Remix*"). Plaintiffs are
20 informed and believe and thereon allege that *Despacito Remix* was written, recorded,
21 produced, distributed and/or exploited by Defendants UMG, UMLE, Sony, Luis
22 Fonsi, Simoes, Daddy Yankee, Bieber and Boyd.

23 48. On or about November 17, 2017, UMG and/or UMLE released the Luis
24 Fonsi single entitled *Échame La Culpa*. Plaintiffs are informed and believe and
25 thereon allege that *Échame La Culpa* was written, recorded, produced, distributed
26 and/or exploited by Defendants UMG, UMLE, Warner, Sony, Luis Fonsi, El Dandee,
27 Cali, and Torres.

1 49. On or about October 19, 2018, UMG and/or UMLE released the Luis
2 Fonsi single entitled *Imposible*. Plaintiffs are informed and believe and thereon allege
3 that *Imposible* was written, recorded, produced, distributed and/or exploited by
4 Defendants UMG, UMLE, Sony, Luis Fonsi, El Dandee, Torres, and Ozuna.

5 50. On or about September 23, 2020, UMG and/or UMLE released the Luis
6 Fonsi single entitled *Perfecta*. Plaintiffs are informed and believe and thereon allege
7 that *Perfecta* was written, recorded, produced, distributed and/or exploited by
8 Defendants UMG, UMLE, Warner, Sony, Luis Fonsi, El Dandee, Torres, and
9 Farruko.

10 51. On or about February 6, 2019, UMG and/or UMLE released the Luis
11 Fonsi single entitled *Sola*. Plaintiffs are informed and believe and thereon allege that
12 *Sola* was written, recorded, produced, distributed and/or exploited by Defendants
13 UMG, UMLE, Warner, Sony, Luis Fonsi, El Dandee, and Torres.

14 52. On or about February 18, 2021, UMG and/or UMLE released the Luis
15 Fonsi single entitled *Vacio*. Plaintiffs are informed and believe and thereon allege that
16 *Vacio* was written, recorded, produced, distributed and/or exploited by Defendants
17 UMG, UMLE, Sony, Luis Fonsi, El Dandee, Torres, and Rauw Alejandro.

18 53. *Bésame, Calypso, Date La Vuelta, Despacito, Despacito Remix, Échame*
19 *La Culpa, Imposible, Perfecta, Sola, and Vacio* (hereinafter referred to collectively as
20 the “Infringing Works”) were each hit songs garnering millions (if not billions) of
21 plays and streams around the world respectively and resulted in significant revenue
22 and profits to the respective Defendants.

23 54. Each of the Infringing Works incorporates an unauthorized sample of
24 the *Fish Market* recording and/or a verbatim copy of the *Fish Market* composition as
25 the primary rhythm / drum section of each work.
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1 55. A comparison of *Fish Market* and each of the Infringing Works
 2 establishes that each of the Infringing Works incorporates both qualitatively and
 3 quantitatively significant sections of the *Fish Market* recording and/or composition.

4 56. The rhythm section of *Bésame* copies original elements of the *Fish*
 5 *Market* rhythm section, including the original combination of drum patterns featured
 6 in *Fish Market*. These purloined elements include, without limitation, the kick, snare
 7 and hi-hat patterns and the sixteenth notes on the ‘and’ of beat one from a hi-hat
 8 sound which replaces a corresponding snare in *Fish Market*. The kick drum of
 9 *Bésame* plays four crotchets per bar beginning on the first beat of each bar as in *Fish*
 10 *Market*. Bongos serve to substitute for the *Fish Market* timbales pattern ending in a
 11 fourth bar rapid burst phrase. The drum and bass tracks both together and
 12 independently, are substantially similar in rhythmic structures and texture to those of
 13 *Fish Market*. The kick, snare, hi-hat and bass are prominent in the mix of *Bésame*
 14 which emulates the sonic texture of *Fish Market*, giving the song a similar feel.
 15 Further, despite note deviations to match the song's chord structure, the bassline most
 16 commonly anchors on beats one and three as in *Fish Market*. These copied elements
 17 form the backbone of *Bésame* and accordingly, significant portions of *Bésame* are
 18 substantially similar if not virtually identical to significant portions of *Fish Market*,
 19 as shown in the transcripts of portions of each below. ♦

Fish Market

Steely & Cleve

The image shows a musical score for the drum parts of 'Fish Market' by Steely & Cleve. The score is written in 4/4 time and consists of seven staves: hi hat, tambourine, timbale 1, timbale 2, tom, snare, and kick. The hi-hat part features a pattern of eighth notes on the 'and' of the first beat. The tambourine part has a similar eighth-note pattern. The timbale 1 part has a pattern of eighth notes on the 'and' of the first beat. The timbale 2 part has a pattern of eighth notes on the 'and' of the first beat. The tom part has a pattern of eighth notes on the 'and' of the first beat. The snare part has a pattern of eighth notes on the 'and' of the first beat. The kick part has a pattern of eighth notes on the 'and' of the first beat.

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Besame
DRUM & BASS EXCERPT - BARS 1 & 2

57. The rhythm section of *Calypso* copies original elements of the *Fish Market* rhythm section, including the original combination of drum and bass patterns featured in *Fish Market*. These purloined elements include, without limitation, the original drum pattern of *Fish Market* including without limitation, the kick, snare and hi-hat patterns and the sixteenth notes on the ‘and’ of beat one from a snare sound. The kick, snare, hi-hat and bass are prominent in the mix of *Calypso* which emulates the sonic texture of *Fish Market*, giving the song a similar feel. These copied elements form the backbone of *Calypso* and accordingly, *Calypso* is substantially similar if not virtually identical to significant portions of *Fish Market*, as shown in the transcripts of portions of each below.

Fish Market

Steely & Cleve

Calypso

DRUM & BASS EXCERPT AT APPROX. 1:08

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The musical notation shows a drum and bass excerpt in 4/4 time. The hi hat, tom, and snare are in 4/4 time. The kick is in 4/4 time. The synth bass is in 4/4 time with a key signature of one sharp (F#). The hi hat and tom play a simple pattern of two notes per bar. The snare plays a pattern of eighth notes with rests. The kick plays a pattern of quarter notes. The synth bass plays a pattern of quarter notes.

58. The rhythm section of *Date La Vuelta* copies original elements of the *Fish Market* rhythm section, including the original combination of drum and bass patterns featured in *Fish Market*. These purloined elements include, without limitation, the original drum pattern of *Fish Market* including without limitation, the kick, snare and hi-hat patterns and the sixteenth notes on the ‘and’ of beat one from a snare sound. The kick drum of *Date La Vuelta* plays four crotchets per bar beginning on the first beat of each bar as in *Fish Market*. The hi-hat plays a similar pattern as shown on bar 2, 4, 6 and 7 of the notation excerpt. The snare drum mimics the snare pattern as played in *Fish Market* with a minor variation on alternating bars. The kick, snare, hi-hat and bass are prominent in the mix of *Date La Vuelta* which emulates the sonic texture of *Fish Market*, giving the song a similar feel. The tom in *Date La Vuelta* plays the exact down beat pattern as *Fish Market* with emphasis on beats 1 and 3 and shares the unique sonic character of the tom sound found in the “Pounder” riddim, indicating that the tom sound was sampled from the “Pounder” riddim. The drum and bass tracks both together and independently, are substantially similar in rhythmic structures and texture to those of *Fish Market*. The bass has a similar texture. Further, despite note deviations to match the song's chord structure, the bassline most commonly anchors on beats one and three as in *Fish Market*. These copied elements form the backbone of *Date La Vuelta* and accordingly, *Date La*

1 *Vuelta* is substantially similar if not virtually identical to significant portions of *Fish*
 2 *Market*, as shown in the transcripts of portions of each below.

3 **Fish Market**

Steely & Cleve

4 hi hat

5 tambourine

6 timbale 1

7 timbale 2

8 tom

9 snare

10 kick

11

12 **DATE LA VUELTA**

DRUM & BASS EXCERPT- BARS 7 & 8

13 7

14 hi hat

15 tom

16 snare

17 kick

18

19

20 59. The rhythm section of *Despacito* and the *Despacito Remix* copies
 21 original elements of the *Fish Market* rhythm section, including the original
 22 combination of drum and bass patterns featured in *Fish Market*. These purloined
 23 elements include but are not limited to the kick and snare pattern and bass pattern.
 24 The kick drum of *Despacito* plays four crotchets per bar beginning on the first beat of
 25 each bar as in *Fish Market*. The snare drum mimics the main accentuated snare
 26 pattern as played in *Fish Market*. As in *Fish Market*, the bass pattern in *Despacito* is
 27 primarily played on beats one and three, as can be heard at approximately 1:46, 3:14
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1 and again at 3:46 of *Despacito*. In addition, the kick drum, snare drum and bass are
 2 prominent in the mix of *Despacito* as is the case in *Fish Market*. *Despacito* also
 3 emulates the texture of *Fish Market*, which gives the song a similar feel. The drum
 4 and bass tracks both together and independently, are substantially similar in rhythmic
 5 structures and texture to those of *Fish Market*. The *Despacito Remix* includes the
 6 same infringing elements as *Despacito*. In sum, the musical backbone of *Despacito*
 7 and the *Despacito Remix* are substantially similar if not virtually identical to a
 8 significant portion of *Fish Market*, as shown in the transcripts of portions of *Fish*
 9 *Market* and *Despacito* below.

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Fish Market

Steely & Cleve

Despacito

DRUM & BASS EXCERPT - BAR 40 verse 2
START TIME APPROXIMATELY 1:46

♩ = 89

1 60. The rhythm section of *Échame La Culpa* copies original elements of the
2 *Fish Market* rhythm section, including the original combination of drum and bass
3 patterns featured in *Fish Market*. These copied elements include, without limitation,
4 the kick and snare patterns as well as the bass pattern which is predominantly played
5 on beats one and three of every bar just as the bass in *Fish Market* is predominantly
6 played on beats one and three of every bar. Both the kick drum and the hi-hat cymbal
7 play four crotchets per bar beginning on the first beat of each bar. The snare drum
8 also mimics the main snare pattern as played within *Fish Market*. The kick, snare
9 drums and bass are prominent in the mix of *Échame La Culpa* as is the case in *Fish*
10 *Market*. Further, *Échame La Culpa* includes a timbale drum roll/phrase occurring at
11 the end of every second bar which mimics the structure of *Fish Market*. *Échame La*
12 *Culpa* also emulates the texture of *Fish Market*. In sum, the musical backbone of
13 *Échame La Culpa* is substantially similar if not virtually identical to a significant
14 portion of *Fish Market*, as shown in the transcripts of portions of each below.

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Fish Market

Steely & Clevie

The musical score for 'Fish Market' by Steely & Clevie is presented in a multi-staff format. The instruments listed on the left are hi hat, tambourine, timbale 1, timbale 2, tom, snare, kick, and bass. The score is divided into two measures by a vertical bar line. The hi hat, snare, and kick parts show a consistent rhythmic pattern of four crotchets per bar. The tambourine and timbale parts feature more complex rhythmic patterns, including rolls and phrases. The bass part is shown at the bottom of the score, indicating a pattern of notes on beats one and three of every bar.

ECHAME LA CULPA

DRUM & BASS EXCERPT FROM CHORUS AT BAR 29
START TIME APPROXIMATELY 1:26

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11 61. *Impossible* copies *Fish Market* by using a sample of the “Pounder”
12 riddim as its rhythm section. The bass has a similar texture. Further, despite note
13 deviations to match the song’s chord structure, the bassline most commonly anchors
14 on beats one and three as in *Fish Market*. The drum and bass tracks combined are
15 substantially similar to the rhythmic structures and texture of the *Fish Market*. The
16 “Pounder” riddim sample provides the musical backbone for *Impossible* and
17 accordingly, *Impossible* is substantially similar if not virtually identical to significant
18 portions of *Fish Market*, as shown in the transcripts of portions of each below.

Fish Market

Steely & Clevie

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Impossible

DRUM & BASS EXCERPT - BAR 9
START TIME APPROXIMATELY 0:36

The musical score for 'Impossible' (Bar 9) features the following parts:

- hi hat:** Four quarter notes per bar.
- tom:** Quarter notes with rests, alternating between the two staves.
- snare 2:** A complex pattern of eighth and sixteenth notes with rests.
- snare 1:** A pattern of eighth notes with rests, mirroring the snare 2 pattern.
- kick:** Four quarter notes per bar.
- bass:** A bass line in G major (one sharp) with a 4/4 time signature, featuring eighth and quarter notes.

62. The rhythm section of *Perfecta* copies original elements of the *Fish Market* rhythm section, including the original combination of drum and bass patterns featured in *Fish Market*. The kick drum plays four crotchets per bar beginning on the first beat of each bar. The hi-hat plays a similar pattern. The snare drum mimics the snare pattern as played in *Fish Market* with the third sixteenth note filled in or substituted by a percussion or timbale. This substitution of sound yields the same rhythmic effect as in *Fish Market*. There is also a minor variation of the snare pattern on bar 4. The tom plays along with the snare drum. *Perfecta* also copies *Fish Market* by using a sample of the “Pounder” riddim as its rhythm section. The copied elements of *Fish Market* provide the musical backbone for *Perfecta* and accordingly, *Perfecta* is substantially similar if not virtually identical to significant portions of *Fish Market*, as shown in the transcripts of portions of each below

Fish Market

Steely & Clevie

The musical score for 'Fish Market' (Steely & Clevie) features the following parts:

- hi hat:** Four quarter notes per bar.
- tambourine:** A complex pattern of eighth and sixteenth notes.
- timbale 1:** A pattern of eighth notes with rests.
- timbale 2:** A pattern of eighth notes with rests.
- tom:** Quarter notes with rests.
- snare:** A pattern of eighth notes with rests.
- kick:** Four quarter notes per bar.
- bass:** A bass line in G major (one sharp) with a 4/4 time signature, featuring quarter notes.

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Perfecta
Drum & Bass Excerpt - Bars 2 & 3

DanceCentral.com

63. The rhythm section of *Sola* copies original elements of the *Fish Market* rhythm section, including the original combination of drum and bass patterns featured in *Fish Market*. These purloined elements include without limitation, the kick and snare patterns. The kick drum plays only two crotchets per bar on the first and third beats of each bar in contrast to *Fish Market*. However, the missing kick drum beats (beats 2 and 4) which would complete the *Fish Market* kick drum pattern, are played with a percussive substitute, thus formulating the full kick drum pattern. Despite the song's ballad styled composition, the bass maintains a similar texture with the deep tone timbre found in *Fish Market*. Further, despite note deviations to match the song's chord structure, the bassline most commonly anchors on beats one and three as in *Fish Market*. The kick drum, snare drum and bass are prominent in the mix of *Sola* presenting a song that is minimalistic in instrumentation and sound as is the case in *Fish Market*. In sum, the musical backbone of *Sola* is substantially similar if not virtually identical to a significant portion of *Fish Market*, as shown in the transcripts of portions of each below.

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Fish Market

Steely & Cleve

Musical score for 'Fish Market' in 4/4 time. The score includes parts for hi hat, tambourine, timbale 1, timbale 2, tom, snare, kick, and bass. The hi hat and snare play a consistent rhythmic pattern of four crotchets per bar. The kick drum plays on beats 1 and 3. The bass line features a steady eighth-note pattern.

Sola

DRUM & BASS EXCERPT - BARS 1 & 2

Musical score for 'Sola' in 4/4 time, labeled as a 'DRUM & BASS EXCERPT - BARS 1 & 2'. The score includes parts for Percussion, efx (fngtr snps), snare, kick, and bass. The percussion and snare parts are highly rhythmic, mimicking the patterns in 'Fish Market'. The kick drum plays on beats 1 and 3. The bass line is a simple eighth-note pattern.

64. The rhythm section of *Vacio* copies original elements of the *Fish Market* rhythm section, including the original combination of drum and bass patterns featured in *Fish Market*. The kick drum and hi-hat plays four crotchets per bar beginning on the first beat of each bar as in *Fish Market*. The snare drum mimics the snare pattern as played in *Fish Market*. Tom 1 is played on beats one and three as in *Fish Market*. The rhythmic structures and texture of the drum and bass tracks are substantially similar to those of *Fish Market*; giving the song a similar feel and subsequent appeal. Further, despite note deviations to match the song's chord structure, the bassline has emphasis on beats one and three as in *Fish Market*. The copied elements of *Fish Market* provide the musical backbone for *Vacio* and accordingly, *Vacio* is

1 substantially similar if not virtually identical to significant portions of *Fish Market*,
2 as shown in the transcripts of portions of each below.

3 **Fish Market**

4 Steely & Clevie

5 hi hat

6 tambourine

7 timbale 1

8 timbale 2

9 tom

10 snare

11 kick

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14 **VACIO**
DRUM & BASS EXCERPT - BAR 34 & 35
START TIME APPROXIMATELY 1:47

15 hi hat

16 tom 1

17 snare 2

18 snare 1

19 kick

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22 65. *Vacio* also copies *Fish Market* by using a sample of the “Pounder”
23 riddim as its rhythm section. The copied elements of *Fish Market* and the “Pounder”
24 riddim sample provide the musical backbone for *Vacio* and accordingly, *Vacio* is
25 substantially similar if not virtually identical to significant portions of *Fish Market*.

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1 73. In addition, Defendants’ “sampling” (direct extraction and reproduction)
2 of *Fish Market* and/or the “Pounder” riddim establishes access by way of striking
3 similarity, if not virtual identity.

4 74. Defendants, and each of them, infringed Plaintiffs’ rights in *Fish Market*
5 by sampling the recording *Fish Market* and/or the “Pounder” riddim and reproducing
6 such sample in one or all of the Infringing Works without Plaintiffs’ authorization or
7 consent.

8 75. Alternatively, Defendants, and each of them, infringed Plaintiffs’ rights
9 in *Fish Market* by making a direct copy of the composition of *Fish Market* and using
10 that copy in one or all of the Infringing Works without Plaintiffs’ authorization or
11 consent.

12 76. Defendants, and each of them, have engaged and continue to engage in
13 the unauthorized reproduction, distribution, public performance, licensing, display,
14 and creation of one or more of the Infringing Works. The foregoing acts infringe
15 Plaintiffs’ rights under the Copyright Act. Such exploitation includes, without
16 limitation, Defendants’, and each of them, distributing and broadcasting the
17 Infringing Works on streaming platforms, including Spotify, Apple Music, Amazon,
18 Pandora, and YouTube.

19 77. Due to Defendants’, and each of their, acts of infringement, Plaintiffs’
20 have suffered actual, general and special damages in an amount to be established at
21 trial, including but not limited to a reasonable license fee for Defendants’ respective
22 uses of *Fish Market*.

23 78. Due to Defendants’ acts of copyright infringement as alleged herein,
24 Defendants, and each of them, have obtained direct and indirect profits they would
25 not otherwise have realized but for their infringement of Plaintiffs’ rights in
26 Plaintiffs’ copyrighted Song. As such, Plaintiffs are entitled to disgorgement of
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1 Defendants' profits directly and indirectly attributable to Defendants' infringements
2 of their rights in the Song in an amount to be established at trial.

3 79. Plaintiffs are informed and believe and now allege that Defendants, and
4 each of their, conduct as alleged herein was willful, reckless, and/or with knowledge,
5 subjecting Defendants, and each of them, to enhanced statutory damages, claims for
6 costs and attorneys' fees, and/or a preclusion from deducting certain costs when
7 calculating disgorgeable profits.

8 **Second Claim for Relief**

9 *(For Vicarious and/or Contributory Copyright Infringement—Against all*
10 *Defendants, and Each)*

11 80. Plaintiffs repeat, re-allege, and incorporate by reference all preceding
12 paragraphs of this Complaint.

13 81. Plaintiffs are informed and believe and now allege that Defendants
14 knowingly induced, participated in, aided and abetted in and profited from the illegal
15 reproduction, distribution, and publication of one or all of the Infringing Works as
16 alleged above. Specifically, the producers (including Universal) underwrote,
17 facilitated, and participated in Luis Fonsi's illegal copying during the creation of the
18 Infringing Works, and each of them, realized profits through their respective
19 obtainment, distribution, and publication of the Infringing Works.

20 82. Plaintiffs are informed and believe and now allege that Defendants, and
21 each of them, are vicariously liable for the infringement alleged herein because they
22 had the right and ability to supervise the infringing conduct and because they had a
23 direct financial interest in the infringing conduct. Specifically, each Defendant
24 involved in the infringement had the ability to oversee the publication and
25 distribution of one or more of the Infringing Works. And, Defendants, and each of
26 them, realized profits through their respective obtainment, distribution, and
27 publication of one or more of the Infringing Works.

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1 83. By reason of Defendants', and each of their, acts of contributory and
2 vicarious infringement as alleged above, Plaintiffs have suffered and will continue to
3 suffer substantial damages in an amount to be established at trial, as well as
4 additional actual, general and special damages in an amount to be established at trial.

5 84. Due to Defendants' acts of copyright infringement as alleged herein,
6 Defendants, and each of them, have obtained direct and indirect profits they would
7 not otherwise have realized but for their infringement of Plaintiffs' rights. As such,
8 Plaintiffs are entitled to disgorgement of Defendants' profits directly and indirectly
9 attributable to Defendants' infringement of Plaintiffs' rights in their copyrighted
10 sound recordings in an amount to be established at trial.

11 85. Plaintiffs are informed and believe and now allege that Defendants, and
12 each of their, conduct as alleged herein was willful, reckless, and/or with knowledge,
13 subjecting Defendants, and each of them, to enhanced statutory damages, claims for
14 costs and attorneys' fees, and/or a preclusion from deducting certain costs when
15 calculating disgorgeable profits.

16 **Prayer for Relief**

17 *(Against All Defendants)*

18 With Respect to Each Claim for Relief, Plaintiffs demand judgment against
19 Defendants as follows:

- 20 a. That Defendants, their affiliates, agents, and employees be enjoined from
- 21 infringing Plaintiffs' copyrights in and to Plaintiffs' copyrighted Song;
- 22 b. Granting an injunction permanently restraining and enjoining Defendants,
- 23 their officers, agents, employees, and attorneys, and all those persons or
- 24 entities in active concert or participation with them, or any of them, from
- 25 further infringing Plaintiff's copyrights in and to Plaintiffs' copyrighted
- 26 Song;

- 1 c. For a constructive trust to be entered over any recordings, videos
- 2 reproductions, files, online programs, and other material in connection with
- 3 recordings of each of the Infringing Works, and all revenues resulting from
- 4 the exploitation of same, for the benefit of Plaintiffs;
- 5 d. That Plaintiffs be awarded all profits of Defendants, and each, plus all
- 6 losses of Plaintiff, plus any other monetary advantage gained by the
- 7 Defendants through their infringement, the exact sum to be proven at the
- 8 time of trial;
- 9 e. That Defendants pay damages equal to Plaintiffs' actual damages and lost
- 10 profits;
- 11 f. That Plaintiffs be awarded statutory damages and attorneys' fees as
- 12 available under 17 U.S.C. § 505 or other statutory or common law;
- 13 g. That Plaintiffs be awarded pre-judgment interest as allowed by law;
- 14 h. That Plaintiffs be awarded the costs of this action; and
- 15 i. That Plaintiffs be awarded such further legal and equitable relief as the
- 16 Court deems proper.

17 Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P.
18 38 and the 7th Amendment to the United States Constitution.

19 Respectfully submitted,

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21 Dated: January 18, 2022

22 By: /s/ Scott Alan Burroughs
23 Scott Alan Burroughs, Esq.
24 David Shein, Esq.
25 Frank R. Trechsel, Esq.
26 DONIGER / BURROUGHS
27 Attorneys for Plaintiffs
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