Scott Alan Burroughs (SBN 235718) 1 scott@donigerlawfirm.com David Shein (SBN 230870) david@donigerlawfirm.com Frank R. Trechsel (SBN 312199) ftrechsel@donigerlawfim.com **DONIGER / BURROUGHS** 03 Rose Avenue Venice, California 90291 Telephone: (310) 590-1820 Attorneys for Plaintiffs 8 UNITED STATES DISTRICT COURT 9 ENTRAL DISTRICT OF CALIFORNIA 10 11 Case No.: 2:21-cv-08295-AB-E CLEVELAND CONSTANTINE Hon. André Birotte Jr. Presiding BROWNE, an individual; ANIKA 12 JOHNSON as personal representative of FIRST AMENDED COMPLAINT FOR: 13 the Estate of WYCLIFFE JOHN deceased; and STEELY & CLI 1. DIRECT COPYRIGHT 14 PRODUCTIONS LTD., INFRINGEMENT; 15 AND Plaintiffs, 16 ICARIOUS AND/OR 17 v. OF YRIGHT INFRINGEMENT 18 LUIS ALFONSO RODRÍGUEZ LÓPEZ-19 CEPERO, an individual; MAURICIO RENGIFO, an individual; ANDRÉS 20 TORRES, an individual; MICHAEL 21 ANTHONY TORRES MONGE, an individual; JUAN CARLOS OZUNA 22 ROSADO, an individual; ERIKA MARÍA 23 ENDER SIMOES, an individual; RAMÓN LUIS AYALA RODRÍGUEZ, an 24 individual; OLADAYO OLATUNJI, an 25 individual; STEPHANIE VICTORIA ALLEN, an individual; NICK RIVERA 26 CAMINERO, an individual; SEBASTIÁN 27 OBANDO GIRALDO, an individual; 28

PABLO AREVALO LLANO, an individual; CARLOS EFRÉN REYES ROSADO, an individual; RAÚL ALEJANDRO OCASIO RUIZ, an individual; JUSTIN BIEBER, an individual; JASON PAUL DOUGLAS BOXD, an individual; UNIVERSAL MUSIC LATIN ENTERTAINMENT, a Delaware general partnership; UMG RECORDINGS, INC., a Delaware corporation; SONY/ATV MUSIC 8 PUBLISHING, an English private limited company; UNIVERSAL MUSIC PUBLISHING, INC., a California 10 corporation; WARNER CHAPPELL MUSIC, INC., a California corporation; 11 WARNER CHAPPELL OVERSEAS HOLDINGS LIMITED, an English private 12 limited company; KOBALT MUSIC 13 PUBLISHING LIMITED, an Engli 14 private limited company and DO through 10; 15 16 Defendants. 17 18 Plaintiffs by and through their undersigned attorneys, hereby pray to this 19 honorable Court for relief based on the following: 20 **Jurisdiction & Venue** 21 This action arises under the Copyright Act of 1976, 1 U. 1. §§ 101, et 22 seq. 23 This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 2. 24 1338(a) and (b), & 1367(a). 25 3. Venue in this judicial district is proper under 28 U.S.C. § 1391 (c) and § 26 1400(a). 27

<u>Parties</u>

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- Plaintiff Cleveland Constantine Browne is an individual residing in 4. Kingston, Jamaica.
- 5. Plaintiff Anika Johnson is a resident of Jamaica, and joins in the action not individually, but solely in her capacity as the personal representative of the Estate of Wyoliffe Johnson, pursuant to grant of administration by the Supreme Court of Judicature of Jamaica, Case No. 2015-P-00576. Mr. Johnson died on September 1, 2009 and was a resident of the City of Kingston, parish of Saint Andrew, state of Jamaica, West Indies. As such, Ms. Johnson is a successor-in-interest to all personal property of Wycliffe Johnson, including any intellectual property rights.
- Plaintiff Steely & Clevie Productions Ltd. is a limited company 6. organized and existing under the laws of Jamaica.
- Plaintiffs are informed and believe and thereon allege that Defendant 7. Luis Alfonso Rodríguez López-Cepero p/k/a Luis Fonsi ("Luis Fonsi") is an individual residing in Miami, Florida and doing business in and with the state of California, including in this judicial district
- Plaintiffs are informed and believe and thereon allege that Defendant 8. Mauricio Rengifo p/k/a El Dandee ("El Dandee") is an individual residing in Cali, Colombia and doing business in and with the state of California, including in this judicial district.
- Plaintiffs are informed and believe and thereon allege that Defendant 9. Andrés Torres ("Torres") is an individual residing in Bogotá, Colombia and doing business in and with the state of California, including in this judicial district.
- 10. Plaintiffs are informed and believe and thereon allege that Defendant Michael Anthony Torres Monge p/k/a Myke Towers ("Myke Towers") is an individual residing in San Juan, Puerto Rico and doing business in and with the state of California, including in this judicial district.

- doing business in and with the state of California, including in this judicial district.

 13. Plaintiffs are informed and believe and thereon allege that Defendant Ramón Luis Ayala Rodríguez p/k/a Daddy Yankee ("Daddy Yankee") is an individual residing in San Juan, Puerto Rico and doing business in and with the state
- 14. Plaintiffs are informed and believe and thereon allege that Defendant Justin Bieber ("Bieber") is an individual residing in Los Angeles, California and doing business in and with the state of California, including in this judicial district.

of California, including in this judicial district.

- 15. Plaintiffs are informed and believe and thereon allege that Defendant Jason Paul Douglas Boyd p/k/a Poo Bear ("Boyd") is an individual residing in San Juan, Puerto Rico and doing business in and with the state of California, including in this judicial district.
- 16. Plaintiffs are informed and believe and thereon allege that Defendant Oladayo Olatunji p/k/a Dyo ("Dyo") is an individual residing in London, England and doing business in and with the state of California, including in this judicial district.
- 17. Plaintiffs are informed and believe and thereon allege that Defendant Stephanie Victoria Allen p/k/a Stefflon Don ("Stefflon Don") is an individual residing in London, England and doing business in and with the state of California, 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.
 - 19. Plaintiffs are informed and believe and thereon allege that Defendant Sebastián Obando Giraldo p/k/a Sebastian Yatra ("Sebastian Yatra") is an individual residing in Colombia and doing business in and with the state of California, including in this judicial district.
 - 20. Plaintiffs are informed and believe and thereon allege that Defendant Pablo Arevalo Nano ("Nano") is an individual residing in Miami, Florida and doing business in and with the state of California, including in this judicial district.
 - 21. Plaintiffs are informed and believe and thereon allege that Defendant Carlos Efrén Reyes Rosado p/k/a Farruko ("Farruko") is an individual residing in San Juan, Puerto Rico and doing business in and with the state of California, including in this judicial district.
 - 22. Plaintiffs are informed and believe and thereon allege that Defendant Raúl Alejandro Ocasio Ruiz p/k/a Rauw Alejandro ("Rauw Alejandro") is an individual residing in Miami, Florida and doing business in and with the state of California, including in this judicial district.
 - 23. Plaintiffs are informed and believe and thereon allege that Defendant UMG Recordings, Inc. ("UMG") is a Delaware corporation, with offices in Santa Monica, California.
 - 24. Plaintiffs are informed and believe and thereon allege that Defendant Universal Music Latin Entertainment ("UMLE") is an American record label/music industry conglomerate and a Delaware General Partnership with offices in Santa Monica, California.

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- 25. Plaintiffs are informed and believe and thereon allege that Defendant Sony/ATV Music Publishing (UK) Limited ("Sony") is a private limited company registered in England, with offices in Santa Monica, California.
- Plaintiffs are informed and believe and thereon allege that Defendant 26. Universal Music Publishing, Inc. ("UMP") is a California corporation, with offices in Santa Monica, California.
- Plaintiffs are informed and believe and thereon allege that Defendant Kobalt Music Publishing Ltd ("Kobalt") is a private limited company registered in England and doing business in and with the state of California, including in this judicial district.
- Plaintiffs are informed and believe and thereon allege that Defendant 28. Warner Chappell Music, Inc. individually and doing business as Warner Chappell North America Limited (collectively "Warner") is a Delaware corporation with offices in Los Angeles, California
- Plaintiffs are informed and believe and thereon allege that Defendant 29. Warner Chappell Overseas Holdings Limited ("WCOH") is a private limited company registered in England, with offices in Los Angeles, California.
- Defendants Does 1 through 10, inclusive, are other parties not yet 30. identified who have infringed Plaintiffs' copyrights, have contributed to the infringement of Plaintiffs' copyrights, or have engaged in one or more of the wrongful practices alleged herein. The true names, whether corporate individual or otherwise, of Defendants 1 through 10, inclusive, are presently unknown to Plaintiff, which therefore sue said Defendants by such fictitious names, and will seek leave to amend this Complaint to show their true names and capacities when same have been ascertained.
- 31. Plaintiffs are informed and believes and thereon alleges that at all times relevant hereto each of the Defendants was the agent, affiliate, officer, director,

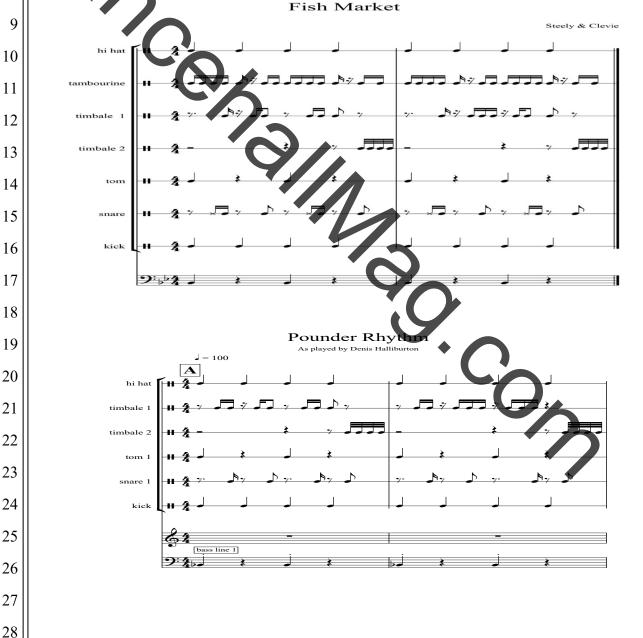
manager, principal, alter-ego, and/or employee of the remaining Defendants and was at all times acting within the scope of such agency, affiliation, alter-ego relationship and/or employment; and actively participated in or subsequently ratified and adopted, or both, each and all of the acts or conduct alleged, with full knowledge of all the facts and circumstances, including, but not limited to, full knowledge of each and every violation of Plaintiffs' rights and the damages to Plaintiffs proximately caused thereby

Factual Background

- 32. This case involves the repeated infringement of Plaintiffs' copyrights in the *Fish Market* song by international recording artist Luis Fonsi and his assorted record labels, producers, publishers, co-writers and other co-creators as follows.
- 33. Plaintiff Cleveland Constantine Browne, p/k/a Clevie, is a world-renowned influential and innovative composer, musician and producer known for, inter alia, pioneering the use of drum machines in reggae.
- 34. Wycliffe Anthony Johnson, p/k/a Steely, was a visionary and innovative composer, musician and producer.
- 35. Together, Mr. Browne and Mr. Johnson formed the writing, musical and producing duo Steely & Clevie, and worked on numerous genre-defining projects. Mr. Browne and Mr. Johnson worked with a plethora of high profile and internationally famous artists including reggae legends Bob Marley, Bunny Wailer, Jimmy Cliff, Gregory Isaacs, Ziggy Marley and Lee "Scratch" Perry
- 36. The Estate of Wycliffe Johnson, is the successor-in-interest to Mr. Johnson's intellectual property rights.
- 37. Plaintiff Steely & Clevie Productions Ltd. is the production company of Mr. Browne and Mr. Johnson.

- 38. In 1989 Mr. Browne and Mr. Johnson wrote and recorded the instrumental song entitled *Fish Market* (the "Song" or "*Fish Market*"). The recording and composition for the Song are registered with the United States Copyright Office.
- 39. Fish Market is an original work including an original drum pattern that gives it a unique sound that differentiates it from prior works. The combination of instruments in Fish Market includes a programmed kick, snare, and hi hat. These instruments are playing a one bar pattern. Fish Market also includes percussion instruments, namely a tambourine playing through the entire bar and a synthesized 'tom' playing on beats one and three. A lower-pitched timbale roll occurs at the end of every second bar. Higher and lower pitched timbales also play a free improvisation over the pattern for the curation of the song. Additionally, Fish Market includes a synthesized Bb (b-flat) bass note on beats one and three of each bar, which follows the aforementioned synthesized tom' pattern. And the combination of the foregoing elements is protectable.
- 40. In 1990, Mr. Browne and Mr. Johnson co-authored the song titled *Dem Bow* (roughly "They Bow" in English) with Shabba Ranks. *Dem Bow* was a massive club hit and garnered worldwide acclaim in the international reggae dancehall scene. *Dem Bow's* instrumental (which is an alternative mix of *Fish Market*, based on the same multi-track recording) is iconic and has been acknowledged as foundational to reggaeton music.
- 41. In 1990, subsequent to the release and success of Shabba Ranks' *Dem Bow*, Denis Halliburton p/k/a "Dennis the Menace" replayed *Dem Bow*'s instrumental to create a sound recording of an instrumental that was used to record a Spanish Language cover version of *Dem Bow* entitled *Ellos Benia* (a rough Spanish translation of *Dem Bow*) by the artist Fernando Brown p/k/a "Nando Boom" and *Pounder* by the duo Patrick Bernard p/k/a "Bobo General" and Wayne Archer p/k/a "Sleepy Wonder".

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



single entitled *Bésame*. Plaintiffs are informed and believe and thereon allege that

Bésame was written, recorded, produced, distributed and/or exploited by Defendants

UMG, UMLE, Warner, Luis Fonsi, Myke Towers, Cali, and Torres.

- 44. On or about June 14, 2018, UMG and/or UMLE released the Luis Fonsi single entitled *Calypso*. Plaintiffs are informed and believe and thereon allege that *Calypso* was written, recorded, produced, distributed and/or exploited by Defendants UMG, UMLE, Warner, Sony, Luis Fonsi, Cali, Torres, Dyo, and Stefflon Don.
- 45. On or about April 23, 2019, UMG and/or UMLE released the single Date La Vuelta. Plaintiffs are informed and believe and thereon allege that Date La Vuelta was written, recorded, produced, distributed and/or exploited by Defendants UMG, UMLE, Warner, Sony, UMP, Luis Fonsi, Cali, Torres, Llano, Nicky Jam, and Sebastian Yatra.
- 46. On or about January 12, 2017, UMG and/or UMLE released the Luis Fonsi single *Despacito*. Plaintiffs are informed and believe and thereon allege that *Despacito* was written, recorded, produced, distributed and/or exploited by Defendants UMG, UMLE, Sony, Luis Fonsi, Simoes, and Daddy Yankee.
- 47. Subsequently, in or about April 2017, UMG and/or UMLE released a remix of *Despacito* featuring Justin Bieber (the "*Despacito Remix*"). Plaintiffs are informed and believe and thereon allege that *Despacito Remix* was written, recorded, produced, distributed and/or exploited by Defendants UMG, UMLE, Sony, Luis Fonsi, Simoes, Daddy Yankee, Bieber and Boyd.
- 48. On or about November 17, 2017, UMG and/or UMLE released the Luis Fonsi single entitled *Échame La Culpa*. Plaintiffs are informed and believe and thereon allege that *Échame La Culpa* was written, recorded, produced, distributed and/or exploited by Defendants UMG, UMLE, Warner. Sony, Luis Fonsi, El Dandee, Cali, and Torres.

- 50. On or about September 23, 2020, UMG and/or UMLE released the Luis Fonsi single entitled *Perfecta*. Plaintiffs are informed and believe and thereon allege that *Perfecta* was written, recorded, produced, distributed and/or exploited by Defendants UMG, UMLE, Warner, Sony, Luis Fonsi, El Dandee, Torres, and Farruko.
- 51. On or about February 6, 2019, UMG and/or UMLE released the Luis Fonsi single entitled *Sola*. Plaintiffs are informed and believe and thereon allege that *Sola* was written, recorded, produced, distributed and/or exploited by Defendants UMG, UMLE, Warner, Sony Luis Fonsi, El Dandee, and Torres.
- 52. On or about February 18, 2021, UMG and/or UMLE released the Luis Fonsi single entitled *Vacio*. Plaintiffs are informed and believe and thereon allege that *Vacio* was written, recorded, produced, distributed and/or exploited by Defendants UMG, UMLE, Sony, Luis Fonsi, El Dandee, Torres, and Rauw Alejandro.
- 53. Bésame, Calypso, Date La Vuelta, Despacito, Despacito Remix, Échame La Culpa, Imposible, Perfecta, Sola, and Vacio (hereinafter referred to collectively as the "Infringing Works") were each hit songs garnering millions (If not billions) of plays and streams around the world respectively and resulted in significant revenue and profits to the respective Defendants.
- 54. Each of the Infringing Works incorporates an unauthorized sample of the *Fish Market* recording and/or a verbatim copy of the *Fish Market* composition as the primary rhythm / drum section of each work.

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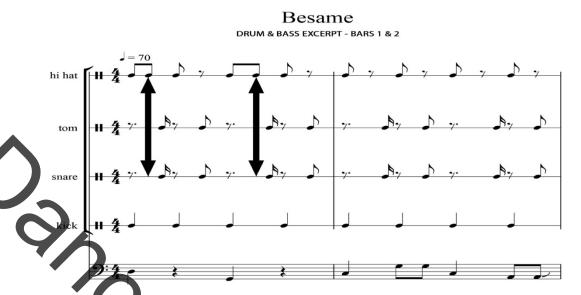
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- 55. A comparison of *Fish Market* and each of the Infringing Works establishes that each of the Infringing Works incorporates both qualitatively and quantitatively significant sections of the *Fish Market* recording and/or composition.
- The rhythm section of Bésame copies original elements of the Fish 56. arket rhythm section, including the original combination of drum patterns featured in Fish Market. These purloined elements include, without limitation, the kick, snare and hi-hat patterns and the sixteenth notes on the 'and' of beat one from a hi-hat sound which replaces a corresponding snare in Fish Market. The kick drum of Bésame plays four crotchets per bar beginning on the first beat of each bar as in Fish Market. Bongos serve to substitute for the Fish Market timbales pattern ending in a fourth bar rapid burst phrase. The drum and bass tracks both together and independently, are substantially similar in rhythmic structures and texture to those of Fish Market. The kick, snare the hat and bass are prominent in the mix of Bésame which emulates the sonic texture of Fish Market, giving the song a similar feel. 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 *Bésame* and accordingly, significant portions of *Bésame* are substantially similar if not virtually identical to significant portions of Fish Market, as shown in the transcripts of portions of each below.

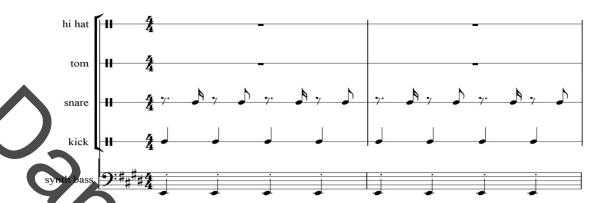




57. The rhythm section of *Calypso* copies original elements of the *Fish Market* rhythm section, including the original combination of drum and bass patterns featured in *Fish Market*. These purloined elements include, without limitation, the original drum pattern of *Fish Market* including without 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.



Calypso DRUM & BASS EXCERPT AT APPROX. 1:08



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*

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



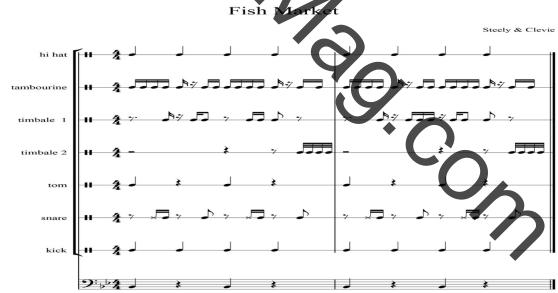
59. The rhythm section of *Despacito* and the *Despacito Remix* copies original elements of the *Fish Market* rhythm section, including the original combination of drum and bass patterns featured in *Fish Market*. These purioined elements include but are not limited to the kick and snare pattern and bass pattern. The kick drum of *Despacito* plays four crotchets per bar beginning on the first beat of each bar as in *Fish Market*. The snare drum mimics the main accentuated snare pattern as played in *Fish Market*. As in *Fish Market*, the bass pattern in *Despacito* is primarily played on beats one and three, as can be heard at approximately 1:46, 3:14

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and again at 3:46 of *Despacito*. In addition, the kick drum, snare drum and bass are prominent in the mix of *Despacito* as is the case in *Fish Market*. *Despacito* also emulates the texture of *Fish Market*, which gives the song a similar feel. The drum and bass tracks both together and independently, are substantially similar in rhythmic structures and texture to those of *Fish Market*. The *Despacito Remix* includes the same infringing elements as *Despacito*. In sum, the musical backbone of *Despacito* and the *Despacito Remix* are substantially similar if not virtually identical to a significant portion of *Fish Market*, as shown in the transcripts of portions of *Fish Market* and *Despacito* below.



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





61. Imposible copies Fish Market by using a sample of the "Pounder" riddim as its rhythm section. 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. The drum and bass tracks combined are substantially similar to the rhythmic structures and texture of the Fish Market. The "Pounder" riddim sample provides the musical backbone for Imposible and accordingly, Imposible is substantially similar if not virtually identical to significant portions of Fish Market, as shown in the transcripts of portions of each below.

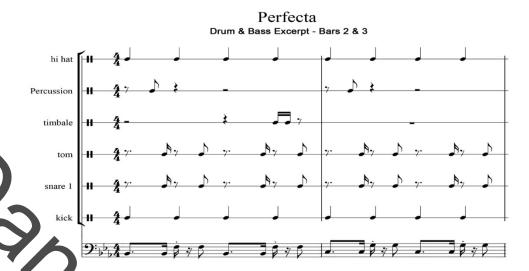




62. The rhythm section of *Perfecta* copies original elements of the *Fish Market* rhythm section, including the original combination of drum and bass patterns featured in *Fish Market*. The kick drum plays four crotchets per bar beginning on the first beat of each bar. The highest plays a similar pattern. 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 *Jerfecta* 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



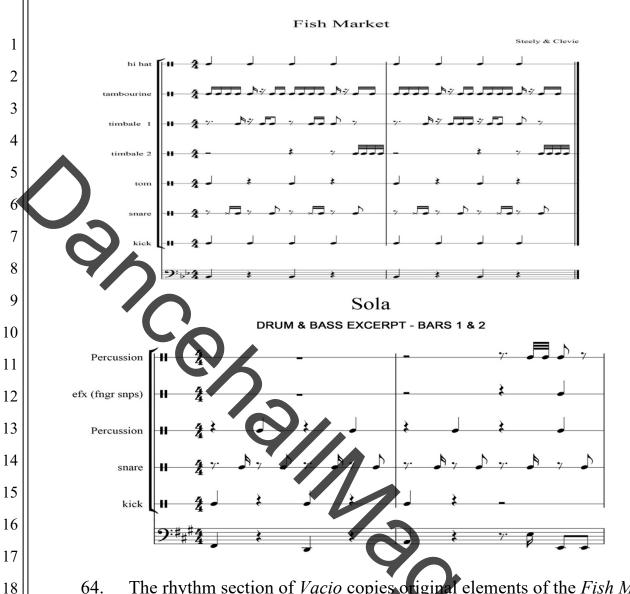
FIRST AMENDED COMPLAINT



rhythm section, including the original combination of drum and bass patterns featured in *Fish Market*. These purlomed 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 (o *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 or 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.

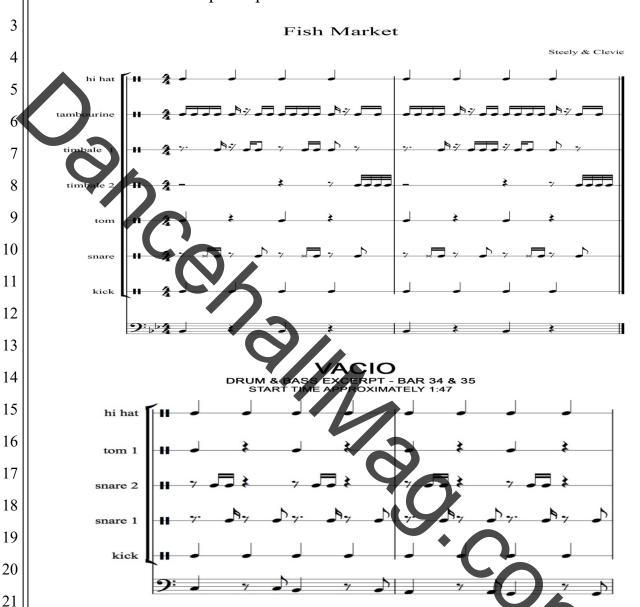
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64. The rhythm section of *Vacio* copies original elements of the *Fish Market* rhythm section, including the original combination of drum and bass patterns featured in *Fish Market*. The kick drum and hi-hat plays four crotchets per bar beginning 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

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



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

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66. At no point did Defendants seek or obtain authorization from Plaintiffs to use or copy Fish Market in connection with any of the Infringing Works in the manner set forth above or otherwise.

Defendants continue to exploit and receive monies from the Infringing 67. Works, respectively, in violation of Plaintiffs' rights in their Song. Defendants' wrongful copying and/or exploitation of Plaintiffs' copyrighted material has also allowed for further infringement abroad. Defendants, and each of their, exploitation of Plaintiffs' work, as detailed herein, constitutes infringement.

First Claim for Relief

r Copyright Infringement—Against all Defendants, and Each)

- Plaintiffs repeat, re-allege, and incorporate by reference all preceding 68. paragraphs of this Complaint.
 - 69. Plaintiffs are the sole and exclusive owners of Fish Market.
 - Fish Market is an original composition and recording. 70.
- Defendants had access to the Fish Market because it has been widely 71. distributed throughout the world since 1989 on vinyl and CD. Defendants also had access to Fish Market through the widespread distribution of Dem Bow on vinyl and CD which was a worldwide hit within the global reggae dancehall scene and remains a reggae dancehall classic. Fish Market and Dem Bow were widely distributed on vinyl and CD, which were the dominant media formats at the time of release, and together sold tens of thousands copies on singles and albums within the global reggae dancehall scene. Both Fish Market and Dem Bow were widely available on streaming platforms, including Spotify, Apple Music, Amazon, Pandora, and You tube prior to the creation of each of the Infringing Works.
- Defendants also had access via Ellos Benia and the "Pounder" riddim 72. which were widely distributed in hard copy and via the aforementioned streaming platforms prior to the creation of each of the Infringing Works.

- 73. In addition, Defendants' "sampling" (direct extraction and reproduction) of *Fish Market* and/or the "Pounder" riddim establishes access by way of striking similarity, if not virtual identity.
- 74. Defendants, and each of them, infringed Plaintiffs' rights in *Fish Market* by sampling the recording *Fish Market* and/or the "Pounder" riddim and reproducing such sample in one or all of the Infringing Works without Plaintiffs' authorization or consent.
- 15. Alternatively, Defendants, and each of them, infringed Plaintiffs' rights in *Fish Market* by making a direct copy of the composition of *Fish Market* and using that copy in one or all of the Infringing Works without Plaintiffs' authorization or consent.
- 76. Defendants, and each of them, have engaged and continue to engage in the unauthorized reproduction, distribution, public performance, licensing, display, and creation of one or more of the infringing Works. The foregoing acts infringe Plaintiffs' rights under the Copyright Act. Such exploitation includes, without limitation, Defendants', and each of them, distributing and broadcasting the Infringing Works on streaming platforms, including Spotify, Apple Music, Amazon, Pandora, and YouTube.
- 77. Due to Defendants', and each of their, acts of infringement, Plaintiffs' have suffered actual, general and special damages in an amount to be established at trial, including but not limited to a reasonable license fee for Defendants' respective uses of *Fish Market*.
- 78. Due to Defendants' acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement of Plaintiffs' rights in Plaintiffs' copyrighted Song. As such, Plaintiffs are entitled to disgorgement of

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

Second Claim for Relief

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

- 80. Plaintiffs repeat re-allege, and incorporate by reference all preceding paragraphs of this Complaint.
- 81. Plaintiffs are informed and believe and now allege that Defendants knowingly induced, participated in, aided and abetted in and profited from the illegal reproduction, distribution, and publication of one or all of the Infringing Works as alleged above. Specifically, the producers (including Universal) underwrote, facilitated, and participated in Luis Fonsi's illegal copying during the creation of the Infringing Works, and each of them, realized profits through their respective obtainment, distribution, and publication of the Infringing Works.
- 82. Plaintiffs are informed and believe and now allege that Defendants, and each of them, are vicariously liable for the infringement alleged herein because they had the right and ability to supervise the infringing conduct and because they had a direct financial interest in the infringing conduct. Specifically, each Defendant involved in the infringement had the ability to oversee the publication and distribution of one or more of the Infringing Works. And, Defendants, and each of them, realized profits through their respective obtainment, distribution, and publication of one or more of the Infringing Works.

- 83. By reason of Defendants', and each of their, acts of contributory and vicarious infringement as alleged above, Plaintiffs have suffered and will continue to suffer substantial damages in an amount to be established at trial, as well as additional actual, general and special damages in an amount to be established at trial.
- 84. Due to Defendants' acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement of Plaintiffs' rights. As such, Plaintiffs are entitled to disgorgement of Defendants' profits directly and indirectly attributable to Defendants' infringement of Plaintiffs' rights in their copyrighted sound recordings in an amount to be established at trial.
- 85. Plaintiffs are informed and believe and now allege that Defendants, and each of their, conduct as alleged herein was willful, reckless, and/or with knowledge, subjecting Defendants, and each of them, to enhanced statutory damages, claims for costs and attorneys' fees, and/or a preclusion from deducting certain costs when calculating disgorgeable profits.

Prayer for Relief

(Against All Defendants)

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

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

c. For a constructive trust to be entered over any recordings, videos reproductions, files, online programs, and other material in connection with 2 recordings of each of the Infringing Works, and all revenues resulting from 3 the exploitation of same, for the benefit of Plaintiffs; 4 That Plaintiffs be awarded all profits of Defendants, and each, plus all 5 losses of Plaintiff, plus any other monetary advantage gained by the Defendants through their infringement, the exact sum to be proven at the 7 time of trial; 8 e. That Defendants pay damages equal to Plaintiffs' actual damages and lost 9 profits 10 f. That Plaintiffs be awarded statutory damages and attorneys' fees as 11 available under 17 J.S.C. § 505 or other statutory or common law; 12 g. That Plaintiffs be awarded pre-judgment interest as allowed by law; 13 h. That Plaintiffs be awarded the costs of this action; and 14 That Plaintiffs be awarded such further legal and equitable relief as the 15 Court deems proper. 16 Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P. 17 38 and the 7th Amendment to the United States Constitution. 18 19 Respectfully submitted, 20 21 Dated: January 18, 2022 By: /s/ Scott Alan Burroug 22 Scott Alan Burroughs, David Shein, Esq. 23 Frank R. Trechsel, Esq. DONIGER / BURROUGHS 24 Attorneys for Plaintiffs 25 26

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