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9	Attorneys for Plaintiffs Ultra International Music Publishing, LLC		
10	and Ultra Records, LLC		
11			
12	UNITED STATES DISTRICT COURT		
13	CENTRAL DISTRICT OF CALIFORNIA		
14	ULTRA INTERNATIONAL MUSIC PUBLISHING, LLC and ULTRA	CASE NO.	
15	RECORDS, LLC,	COMPLAINT FOR COPYRIGHT INFRINGEMENT	
16	Plaintiffs,	Demand For Jury Trial	
17	V.	·	
18	MICHELLE PHAN,		
19	Defendant.		
20			
21	Plaintiffs Ultra International Music Publishing, LLC ("UIMP") and Ultra		
22	Records, LLC ("Ultra") (together, "Plaintiffs"), by their undersigned attorneys, for		
23	their Complaint against Defendant Michelle Phan ("Phan"), allege as follows:		
24	JURISDICTION AND VENUE		
25	1. This is a civil action seeking damages and injunctive relief for		
26	copyright infringement under the Copyright Act, 17 U.S.C. § 101 et seq. This		
27	Court has subject matter jurisdiction over Plaintiffs' claims for copyright		
28	infringement pursuant to 28 U.S.C. §§ 1331 and 1338(a).		

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U.S.C. §§ 1391 and 1400, in that Plaintiffs are subject to personal jurisdiction, and may be found, in this District.

THE PARTIES

- 5. Plaintiff UIMP is a limited liability company organized and existing under the laws of the State of New York, having its principal place of business at 235 West 23rd Street, 6th Floor, New York, New York 10011.
- 6. Plaintiff Ultra is a limited liability company organized and existing under the laws of the State of Delaware, having its principal place of business at 235 West 23rd Street, 6th Floor, New York, New York 10011.
- 7. Plaintiffs are a record label and music publishing company, which are engaged in the business of acquiring, owning, publishing, producing, administering, licensing and otherwise exploiting copyrights in musical compositions and sound recordings, including but not limited to licensing the

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- 8. UIMP owns or administers (in whole or in part) copyrights and/or exclusive rights in and to numerous compositions, including by way of example those compositions identified on Schedule A hereto, incorporated herein by reference (the "Musical Compositions"). UIMP has obtained or has applied for certificates of copyright registration issued by the United States Copyright Office in each of the Musical Compositions identified on Schedule A. As the owner or administrator of the copyrights (in whole or in part) in these Musical Compositions, UIMP possesses the exclusive right, among other things, to reproduce the Musical Compositions in copies or phonorecords, to adapt the Musical Compositions, to distribute copies or phonorecords of the Musical Compositions to the public, and to perform the Musical Compositions publicly.
- 9. Ultra owns copyrights and/or exclusive rights in and to numerous sound recordings, including by way of example, the recordings identified on Schedule B hereto, incorporated herein by reference (the "Recordings"). Ultra has obtained or has applied for certificates of copyright registration issued by the United States Copyright Office in each of the Recordings. As the owner of the copyrights in the Recordings, Ultra possesses the exclusive rights, among other things, to reproduce the Recordings in copies or phonorecords, to distribute copies or phonorecords of the Recordings to the public, to perform the Recordings publicly by means of a digital audio transmission and to license these exclusive rights, including over the Internet.

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10. Defendant Phan is an individual that is engaged in the production of videos that are distributed worldwide over the Internet via, among other things, the website located at www.youtube.com ("YouTube"), which videos are accessible throughout the United States and in the State of California.

FACTUAL BACKGROUND

- 11. Ultra is one of the leading independent music companies in the world, and is one of the dominant independent music labels currently operating in the genre of what is generally referred to in the music industry as "dance music." UIMP is a music publishing company. Among the successful artists whose works are or have been on the Ultra label and/or published by UIMP are Kaskade, deadmau5 and Calvin Harris.
- Phan is a makeup artist that is most well-known for a series of video 12. tutorials that she began posting on YouTube in 2007. In these videos, Phan provides makeup advice centered around a variety of different themes.
- 13. Phan's videos are extremely popular. Her YouTube channel, located at www.youtube.com/user/MichellePhan, has more than six million subscribers from all over the world. One of her YouTube videos, entitled "Barbie Transformation Tutorial," has been viewed more than fifty million times.
- 14. This year, Phan has been featured in a high profile and multi-platform advertising campaign for YouTube, which features some of YouTube's most popular personalities. Phan has also been featured in national advertising for Dr. Pepper.
- Upon information and belief, Phan monetizes her YouTube videos by 15. collecting substantial income from YouTube derived from the advertisements that appear in association with her videos.
- Phan's videos are also available through her own website located at 16. michellephan.com, which website also prominently features advertising.

- 17. Upon information and belief, Phan has also parlayed her Internet fame into other business ventures, including authoring a book and designing a makeup line.
- 18. Phan, without license, authorization or permission from Plaintiffs, has embarked on a wholesale infringement of Plaintiffs' musical compositions and recordings. Phan has copied and synchronized the Musical Compositions and/or Recordings, in whole or in part, together with certain visual footage to create audiovisual works (the "Unauthorized Videos") and has made the Unauthorized Videos available to the public without license, authorization or permission by publishing the Unauthorized Videos on the Internet.
- 19. Schedule C, incorporated herein by reference, contains an non-exclusive list of the Unauthorized Videos, together with the Musical Compositions and/or Recordings embedded within such videos.
- 20. Upon information and belief, the Unauthorized Videos have been viewed more than 150 million times.
- 21. While Schedule C includes nearly fifty examples of blatant copyright infringement, Plaintiffs' analysis is still preliminary, and the full extent of Phan's infringement has not yet been determined.
- 22. Phan's conduct is willful and deliberate. Phan knows and has been informed that she does not possess a license from Plaintiffs to utilize the Musical Compositions and/or Recordings in the Unauthorized Videos, and yet continues to wilfully infringe in blatant disregard of Plaintiffs' rights of ownership.

COUNT I

COPYRIGHT INFRINGEMENT

[By Ultra Against Phan]

23. Plaintiffs incorporate by reference each and every averment contained in paragraphs 1 through 22, inclusive.

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- 31. Phan has infringed UIMP's copyrights in the Musical Compositions, including by reproducing, distributing, adapting and digitally publicly performing the Recordings without authorization, in violation of the Copyright Act, 17 U.S.C. §§ 106 and 501.
- 32. The unauthorized use of each Musical Composition constitutes a separate and distinct act of infringement of each such Musical Composition.
- 33. Phan's acts of infringement are willful, in disregard of and with indifference to the rights of UIMP.
- 34. As a direct and proximate result of the infringement by Phan, UIMP is entitled to damages and to Phan's profits in amounts to be proven at trial, and which are not currently ascertainable. Alternatively, UIMP is entitled to maximum statutory damages of \$150,000 for each copyright infringed, or in such other amount as many be proper under 17 U.S.C. § 504(c).
- 35. UIMP is further entitled to its attorneys' fees and full costs pursuant to 17 U.S.C. § 505.
- 36. As a result of Phan's acts and conduct, UIMP has sustained and will continue to sustain substantial, immediate and irreparable injury for which there is no adequate remedy at law. UIMP is informed and believes, and on that basis avers, that unless enjoined and restrained by this Court, Phan will continue to infringe UIMP's rights in the Musical Compositions. UIMP is entitled to temporary, preliminary and permanent injunctive relief to restrain and enjoin Phan's continuing infringing conduct.

WHEREFORE, Plaintiffs pray for judgment against Phan as follows:

1. For a preliminary and permanent injunction enjoining and restraining Phan and her agents, servants, employees, representatives, affiliated companies and other business entities, successors, assigns, and those acting in concert with her or at her direction, from directly or indirectly infringing in any manner any right in any and all copyrighted works (or portions thereof), whether now in existence or

1	later created, in which any Plaintiff (including its parents, subsidiaries, affiliates or			
2	distributed labels) owns or controls an exclusive right under Section 106 of the			
3	United States Copyright Act (17 U.S.C. § 106), including without limited by			
4	directly or	directly or indirectly reproducing, downloading, distributing, communicating to the		
5	public, uploading, linking to, transmitting, publicly performing, or otherwise			
6	exploiting	in any manner any	of Plaintiffs' copyrights, including but not limited to	
7	the Record	ing and Musical C	ompositions identified in Schedules A and B to the	
8	Complaint	;		
9	2.	For Phan's profit	ts and for damages in such amount as may be	
10	determined	l; alternatively, for	maximum statutory damages in the amount of	
11	\$150,000 v	with respect to each	n copyrighted work infringed, or for such other	
12	amount as	may be proper pur	suant to 17 U.S.C. § 504(c);	
13	3. For Plaintiffs' attorneys' fees and full costs;		torneys' fees and full costs;	
14	4. For prejudgment interest according to law; and		interest according to law; and	
15	5.	For such other ar	nd further relief as the Court may deem just and	
16	proper.			
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18	DATED: J	uly 16, 2014	MITCHELL SILBERBERG & KNUPP LLP	
19				
20			By: /s/ Bradley L. Mullins	
21			Christine Lepera (pro hac vice application forthcoming) Bradley J. Mullins Attorneys for Plaintiffs Ultra International Music Publishing,	
22			Ultra International Music Publishing,	
23			LLC and Ultra Records, Inc.	
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DEMAND FOR JURY TRIAL Plaintiffs demand a trial by jury as to all claims averred herein that are triable to a jury. DATED: July 16, 2014 MITCHELL SILBERBERG & KNUPP LLP By: <u>/s/ Bradley L. Mullins</u> Christine Lepera (pro hac vice application forthcoming) Bradley J. Mullins
Attorneys for Plaintiffs
Ultra International Music Publishing,
LLC and Ultra Records, Inc. Silberberg &

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Mitchell

Knupp LLP 6251523.2

SCHEDULE A

SCHEDULE A

SCHEDULE A

Compositions

Song Title	<u>Artist</u>
4AM	Kaskade
All That You Give	Kaskade
All You	Kaskade
Angels And Angles	Late Night Alumni
Back On You	Kaskade
Borrowed Theme	Kaskade
Days	Late Night Alumni
Empty Streets	Kaskade
Epilogue	Late Night Alumni
Everything	Late Night Alumni
Eyes	Kaskade
Finally Found	Late Night Alumni
Golden	Late Night Alumni
How Long	Kaskade feat. Late Night Alumni
Норе	Late Night Alumni
I Remember	deadmau5 & Kaskade
I'll Never Dream	Kaskade
Illuminating	Haley
In This Life	Kaskade
It's Only Life	Late Night Alumni
It's You It's Me	Kaskade
Last Chance	Kaskade & Project 46
Light Reading	Late Night Alumni

SCHEDULE A

Compositions

Song Title	<u>Artist</u>
Midnight Light	Haley
Moonwalking	Late Night Alumni
Move For Me	Kaskade & deadmau5
My Awake	Late Night Alumni
No Or Yes	Late Night Alumni
Of Birds, Bees, Butterflies, Etc.	Late Night Alumni
One Heart	Kaskade
Potions	Late Night Alumni
Ring a Bell	Late Night Alumni
Run A Mile	Late Night Alumni
Sapphire	Late Night Alumni
Shine	Late Night Alumni
Start Again	Kaskade
Still Still Still	Kaskade
Sun Space	Late Night Alumni
The World Spins 'Round	Late Night Alumni
This Is Life	Late Night Alumni
This is Why	Late Night Alumni
Uncharted	Late Night Alumni
Vixen	Late Night Alumni
What's In A Name	Late Night Alumni
You Can Be The One	Late Night Alumni

SCHEDULE B

SCHEDULE B

SCHEDULE B

Sound Recordings

Song Title	<u>Artist</u>
4AM	Kaskade
All That You Give	Kaskade
All You	Kaskade
Angels and Angles	Late Night Alumni
Back On You	Kaskade
Borrowed Theme	Kaskade
Days	Late Night Alumni
Empty Streets	Kaskade
Epilogue	Late Night Alumni
Everything	Late Night Alumni
Eyes	Kaskade
Finally Found	Late Night Alumni
How Long	Kaskade feat. Late Night Alumni
I Remember	deadmau5 & Kaskade
I'll Never Dream	Kaskade
Illuminating	Haley
In This Life	Kaskade
It's Only Life	Late Night Alumni
It's You It's Me	Kaskade
Last Chance	Kaskade & Project 46
Midnight Light	Haley
Moonwalking	Late Night Alumni

SCHEDULE B

Sound Recordings

Song Title	<u>Artist</u>
Move For Me	Kaskade & deadmau5
My Awake	Late Night Alumni
No or Yes	Late Night Alumni
One Heart	Kaskade
Ring a Bell	Late Night Alumni
Sapphire	Late Night Alumni
Shine	Late Night Alumni
Start Again	Kaskade
Sun Space	Late Night Alumni
The World Spins 'Round	Late Night Alumni
This is Why	Late Night Alumni
Vixen	Late Night Alumni

<u>Unauthorized Video Title</u>	Songs Used
\$20 Makeup Challenge Tutorial	Kaskade feat. Late Night Alumni, "How Long"
3 Ways to Change Up Your Look	Late Night Alumni, "My Awake"
Angelina Jolie Makeup Tutorial	Late Night Alumni, "Golden"
	Late Night Alumni, "Vixen"
Avatar Inspired Look	Late Night Alumni, "Run A Mile"
	Late Night Alumni, "Uncharted"
Beautiful Basic Curls	Kaskade, "It's You It's Me"
Beauty Survival Guide: Emergency Kit	Late Night Alumni, "Sapphire"
	Late Night Alumni, "Days"
Cara Delevingne Makeup	Late Night Alumni, "Ring A Bell"
Catch My Heart	Kaskade, "Eyes"
Catch My Heart	Kaskade, "Eyes"
Clubbing Makeup Tutorial Ep. 1	deadmau5 & Kaskade, "I Remember"
	Kaskade & deadmau5, "Move For Me"
DIY Scarf Dresses and Giveaway!	Late Night Alumni, "Days"
Double Lines	Late Night Alumni, "Of Birds, Bees, Butterflies, Etc."
Double Wing Eyeliner	Kaskade, "I'll Never Dream"
Easy Autumn	Late Night Alumni, "Light Reading"
Easy Ways to Use Liquid Liner	Late Night Alumni, "Sapphire"
	Late Night Alumni, "Days"
Elegant Masquerade	Late Night Alumni, "Potions"
	Late Night Alumni, "Golden"

<u>Unauthorized Video Title</u>	Songs Used
Enchanting Christmas	Late Night Alumni, "Epilogue"
	Late Night Alumni, "This Is Why"
Enchanting Prom	Late Night Alumni, "Golden"
Forest Fairy	Late Night Alumni, "Moonwalking"
	Late Night Alumni, "Golden"
Fresh Spring Look	Late Night Alumni, "Moonwalking"
	Late Night Alumni, "Finally Found"
Futuristic Look	Kaskade, "Empty Streets"
Graduation ★ Tutorial	Late Night Alumni, "Finally Found"
Holiday Glam	Kaskade, "Still Still Still"
How To Master The High Heel	Kaskade, "Back On You"
How to Master the High Heel	Kaskade, "Back On You"
How to Recycle Your Wardrobe	Late Night Alumni, "The World Spins 'Round"
Impressionism Lace Nails	Late Night Alumni, "What's In A Name"
Kissable ♥ Lips DIY	Kaskade, "All You"
Luscious Lips	Kaskade, "Borrowed Theme"
Mascara Business Card Trick	Kaskade, "Back On You"
Mascara Business Card Trick	Kaskade, "Back On You"
Metallic Knight	Kaskade, "How Long"
	Haley, "Illuminating"
	Late Night Alumni, "You Can Be The One"
Michelle's Favorites Vol. 2	Late Night Alumni, "Ring A Bell"

<u>Unauthorized Video Title</u>	Songs Used
Midnight Kiss	Late Night Alumni, "No or Yes"
	Late Night Alumni, "You Can Be The One"
	Haley, "Midnight Light"
Midnight Luster	Late Night Alumni, "Shine"
	Kaskade, "Eyes"
New Year Give Away & Meet n Greet	Kaskade, "One Heart"
	Kaskade, "Eyes"
New Years Eve / Party Makeup Tutorial	Kaskade, "4AM Remix"
New Years Glam	Kaskade, "4AM"
	Kaskade, "One Heart"
New Years Magic	Kaskade, "Start Again"
Night Life Favorites	Kaskade, "4AM"
Out All Night	Kaskade, "In This Life"
	Haley, "Illuminating"
Painting A Beautiful Heart	Kaskade, "One Heart"
Payne's Grey Smokey Eyes	Late Night Alumni, "Ring A Bell"
Purple Hazy Look	Kaskade, "Borrowed Theme"
Queen of Darkness	Late Night Alumni, "It's Only Life"
Romantic Curls Tutorial	Kaskade, "4AM"
Sexy Glasses	Late Night Alumni, "Angels and Angles"
	Late Night Alumni, "No or Yes"
Stretch Your Shoes With Ice	Late Night Alumni, "Hope"
Summer Meadow	Kaskade, "All That You Give"

<u>Unauthorized Video Title</u>	Songs Used
The Golden Hour	Kaskade & Project 46, "Last Chance"
	Late Night Alumni, "Golden"
The Sweetest Thing	Late Night Alumni, "Light Reading"
Twilight Noir	Late Night Alumni, "It's Only Life"
	Late Night Alumni, "Sun Space"
Underneath Your Love	Late Night Alumni, "This Is Why"
Waterproof Your Makeup	Late Night Alumni, "Everything"
What to Wear to a Holiday Party!	Kaskade, "Still Still Still"