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INTERNATIONAL MANUFACTURING CONCEPTS, INC., a Nevada
Corporation, dba MELOMEGA MUSIC and SOUND GEMS

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

INTERNATIONAL MANUFACTURING
CONCEPTS, INC., a Nevada Corporation,
dba MELOMEGA MUSIC and SOUND
GEMS,

Plaintiff,

-vs-

JUSTIN BIEBER, an individual; DAN
SMYERS, an individual; SHAY
MOONEY, an individual; JESSIE JO
DILLON, an individual; JORDAN
REYNOLDS, an individual; JASON
BOYD, an individual; WARNER MUSIC
NASHVILLE, LLC, a Tennessee limited
liability company; W CHAPPELL MUSIC
CORP., a California corporation dba WC
MUSIC CORP. (f/k/a WB MUSIC
CORP.); BMG RIGHTS
MANAGEMENT (US) LLC, a Delaware
limited liability company dba BMG
GOLD SONGS; WARNER MUSIC
GROUP CORP., a Delaware corporation;
WARNER-TAMERLANE PUBLISHING
CORP., a California corporation;
UNIVERSAL MUSIC CORPORATION,
a Delaware corporation; POO BZ INC., a
California corporation aka POO BZ
PUBLISHING and POO B Z
PUBLISHING INC; BIG MACHINE
MUSIC LLC dba BIG MUSIC
MACHINE, a Delaware limited liability

Case No. 2:22-cv-2650

**COMPLAINT FOR
COPYRIGHT INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 company; BIG ASS PILE OF DIMES
 2 MUSIC, an entity of unknown form;
 3 SHAY MOONEY MUSIC, an entity of
 4 unknown form; BIEBERTIME
 5 PUBLISHING, LLC dba BIEBER TIME
 6 PUBLISHING, a Delaware limited
 7 liability company; BUCKEYE26, an entity
 of unknown form; JREYN
 PRODUCTIONS LLC, a Tennessee
 limited liability company dba
 JREYNMUSIC; BEATS AND BANJOS,
 an entity of unknown form; and DOES 1
 through 50 inclusive,
 Defendants.

8
 9
 10 Plaintiff INTERNATIONAL MANUFACTURING CONCEPTS, INC., a
 11 Nevada Corporation, dba MELOMEGA MUSIC and SOUND GEMS
 12 (“Melomega”) hereby complains and alleges as follows:

13 INTRODUCTION

14 1. Creative theft in the entertainment industry has become its own cottage
 15 industry. Its perpetrators pillage the labor of lesser-known, hard-working creators,
 16 while unapologetically exploiting such work as their own. This flagrant pilfering of
 17 the creative victims’ intellectual property is no more alive than in the music industry
 18 where innocent songwriters and artists are routinely left as collateral damage. Ergo,
 19 this case.

20 2. Make no mistake, this case marks an instance of blatant and errant
 21 copying. Enter Defendants JUSTIN BIEBER, DAN SMYERS, SHAY MOONEY,
 22 JESSIE JO DILLON, JORDAN REYNOLDS, JASON BOYD, WARNER MUSIC
 23 NASHVILLE, LLC, W CHAPPELL MUSIC CORP. dba WC MUSIC CORP. (f/k/a
 24 WB MUSIC CORP.), BMG RIGHTS MANAGEMENT (US) LLC dba BMG
 25 GOLD SONGS, WARNER MUSIC GROUP CORP., WARNER-TAMERLANE
 26 PUBLISHING CORP., UNIVERSAL MUSIC CORPORATION, POO BZ INC.,
 27 aka POO BZ PUBLISHING and POO B Z PUBLISHING, INC., BIG MACHINE
 28 MUSIC LLC dba BIG MUSIC MACHINE, BIG ASS PILE OF DIMES MUSIC,

1 SHAY MOONEY MUSIC, BIEBERTIME PUBLISHING, LLC dba BIEBER TIME
2 PUBLISHING; BUCKEYE26, JREYN PRODUCTIONS LLC dba JREYNMUSIC,
3 and BEATS AND BANJOS (collectively “Defendants”) who, through their song
4 *10,000 Hours*, have committed, contributed to and/or participated in infringing
5 Plaintiff’s work.

6 3. In particular, Defendants JUSTIN BIEBER, DAN SMYERS and
7 SHAY MOONEY are some of the music industry’s biggest artists, each having
8 achieved great fame, success and acclaim, with numerous mega-hits under their
9 belts. The success of their recent collaboration, *10,000 Hours*, has exceeded even
10 that of many of their past hits. Aside from the many awards and accolades *10,000*
11 *Hours* has received, the song has nearly two-billion streams internationally, and
12 nearly 800,000,000 streams on Spotify, alone. The problem: Defendants stole the
13 core portion of *10,000 Hours* from Plaintiff’s song, *The First Time Baby Is A*
14 *Holiday* (“*First Time*”). *First Time*’s authors wrote the song over forty (40) years
15 ago. Most recently, Plaintiff released *First Time* in 2014 through one of the largest
16 music distributors in the world, Sony’s *Orchard*. Here is a link to the song for easy
17 reference: <https://youtu.be/oybr6KWbugo>.

18 4. Defendants’ theft is impudently bold. One need only listen to *First Time*
19 and the infringing *10,000 Hours* to discern the unmistakable similarities between the
20 songs. However, subjective analysis aside, when the songs are viewed through the
21 objective, empirical lens of musical science—as was done in this case by one of the
22 top musicology experts in the industry—Defendants’ infringement is unmistakable.
23 The result: a single, universal and ineluctable conclusion that Defendants stole
24 Plaintiff’s song.

25 5. *10,000 Hours* is not just substantially similar to *First Time*; Defendants
26 copied, in minute detail, the most important, core portion of Plaintiff’s song, which
27 includes the chorus, verse and hook. The similarities are so striking that *10,000*
28 *Hours* simply cannot have been independently created.

6. Defendants have profited considerably from their exploitation of Plaintiff's work. Plaintiff seeks redress from Defendants' egregious and blatant violation of Plaintiff's intellectual property rights and seeks, among other remedies, monetary compensation and attorneys' fees. Plaintiff also seeks an injunction enjoining Defendants from further distributing and exploiting their infringing song, as well as requiring Defendants to take all measures to ensure that Plaintiff (and/or the songwriters) receive credit and are included in any and all honors, awards and accolades, past and future, associated with the song.

THE PARTIES

7. Plaintiff INTERNATIONAL MANUFACTURING CONCEPTS, INC., dba MELOMEGA MUSIC, LTD. and SOUND GEMS ("Plaintiff" or "Melomega"), is a Nevada corporation. Plaintiff is the owner of the underlying musical composition and sound recordings of *First Time*. *First Time* is registered in the United States Copyright Office, with Copyright Registration numbers PA0000080539, SRu001465520 and SR0000904298.

8. Defendant JUSTIN BIEBER ("Defendant Bieber") is an individual and, based on information and belief, a resident of Los Angeles, California. Defendant Bieber is the world famous singer and recording artist who co-wrote the musical composition and performed vocals on the infringing *10,000 Hours* sound recording. The U.S. Copyright registrations for the *10,000 Hours* musical composition, Reg. Nos. PA0002212950, PA0002223387, and PA0002248599 (collectively, the "*10,000 Hours* Music Registrations"), identify Defendant Bieber as an author of the song's music and lyrics. Reg. No. PA0002223387 also identifies Defendant Bieber as a copyright claimant.

9. Defendant DAN SMYERS ("Defendant Smyers") is an individual and, based on information and belief, a resident of Davidson County, Tennessee. Defendant Smyers is a world-famous singer and recording artist, and the recipient of numerous awards and accolades from the Academy of Country Music Awards,

1 the Billboard Music Awards, the CMT Music Awards and the Grammys. Defendant
2 Smyers co-wrote the musical composition and performed vocals on the infringing
3 *10,000 Hours* sound recording. The *10,000 Hours* Music Registrations identify
4 Defendant Smyers as an author of the song's music and lyrics. Further, Plaintiff is
5 informed and believes, and thereupon alleges that Defendant Smyers has and
6 continues to come to Los Angeles, California, to perform regularly at live concerts.
7 On information and belief, he also regularly performs at and/or attends music awards
8 ceremonies in and around Los Angeles, including the American Country Countdown
9 Awards, the Grammys, the American Music Awards, and the iHeartRadio Music
10 Awards, and regularly travels to the Los Angeles area for television tapings and
11 media appearances, including but not limited to *The Tonight Show* and *The Voice*.
12 Moreover, he has specifically performed, sung and promoted the subject song *10,000*
13 *Hours* in Los Angeles and other parts of California on numerous occasions,
14 committing copyright infringement violations personally, directly and specifically
15 in the county of Los Angeles, State of California.

16 10. Defendant SHAY MOONEY ("Defendant Mooney") is an individual
17 and, based on information and belief, a resident of Davidson County, Tennessee.
18 Defendant Mooney is a world-famous singer and recording artist and the recipient
19 of numerous awards and accolades from the Academy of Country Music Awards,
20 the Billboard Music Awards, the CMT Music Awards and the Grammys. Defendant
21 Mooney co-wrote the musical composition and performed vocals on the infringing
22 *10,000 Hours* sound recording. The *10,000 Hours* Music Registrations identify
23 Defendant Mooney as an author of the song's music and lyrics. Further, Plaintiff is
24 informed and believes, and thereupon alleges that Defendant Mooney has and
25 continues come to Los Angeles, California to perform regularly at live concerts. On
26 information and belief, he also regularly performs at and/or attends music awards
27 ceremonies in and around Los Angeles, including the American Country Countdown
28 Awards, the Grammys, the American Music Awards, and the iHeartRadio Music

1 Awards, and regularly travels to the Los Angeles area for television tapings and
2 media appearances, including but not limited to the *Tonight Show* and *The Voice*.
3 Moreover, he has specifically performed, sung and promoted the subject song *10,000*
4 *Hours* in Los Angeles and other parts of California on numerous occasions,
5 committing copyright infringement violations personally, directly and specifically
6 in the county of Los Angeles, State of California.

7 11. Defendant JESSIE JO DILLON (“Defendant Dillon”) is an individual
8 and, based on information and belief, a resident of Davidson County, Tennessee.
9 The *10,000 Hours* Music Registrations identify Defendant Dillon as an author of the
10 song’s music and lyrics. Reg. No. PA0002223387 also identifies Defendant Dillon
11 as a copyright claimant. Based on information and belief, Defendant Dillon
12 previously resided in Los Angeles County, State of California, and continues to
13 return to Los Angeles for various awards shows, musical appearances and
14 promotional activities in furtherance of her musical career. Further, based on
15 information and belief, Defendant Dillon has songwriting credits associated with
16 over 900 songs and routinely writes music intended to be performed, distributed and
17 exploited in Los Angeles, California, conducts business in the music industry in this
18 county and state, and works with Los Angeles-based co-writers, musicians and/or
19 artists who have or will perform and market Defendant Dillon’s songs in Los
20 Angeles County, State of California.

21 12. Defendant JORDAN REYNOLDS (“Defendant Reynolds”) is an
22 individual and, based on information and belief, a resident of Los Angeles,
23 California. The *10,000 Hours* Music Registrations identify Defendant Reynolds as
24 an author of the song’s music and lyrics. In addition to residing in Los Angeles,
25 California, it is believed that Defendant Reynolds conducts business in the music
26 industry and routinely performs in Los Angeles, as well as promotes *10,000 Hours*
27 in this state and county.
28

1 13. Defendant JASON BOYD (“Defendant Boyd”) is an individual and,
2 based on information and belief, a resident of Miami-Dade County, Florida. The
3 *10,000 Hours* Music Registrations identify Defendant Boyd as an author of the
4 song’s music and lyrics. Reg. No. PA0002223387 also identifies Defendant Boyd as
5 a copyright claimant. Plaintiff is informed and believes, and thereupon alleges that
6 Defendant Boyd, who also goes by the name of “Poo Bear,” resided in Los Angeles,
7 California until in or about 2021 and routinely returns to Los Angeles to promote his
8 career. Like Defendants Meyers and Mooney, Defendant Boyd regularly attends
9 awards shows, events and openings in an around Los Angeles, including Variety’s
10 1st Annual Hitmakers Luncheon, the Grammys, the Gushcloud Talent Agency
11 opening, the Wonderbrett Cannabis Store Grand Opening, the 31st Annual Rhythm
12 & Soul Music Awards, the ASCAP Pop Music Awards and ASCAP “I Create
13 Music” Expo. Further, based on information and belief, Boyd regularly promotes his
14 songs, including *10,000 Hours*, and conducts other business in the music industry in
15 the county of Los Angeles, State of California, including in connection with
16 Defendant Poo BZ, Inc., a California corporation of which Boyd is Chief Executive
17 Officer.

18 14. Defendant WARNER MUSIC NASHVILLE, LLC (“Warner Music”),
19 is a Tennessee limited liability company, and serves as Defendant WARNER
20 MUSIC GROUP CORP.’s country music label. Warner Music owns the copyright
21 in the *10,000 Hours* sound recording, Reg. No. SR0000864368. Since 2017, Warner
22 Music artists have performed over 80 times at various venues throughout California,
23 including at last two live performances of *100,000 Hours* by Dan + Shay at the
24 Hollywood Bowl for the 2000 Country Music Awards and at the Staples Center on
25 or about October 15, 2021. Warner Music’s website, at the URL
26 <https://www.warnermusicnashville.com/artist>, currently promotes approximately 22
27 upcoming California performances by Warner Music artists. Warner Music regularly
28 conducts business in Los Angeles, California, pertaining to a myriad of aspects of

1 the music industry, including but not limited to signing, developing, marketing and
2 exploiting artists, recording music, publishing musical compositions, and generally
3 conducting business in the music field while enjoying the benefits and privileges of
4 doing business in Los Angeles, California. It is believed that Warner Music has
5 specifically promoted, marketed and exploited *10,000 Hours* in Los Angeles,
6 California.

7 15. Defendant WARNER MUSIC GROUP CORP. (“Warner”) is a
8 Delaware corporation that has filed as a foreign corporation in California and has
9 offices located in Los Angeles, California. Warner oversees all of its music labels,
10 including Defendant Warner Music, and, based on information and belief, Warner
11 has control over the distribution, exploitation, marketing and sales of *10,000 Hours*
12 through Warner Music.

13 16. Defendant W CHAPPELL MUSIC CORP. dba WC MUSIC CORP.
14 (f/k/a WB MUSIC CORP.) (“W Chappell”) is a California corporation with a
15 principle place of business in Los Angeles County. U.S. Copyright Reg. No.
16 PA0002212950 for the *10,000 Hours* musical composition identifies W Chappell’s
17 former dba, WB Music Corp., as a copyright claimant. Reg. No. PA0002223387
18 identifies W Chappell’s current dba, WC Music Corp., as a copyright claimant.

19 17. Defendant BMG RIGHTS MANAGEMENT (US) LLC (“BMG”) is a
20 Delaware limited liability company. BMG is registered to do business, and has
21 offices, in California. Based on information and belief, BMG sometimes does
22 business as “BMG Gold Songs.” U.S. Copyright Reg. No. PA0002248599 for the
23 *10,000 Hours* musical composition identifies BMG as a copyright claimant. U.S.
24 Copyright Reg. No. PA0002212950 for the *10,000 Hours* musical composition
25 identifies BMG Gold Songs as a copyright claimant.

26 18. Defendant WARNER-TAMERLANE PUBLISHING CORP.
27 (“Warner-Tamerlane”) is a California corporation with a principal place of business
28 in California. U.S. Copyright Reg. Nos. PA0002212950 and PA0002223387 for the

1 *10,000 Hours* musical composition identify Warner-Tamerlane as a copyright
2 claimant.

3 19. Defendant UNIVERSAL MUSIC CORP. (“UMC”) is a Delaware
4 corporation that has filed as a foreign corporation in California and has offices
5 located in Los Angeles, California. U.S. Copyright Reg. No. PA0002212950 for the
6 *10,000 Hours* musical composition identifies UMC as a copyright claimant.

7 20. Defendant POO BZ INC., is a California corporation that, on
8 information and belief, is also known as POO B Z PUBLISHING, INC and POO BZ
9 PUBLISHING (collectively, “Poo BZ”). U.S. Copyright Reg. Nos. PA0002212950
10 and PA0002248599 for the *10,000 Hours* musical composition identify Poo BZ
11 Publishing, and Poo B Z Publishing Inc, respectively, as copyright claimants.
12 Further, by and through Defendant Boyd, who is believed to be a principal of
13 Defendant Poo BZ, and to operate on its behalf, Poo BZ has substantial contacts with
14 the county of Los Angeles, State of California, and specifically promotes its music,
15 including *10,000 Hours*, in this county and state.

16 21. Defendant BIG MACHINE MUSIC LLC (“Big Machine”) is a
17 Delaware limited liability corporation with a principal place of business in
18 Tennessee. Based on information and belief, Big Machine Music also does business
19 as “Big Music Machine.” U.S. Copyright Reg. No. PA0002212950 for the
20 *10,000 Hours* musical composition identifies Big Music Machine as a copyright
21 claimant. Based on information and belief, Defendant Big Machine regularly
22 conducts promotional activities and engages in various aspects of the music business
23 in Los Angeles, California.

24 22. Defendant BIG ASS PILE OF DIMES MUSIC (“Pile of Dimes”) is,
25 based on information and belief, a business entity of unknown legal form and status.
26 U.S. Copyright Reg. No. PA0002212950 for the *10,000 Hours* musical composition
27 identifies Defendant Pile of Dimes as a copyright claimant. Based on information
28

1 and belief, Defendant Pile of Dimes regularly conducts promotional activities and
2 engages in various aspects of the music business in Los Angeles, California.

3 23. Defendant SHAY MOONEY MUSIC (“Mooney Music”) is, based on
4 information and belief, a business entity, the legal form and status of which is
5 currently unknown to Plaintiff. U.S. Copyright Reg. Nos. PA0002212950 and
6 PA0002223387 for the *10,000 Hours* musical composition identify Mooney Music
7 as a copyright claimant. Moreover, by and through Defendant Mooney as its
8 principal, Mooney Music has substantial contacts with the County of Los Angeles,
9 State of California, and specifically publishes and promotes its music, including
10 *10,000 Hours*, in this county and state.

11 24. Defendant BIEBERTIME PUBLISHING, LLC dba BIEBER TIME
12 PUBLISHING (“Bieber Time”) is a Delaware limited liability company with, based
13 on information and belief, a principal place of business in California. U.S. Copyright
14 Reg. No. PA0002212950 for the *10,000 Hours* musical composition identifies
15 Bieber Time Publishing as a copyright claimant. Based on information and belief,
16 Defendant Bieber Time regularly conducts promotional activities and otherwise
17 does business in Los Angeles, California.

18 25. Defendant BUCKEYE26 (“Buckeye”) is, based on information and
19 belief, a business entity, the legal form and status of which is currently unknown to
20 Plaintiff. U.S. Copyright Reg. Nos. PA0002212950 and PA0002223387 for the
21 *10,000 Hours* musical composition identify Buckeye26 as a copyright claimant.
22 Based on information and belief, Defendant Buckeye regularly conducts
23 promotional activities and engages in various aspects of the music business in Los
24 Angeles, California.

25 26. Defendant JREYNMUSIC (“Jreyn”) is, based on information and
26 belief, a business entity, the legal form and status of which is currently unknown to
27 Plaintiff. U.S. Copyright Reg. Nos. PA0002212950 and PA0002223387 for the
28 *10,000 Hours* musical composition identify Jreyn as a copyright claimant. Based on

1 information and belief, Defendant Jreyn operates by and through Defendant
2 Reynolds as its agent, and has the similar contacts and relationship with Los
3 Angeles, California as Defendant Reynolds, and also regularly conducts promotional
4 activities and engages in various aspects of the music business in Los Angeles,
5 California.

6 27. Defendant BEATS AND BANJOS (“Beats”) is, based on information
7 and belief, a business entity, the legal form and status of which is currently unknown
8 to Plaintiff. U.S. Copyright Reg. Nos. PA0002212950 and PA0002223387 for the
9 *10,000 Hours* musical composition identify Defendant Beats as a copyright
10 claimant. Based on information and belief, Defendant Beats regularly conducts
11 promotional activities and engages in various aspects of the music business in Los
12 Angeles, California.

13 28. Plaintiff is informed and believes, and thereupon alleges, that other
14 fictitious defendants, not previously identified by name but designated as Does 1
15 through 50, may be liable or responsible in whole or in part for the allegations
16 contained herein. Once the true names and capacities of these Doe Defendants are
17 ascertained, Plaintiffs will seek leave to amend this Complaint and substitute their
18 true names and capacities.

19 29. Plaintiff is informed and believes and thereupon alleges, that each of
20 the Defendants named herein as Does 1 through 50, inclusive, is intentionally,
21 negligently or otherwise legally responsible in some manner, either vicariously or
22 by virtue of his, her or its agents, representatives, servants or employees, for the acts
23 and occurrences alleged herein, and has thereby proximately caused injury or
24 damage to Plaintiff.

25 30. Plaintiff is informed and believes, and thereupon alleges, that at all
26 times herein mentioned, the Defendants, and each of them, were the agents, partners,
27 alter egos, joint venturers and/or employees of each other, and at all times were
28 acting within the scope and course of said agency, partnership, joint venture, alter

1 ego relationship and/or employment, and with full knowledge and consent of each
2 other. In so doing, the Defendants, and each of them, acted within the scope of such
3 relationship or ratified the acts of the others, and is jointly and severally liable as
4 such. Plaintiffs further believe and allege that Defendants, and each of them, are the
5 alter egos of the other, and that there is such a unity of interest and ownership
6 between and among Defendants, that such interests have become intertwined and
7 inseparable.

8 JURISDICTION AND VENUE

9 31. The Court has federal question jurisdiction pursuant to 28 U.S.C.
10 Sections 1331 and 1338(a), as an action arising under the 1976 Copyright Act, 17
11 U.S.C. Sections 101, *et seq.*

12 32. This Court has specific personal jurisdiction over Defendants because,
13 based on information and belief, each has purposefully committed, within the state,
14 the acts from which Plaintiff's claim arises and/or committed tortious acts outside
15 California, knowing and intending that such acts would cause injury to Plaintiff
16 within the state.

17 33. Specifically, based on information and belief, Defendants have
18 purposefully availed themselves of the benefits of conducting business within the
19 State of California by directing their activities with respect to the infringing work,
20 including their marketing and promotion of the infringing work, to California
21 residents, who are able to purchase, download and stream the infringing
22 compositions and recordings. Upon information and belief, Defendants, and each of
23 them, have received substantial revenues from their exploitation of the infringing
24 works in California.

25 34. Upon information and belief, and as set forth above in greater detail,
26 Defendants Bieber, Shay and Mooney, have performed and/or will perform touring
27 dates in California to further exploit the infringing compositions and recordings, and
28

1 have licensed, distributed and exploited the subject infringing song (and other songs)
2 in this state.

3 35. The Court also has general personal jurisdiction over Defendants, as
4 each either resides in this state, has incorporated in this state, is licensed as a foreign
5 entity to do business in this state, has its principal place of business in this state,
6 and/or conducts continuous, systematic, and routine business within the state of
7 California and the County of Los Angeles and/or within this district.
8 Consequentially, by virtue of their pervasive business contacts and transactions
9 within the State of California, Defendants are constructively aware and can
10 reasonably expect and/or anticipate being sued in this jurisdiction.

11 36. Venue is proper in the United States District Court for the Central
12 District of California pursuant to 28 U.S.C. §§ 1391(b) - (d) and 1400.

13 **FACTUAL BACKGROUND**

14 37. This is an action for copyright infringement, in violation of 17 U.S.C.
15 §§ 101 *et seq.*, arising from the unauthorized reproduction, distribution and/or public
16 performance of Plaintiff's copyrighted musical composition *First Time*. Plaintiff is
17 informed and believes, and thereupon alleges, that Defendants are the writers,
18 composers, performers, producers, record label, distributors, and publishers who
19 were involved with the creation, release, reproduction, exploitation, licensing, and
20 public performance of the infringing and derivative musical composition *10,000*
21 *Hours*, the infringing sound recording of *10,000 Hours*, and the music video and
22 other products embodying the infringing musical composition and sound recording
23 *10,000 Hours* (collectively, the "Infringing Works"). Defendants Bieber, Smyers,
24 Dillon, Reynolds, Boyd, and Mooney (collectively, the "Composer Defendants")
25 each received credit as composers of the music and lyrics of *10,000 Hours*. The
26 corporate Defendants are, on information and belief, the publishing, distribution,
27 recording labels and other entities that exploit the song.
28

A. Plaintiff's Song *The First Time Baby Is A Holiday*

38. Plaintiff Melomega is the owner of the copyright in the musical composition embodied in sound recordings of *First Time*. The authors of the music and lyrics of *First Time*, Palmer Rakes and Frank Fioravanti, respectively, were well-known songwriters at the time they authored the song. In 1973, shortly after forming their first record label, Sound Gems Records, one of their singles, *What You Got* by William Devaughn, earned a gold record, selling 2 million copies and climbing to number 2 or 3 on the charts, depending on the publication doing the ranking. Frank Fioravanti eventually formed Melomega, which released numerous songs in the 70's and 80's, including a number of chart-making songs in the top 100.

39. In 1980, Melomega registered the musical composition for *First Time* with the U.S. Copyright Office, under registration number PA0000080539, under the title "The First time, baby, was a holiday." In 2014, Melomega recorded the song and, on August 4, 2021, registered the 2014 sound recording and derivative version of the musical composition under registration number SR0000904298, using the slightly altered title "The First Time Baby Is a Holiday." On February 15, 2021, Plaintiff also registered an unpublished sound recording of the 1980 version of *First Time* under registration number SRu001465520.

40. Melomega initially released the 2014 sound recording in or about September, 2014. In 2017 and 2019, Melomega's Sound Gems Records label re-released the song on three different albums. In 2014, the sound recording commenced world-wide distribution via *The Orchard*, one of the largest music distributors in the world, which distributes to approximately 45 global markets and hundreds of retail outlets, if not more, including digital, physical and multimedia platforms.

B. Defendants' Song *10,000 Hours*.

41. Defendants released *10,000 Hours* as a single in the United States on or about October 4, 2019. The official music video for the song debuted that same

1 day. On or about November 27, 2019, Defendants released a piano version of *10,000*
 2 *Hours*, known as “the wedding version.” The song also appears on the album entitled
 3 *Good Things*, which was released on or about August 13, 2021. *10,000 Hours* was a
 4 multi-week No. 1 hit, with nearly two billion global streams to date. In its first week
 5 of distribution, listeners streamed *10,000 Hours* more times than any other single in
 6 country music history, earning over four million U.S. track equivalents to date. It is
 7 only the sixth song ever to top all four *Billboard* country song charts simultaneously,
 8 and was also the highest-charting non-holiday country song in the history of
 9 *Billboard*’s streaming song charts.

10 42. *10,000 Hours* received awards for “Best Country Duo/Group
 11 Performance” at the 2021 Grammy Awards, “Collaboration of the Year” and
 12 “Favorite Country Song” at the 2020 American Music Awards, and Top Country
 13 Song at the 2020 Billboard Music Awards. The Recording Industry Association of
 14 America certified *10,000 Hours* as Gold in late 2019, and the song went quadruple
 15 platinum in 2021.

16 **C. Substantial Similarity Between *10,000 Hours* and *First Time***

17 43. From a subjective standpoint, by simply listening to both songs, the
 18 average listener clearly hears the distinctively similar melody and other
 19 compositional elements in both songs. Indeed, the melodies of the chorus of *10,000*
 20 *Hours* and the chorus/verse of *First Time* are practically identical.

21 44. The listener’s subjective observations are more than corroborated by an
 22 objective, scientific, empirical musical analysis conducted by one of the top
 23 musicologists in the industry, Dr. Alexander Stewart. Dr. Stewart, whose extensive
 24 analysis is set forth in his preliminary report, attached hereto as Exhibit A, came to
 25 the immutable conclusion that not only are these songs substantially similar, but
 26 from an analysis of the most significant, core expressions of each song, “*First Time*
 27 *Baby* and *10,000 Hours* are practically the same song [and] [g]iven the degree of
 28

1 similarity in these passages and other details... I consider it almost impossible that
 2 *10,000 Hours* was created independently from *First Time Baby*.”

3 45. From a general perspective, both songs have similar tempos, overall
 4 feel, and form structure. More specifically, however, an analysis with respect to the
 5 “core expression” of the songs is particularly striking and revealing. Such core
 6 expression is found in the chorus of *10,000 Hours* and the chorus/verse of *First Time*.
 7 These are the most important sections of the songs in which the titles of the songs
 8 are referenced, the signature phrases and “hooks” are found, and which the listener
 9 is most likely to identify and remember. Dr. Stewart compared the melodic themes,
 10 pitch, rhythm, length, phrasing, hook, lyrics and metric placement of these core
 11 sections of the songs and found them to be practically identical.

12 46. For example, when the core sections of the songs are broken down into
 13 their four component phrases, and the pitch sequences compared on a note-by-note
 14 basis, the percentage of melodic components of *First Time* that also appear in *10,000*
 15 *Hours* is as high as 83%, or all but two (2) of the twelve (12) notes.

16

17 First Time ②

18 We packed up our bags_ and we went_ a - way_

19 10,000 ①

20 I'd spend TEN THOU-SAND HOURS_ and ten thou-sand more,_

21

22 Pitch sequences

23 FTB 165632161231

10k 1165632151233

24 47. Moreover, when looking at the core portions of the songs as a whole,
 25 34 of 47 notes—i.e., 72%—in the pitch sequence of the main verse/chorus of *First*
 26 *Time* appear in the chorus of *10,000 Hours*.¹

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28 ¹ In each of the graphs, identical notes are denoted in red.

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First Time
THE FIRST TIME__ BA-BY WAS A HOL-I - DAY. We packed up my bags and we went__ a-way__ You

10,000
I'd spend TEN THOU-SAND HOURS__ and ten thou sand more, oh, if that's what it takes to learn that sweet heart of yours. And I

First Time
treat - ed me ten - der,__ so per-fect-ly right, a time I'll re - mem-ber for *the rest of my life.*

10,000
might nev er get__ there,__ but I'm gon-na try,__ if it's TEN THOU-SAND HOURS or *the rest of my life.*

Detailed description: This block contains two musical staves. The top staff is for the song 'The First Time' with a tempo of 84. It features a melody in 4/4 time with lyrics: 'THE FIRST TIME__ BA-BY WAS A HOL-I - DAY. We packed up my bags and we went__ a-way__ You'. The bottom staff is for the song 'Ten Thousand Hours' with a tempo of 89. It features a melody in 4/4 time with lyrics: 'I'd spend TEN THOU-SAND HOURS__ and ten thou sand more, oh, if that's what it takes to learn that sweet heart of yours. And I treat - ed me ten - der,__ so per-fect-ly right, a time I'll re - mem-ber for the rest of my life.' and 'might nev er get__ there,__ but I'm gon-na try,__ if it's TEN THOU-SAND HOURS or the rest of my life.' The lyrics 'the rest of my life' are written in red italics in both songs.

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48. Even further, a comparison of the rhythm and metric placement of this extended, 47-note sequence demonstrates that nearly 90% of notes—an incredible 42 of 47 notes—are identical in this regard. While keeping the same rhythms, only four pitches were changed in two of the phrases, amounting to just a nominal variation. In other words, for all intents and purposes, the melodies and melodic structure of these two core sections of each song are the same.

First Time
THE FIRST TIME__ BA-BY WAS A HOL-I - DAY. We packed up our bags and we went__ a-way__ You

10,000
I'd spendTEN THOU-SAND HOURS__ and ten thou-sand more, oh, if that's what it takes to learn that sweet heart of yours. And I

First Time
treat - ed me ten - der,__ so per-fect-ly right, a time I'll re - mem-ber for *the rest of my life.*

10,000
might nev-er get__ there,__ but I'm gon-na try,__ if it's TEN THOU-SAND HOURS or *the rest of my life.*

Detailed description: This block contains two musical staves, similar to the previous one, but with red diagonal lines drawn over the notes to highlight the rhythmic structure. The lyrics are the same as in the previous block, with 'the rest of my life' in red italics.

49. Additional analysis found other musical features to be substantially similar, including the harmony and accompaniment figures. In fact, the hooks of these songs are exactly the same—both end with the identical lyric “for the rest of

my life,” set to the same melody. This identical similarity can’t be overstated. The fact that both songs exhibit the exact same lyrics, pitch, rhythm, contours and metric placement at exactly the same moment in each song simply can’t happen without copying.



50. In looking at this analysis, it also is important to understand that musicological comparisons have in many cases involved comparisons of as few as 6 to 7 consecutive notes in the subject musical compositions. Here, in contrast, several 47-note sections of *10,000 Hours* are virtually *identical* to parallel sections of *First Time*. Such a lengthy expression of largely identical musical composition is nothing less than strikingly similar. This, combined with the results of a prior art search which uncovered no compositions with anywhere near this degree of similarity pre-dating *First Time*, makes Defendants’ theft abundantly clear.

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Melodies

The First Time Baby



10,000 Hours



Rhythms

The First Time Baby



10,000 Hours



51. The musicological analysis is not only compelling but constitutes overwhelming evidence that *10,000 Hours* copied and is comprised of the most important portions of *First Time*. In fact, without *First Time*, *10,000 Hours* would not exist.

D. Access.

52. The fact that the core expression of the two songs is nearly identical and strikingly similar obviates the need to establish access, as such is inferred.

53. Notwithstanding, *First Time* was written and recorded in 1980, and initially released in 2014 on Sony's Orchard platform, with subsequent releases in 2017 and 2019, for a total of three separate releases on three different albums. The Orchard is one of the largest music distributors in the world, reaching over 45 countries through hundreds of musical outlets. In the United States, *First Time* is distributed and available through all of the major retailers including top outlets such as iTunes, Spotify, Napster, Shazam, Soundcloud, Tidal, TikTok, Peloton, Vevo, Amazon Music, Facebook, YouTube Music and Pandora. In fact, there are five

1 different versions of *First Time* available for purchase on iTunes, alone. *First Time*
2 was written four decades ago, and domestically and internationally distributed for
3 approximately 5 years prior to the release of *10,000 Hours*. Thus, access through
4 widespread distribution is undeniable.

5 **E. Defendants' Unauthorized Exploitation of *First Time***

6 54. Defendants have, without authorization, and without giving credit to
7 either Palmer Rakes or Frank Fioravanti, or a copyright interest to Melomega, copied
8 *First Time*, and reproduced, distributed, displayed, publicly performed and
9 otherwise exploited the Infringing Works, resulting in substantial revenue, profit and
10 fame for Defendants. Upon information and belief, each Defendant is responsible in
11 some manner for the events described herein and are liable to Melomega for the
12 damages it has incurred. As co-infringers, Defendants are jointly and severally liable
13 for all amounts owed.

14 55. Defendants continue to infringe on the musical composition *First Time*
15 by reproducing, displaying, distributing, exploiting, licensing, and publicly
16 performing the Infringing Works. *10,000 Hours* continues to be reproduced, sold,
17 distributed, publicly performed, licensed and otherwise exploited on compact discs
18 and albums, digital downloads, streaming, music videos, internet and other
19 commercial products, all without payment to the Melomega or credit to Frank
20 Fioravanti.

21 56. These acts were willful, knowing, and malicious and perpetrated
22 without regard to Melomega's rights.

23 **CAUSE OF ACTION COPYRIGHT INFRINGEMENT**

24 **(Direct, Contributory, And Vicarious Copyright Infringement**

25 **Against All Defendants)**

26 57. Plaintiff repeats and re-alleges each of the foregoing paragraphs, as
27 though fully set forth herein.
28

1 58. Plaintiff is the sole owner of the U.S. copyright in all rights, titles, and
2 interests in the musical composition *First Time*. The musical composition is properly
3 registered with the United States Copyright Office.

4 59. Defendants' unauthorized reproduction, distribution, public
5 performance, display, and creation of a derivative work of *First Time* infringes
6 Melomega's exclusive rights in violation of the Copyright Act, 17 U.S.C. §§ 101 *et*
7 *seq.*

8 60. Defendants did not seek or receive permission to copy or interpolate
9 any portion of *First Time* into *10,000 Hours*.

10 61. Defendants' conduct has at all times been knowing, willful, and with
11 complete disregard to Melomega's rights.

12 62. As a proximate cause of Defendants' wrongful conduct, Melomega has
13 been irreparably harmed.

14 63. The Infringing Works copy quantitatively and qualitatively the most
15 distinct, important, recognizable and significant portions of *First Time* to the point
16 where *10,000 Hours* could not exist without the stolen portions of *First Time*.

17 64. From the date of the creation of the infringing *10,000 Hours*,
18 Defendants have infringed Melomega's copyright interest in *First Time* including:
19 (a) by substantially copying and publicly performing, or authorizing the copying and
20 public performances, including publicly performing *10,000 Hours* on the radio, at
21 live concerts and personal appearances, and on film, video, television, internet and
22 otherwise; (b) by authorizing the reproduction, distribution and sale of the records,
23 digital downloads and streaming through the execution of licenses, and/or actually
24 selling, manufacturing, and/or distributing *10,000 Hours* through various sources
25 and outlets; (c) by substantially copying and the related marketing and promotion of
26 the sale of the records, videos, downloads, streams, tickets to concerts and other
27 performances, and other merchandise; and (d) by participating in and furthering the
28 aforementioned infringing acts, and/or sharing in the proceeds therefrom, all through

1 substantial use of *First Time* in and as part of the Infringing Works, packaged in a
2 variety of configurations and digital downloads, streams, mixes and versions, and
3 performed in a variety of ways including internet, radio, concerts, personal
4 appearances, film, video, television, downloads, streams and otherwise.

5 65. Neither Palmer Rakes nor Frank Fioravanti have received songwriter
6 or composer credit for, and Melomega has received no copyright ownership interests
7 in and for, any of the exploitations of *10,000 Hours* or any of the works associated
8 with *First Time*.

9 66. The infringement by Defendants has been, and continues to be, willful
10 and knowing.

11 67. With knowledge of the infringement, the Defendants have induced,
12 caused, or materially contributed to, the infringing conduct of others, such that they
13 should be found to be contributorily liable.

14 68. Defendants had the right and ability to control other infringers and have
15 derived a direct financial benefit from that infringement such that Defendants should
16 be found to be vicariously liable.

17 69. The infringement is continuing as the album *Good Things*, on which
18 *10,000 Hours* appears, continues to be sold and the single *10,000 Hours* continues
19 to be licensed for sale, downloads, streams, ringtones and/or mastertones, and other
20 exploitations by Defendants or their agents.

21 70. As a direct and proximate result of Defendants' conduct, Melomega has
22 suffered actual damages including lost profits, lost opportunities, and loss of
23 goodwill.

24 71. Pursuant to 17 U.S.C. § 504, Melomega is entitled to actual damages,
25 including Defendants' profits, as will be proven at trial, and/or statutory damages,
26 including attorneys' fees.

27 72. Defendants' conduct is causing and, unless enjoined by this Court, will
28 continue to cause Melomega irreparable injury that cannot be fully compensated or

1 measured in monetary terms. Melomega has no adequate remedy at law. Pursuant to
2 17 U.S.C. § 502, Melomega is entitled to a permanent injunction prohibiting the
3 reproduction, distribution, sale, public performance or other use or exploitation of
4 *10,000 Hours*, including all Infringing Works.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Melomega prays for judgment against Defendants and for the
7 following relief:

8 A. A permanent injunction prohibiting Defendants and their agents,
9 servants, employees, officers, attorneys, successors, licensees, partners, and assigns,
10 and all persons acting in concert or participation with each or any one of them, from
11 directly or indirectly infringing, or causing, enabling, facilitating, encouraging,
12 promoting, inducing, and/or participating in the infringement of, any of Melomega's
13 rights protected by the Copyright Act; an order directing Defendants to include
14 credits on behalf of Melomega and/or the authors of *First Time* to be included on
15 any awards, accolades, events of prestige and/or other public recognition attributed
16 to *10,000 Hours*;

17 B. An award of damages pursuant to 17 U.S.C. § 504(b), including actual
18 damages and Defendants' profits in an amount to be proven at trial;

19 C. An award of statutory damages,

20 D. An award of attorneys' fees;

21 E. For pre-judgment and post-judgment interest according to law, as
22 Applicable.

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1 F. For such other and further relief as this Court may deem just and proper.

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4 Dated: April 21, 2022

THE LOVELL FIRM, P.C.

5 By: Tre Lovell

6 Tre Lovell
7 Attorneys for Plaintiff
8 INTERNATIONAL
9 MANUFACTURING CONCEPTS,
10 INC., a Nevada Corporation, dba
11 MELOMEGA MUSIC and SOUND
12 GEMS

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JURY DEMAND

Plaintiff respectfully requests a jury trial.

Dated: April 21, 2022

THE LOVELL FIRM, P.C.

By: Tre Lovell

Tre Lovell
Attorneys for Plaintiff
INTERNATIONAL
MANUFACTURING CONCEPTS,
INC., a Nevada Corporation, dba
MELOMEGA MUSIC and SOUND
GEMS

EXHIBIT “A”

**Alexander Stewart, Ph.D. LLC
Preliminary Musicology Report**

April 10, 2022

Re: “The First Time Baby Was a Holiday” and “10,000 Hours”

1. Background

I am Professor of Music, the founder and coordinator of the Jazz Studies Program, and former Director of Latin American and Caribbean Studies at the University of Vermont. I collaborated in the design and implementation of the Music Technology and Business Program. I have contributed to numerous peer-reviewed journals and other publications and I am author of a book, *Making the Scene: Contemporary New York City Big Band Jazz*, published by University of California Press (2007). My article on drumming and rhythms, “Funky Drummer,” first published in the British journal *Popular Music* in 2000, has been reprinted in several anthologies and has been widely cited. My scholarly work encompasses extensive music transcriptions, musicological analysis, historical research, and other activities, particularly in popular music. I earned a Ph.D. in Music (Ethnomusicology Concentration) from the Graduate Center of the City University of New York (CUNY) and a Master of Music in Jazz and Commercial Music from Manhattan School of Music. During 2006-7 I was a Fulbright scholar researching traditional and popular music in Mexico. As an active professional musician for more than forty years I have performed and recorded with leading musicians in jazz and popular music such as Lionel Hampton, Wynton Marsalis, and Ray Charles. I have provided expert opinions and analysis and lectured widely on music copyright matters for nearly twenty years. A C.V. attached to this report as Exhibit 3 lists my professional activities in more detail.

2. Assignment

I have been asked to examine, compare and research two songs: “The First Time Baby Was a Holiday” (henceforth “FTB”) and “10,000 Hours” (henceforth “10K”). I was provided mp3’s and links to the recordings by Tre Lovell, Esq. of The Lovell Firm, P.C. He also provided me with the deposit copy sheet music to FTB (Exhibit 1). I was also asked to perform a preliminary search for other songs containing similar expression (“prior art”).

3. Summary of Findings

My investigation and analysis have found that the compositions FTB and 10K are substantially similar in their main melodic themes, hook lyrics, supportive harmonies, and accompaniment. A prior art search turned up no songs with anywhere near this degree of similarity that predate either of the two versions of FTB (1980 and 2014). The analysis below is primarily based on the more recent (2014) version of FTB. The melody, harmonies, lyrics, and other expression in the 1980 recording and the deposit copy sheet music are very similar to those in the later recording of the composition.

4. Analysis

a) General

FTB and 10K are both set to major keys and have similar tempos and overall feel or style.

	Tempo	Key
FTB	84bpm ¹	Eb major (and E major after the modulation)
10K	89bpm	Bb major

b) Structure

The forms of both songs are as follows:

First Time

intro	0:00 instrumental; guitar plays theme
verse 1 ²	0:13
chorus 1	0:36
verse 2	1:00
chorus 2	1:23
verse 3	1:53 (modulation) guitar plays theme; vocal ad lib.
chorus 3	2:13
outro	2:37-3:02 improvised vocal over fadeout and guitar/piano riffing on chorus

10,000 Hours

intro	0:00
verse 1	0:09
chorus 1	0:29
verse 2	0:56
chorus 2	1:17
bridge	1:49
chorus 3	2:02
outro	2:24-2:48 improvised vocal over guitar riffing on chorus

¹ BPM = beats per minute

² This section also functions like a chorus in FTB as is clear in the sheet music deposit copy version.

While there are differences (such as the short bridge in 10K) the basic form is similar. One unusual feature of FTB is that the verse also functions like a chorus later in the song, as evidenced in the original lead sheet deposit copy where the lyrics and music of the first section are repeated at the end.

c) Melodies

Following standard musicological procedure when comparing two or more works, in this and all following examples, I have transposed each song to the same key (C major).

Example 1. Chorus of “10,000 Hours” and 1st verse/chorus of “First Time”

Example 1 displays the musical notation for the chorus of “10,000 Hours” and the 1st verse/chorus of “First Time”, transposed to C major. The notation is presented in two systems, each with a treble clef staff and a bass clef staff. The tempo is marked as 84 for “First Time” and 89 for “10,000 Hours”. The lyrics are written below the notes. Red notes and lyrics indicate matches between the two songs. The notation is divided into four numbered phrases (1-4) by brackets. The hook phrase “the rest of my life” is highlighted in red in both songs.

Example 1 provides the chorus of 10K and the verse/chorus of FTB. The melodies in each of these sections reference the titles of the songs and, by containing the signature phrases, they can be considered the most important sections of both songs. These eight measure sections are constructed from four two-measure phrases. In the above example each phrase has been marked and assigned a number 1-4. Notes and lyrics that match are red. Note that in both songs, the sections end with the same hook phrase: “the rest of my life.”

As discussed in greater detail below, phrases 1 and 3 in both songs are virtually identical. Phrases 2 and 4 begin with different pitches³ for the first four notes but are virtually identical for their remaining notes. The fourth phrase in each song ends with identical lyrics set to the same melodies (pitches and rhythms). The only difference is an insignificant decorative embellishment on the last syllables of 10K. The fourth and final phrase containing the words “the rest of my

³ “Pitch” is the frequency of a sound, generally perceived by the human ear as its highness or lowness.

life” can be considered an important hook in each song as it explains the significance of the titles and the lyrics that precede it.

Overall, 34 of 47 or 72.3% of the notes in the pitch sequence of the main verse/chorus of FTB, appear in the chorus of 10K. These pitches are set to the same rhythms and appear in relation to the same beats (metric placement). Phrases 1 and 3 share the same initial (C) and final pitches (E), and phrases 2 and 4 the same final pitches (C). The only relatively minor difference between these sections of the songs are the first four pitches of phrases 2 and 4 (which nevertheless are set to the same rhythms).

In fact, the rhythms and metric placement of all four phrases are virtually identical. As can be seen in Example 2, only 5 of 47 notes are set to different rhythms and the difference in metric placement of all five of these notes is miniscule (just a sixteenth note, or less than two-tenths of one second (0.178) at 84 bpm).

Example 2. Rhythm and metric placement compared

First Time $\text{♩} = 84$

10,000 $\text{♩} = 89$

THE FIRST TIME__ BA-BY WAS A HOL-I - DAY. We packed up our bags and we went__ a-way.__ You

I'd spendTEN THOU-SAND HOURS__ and ten thou-sand more, oh, if that's what it takes to learn that sweet heart of yours. And I

treat-ed me ten - der,__ so per-fect-ly right, a time I'll re - mem - ber for *the rest of my life.*

might nev-er get__ there,__ but I'm gon-na try,____ if it's TEN THOU-SAND HOURS or *the rest of my life.*

For all intents and purposes, the melodies and melodic structure of the chorus and verse/chorus sections of these two songs are the same.

Phrase 1 compared (signature theme and title phrase)

Example 3 looks at phrase 1 in closer detail. As can be seen, these melodies are a close match. By referencing the title of each song and their prominent placement at the beginning of each section, they can be considered the signature phrases of each song.

Example 3. Phrase 1 Signature phrases

First Time

THE FIRST TIME_ BA - BY WAS A HOL - I - DAY.

10,000

I'd spend TEN THOU - SAND HOURS and ten thou-sand more, _

When comparing melodies a common procedure is to convert each pitch to an integer. The C major scale would thus be rendered as 1 to 7 where 1 = C, 2 = D, 3 = E, 4 = F, 5 = G, 6 = A, and 7 = B.⁴

Pitch sequences in phrase 1

FTB 165632161 13

10k 1165632151233

In terms of pitch sequences, 9 of 11 or 82% of the notes in the signature phrases of FTB and 10K match. Melody, of course, also includes durations, metric placement, and contour⁵ as well as pitch ordering, all of which are nearly identical in these songs.⁶

These phrases begin with an upward leap from the tonic (C) up to the 6th degree of the scale (A) on beat one, a stepwise motion to the 5th (G) and return to the sixth (A) before a downward leap to the 3rd (E) and stepwise descent to the tonic. The melodies continue similarly after a similar gesture to a lower pivot or pick up note by returning to the tonic and landing on the third on the last syllable. The slight difference in this very brief lower pivot note (on the words “a” and “and”) is insignificant.

Slightly embellished and harmonized iterations of the signature phrase by the guitar appear in FTB during the intro (see example 9) and a similar version is heard during the instrumental section (1:53-2:12).

⁴ This is similar to the Western system of solfege, using numbers instead of the syllables *do* (1), *re* (2), *me* (3), etc.

⁵ “Contour” refers to the shape of a melody as the pitches rise and fall.

⁶ The most authoritative reference work on music in the English language, the *New Grove*, defines melody as “pitched sounds in musical time” and the *Oxford Companion to Music* defines it as the “interaction of rhythm and pitch.” The *Harvard* and *Oxford* dictionaries of music further explain that, along with pitch, duration (rhythm) is an essential element in the formation and recognition of melodies.

If we compare the second phrase of FTB with the opening signature phrase of 10K, even more pitches and notes match – 10 of 12 or 83%.

Example 4. signature phrases (second iteration in FTB)

First Time ②

We packed up our bags and we went a - way.

10,000 ①

I'd spend TEN THOU-SAND HOURS and ten thou-sand more,

Pitch sequences

FTB 165632161231

10k 1165632151233

As in example 3, the difference in the note at the end of the first full measure (set to the words “we” in FTB and “and” in 10K) is insignificant because of its brevity, its similar pitch level (6 in FTB and 5 in 10k), contour (skip down to 6 or 5), and function (a pivot or pickup into the second part of the phrase). The musical gesture is the same and the miniscule difference in pitch of this single brief note would be imperceptible to most listeners.⁷ Essentially, the only difference in these phrases is the last pitch.

Phrase 2 compared

In the second phrase of each song, after the first 4 notes (5 notes in 10K including the initial “oh”), the two phrases are identical for the last 8 notes except for a slight inflection on the last word (“yours”) in 10K. In other words, 8 of the 12 notes (or 67%) in FTB appear in 10K.

Example 5 Phrase 2 comparison

First Time ②

We packed up our bags and we went a - way.

10,000

oh, if that's what it takes to learn that sweet heart of yours.

⁷ As the only sixteenth notes, these notes have the shortest duration in the entire phrase.

Pitch sequences

FRB 165632161231

10K 56125**321612321**

Phrase 3 compared

The third phrase of each song closely mirrors the melody (pitches, rhythms, and metric placement) of the first or signature/title phrase. 9 of 12 or 75% of the notes match.

Pitch sequences in phrase 3

FTB 165632161113

10k 1**16563215**12343

Phrase 4 compared (hook phrase)

Similarly, phrase 4 in each song closely mirrors the melody (pitches, rhythms, and metric placement) of phrase 2. Moreover, the fourth phrase in both songs ends with an identical hook: the words “the rest of my life” set to the same melody (pitches, rhythms, and metric placement).

Example 6. Phrase 4 “hook” comparison

First Time

10,000

a time I'll re - mem - ber for the rest of my life.____

if it's ten thou-sand hours____ or the rest of my_ life.____

Again, duration and rhythmic placement are essential components of melody. These pitch sequences are set to nearly identical rhythms and contours and placed identically in the meter.

Pitch sequences

FRB 165632161231

10K 56125**3216123**121

The two added pitches (1 and 2) at the end of the phrase on the words “my” and “life” in 10K are purely decorative with little melodic significance. As in the second phrase of both songs, out of 12 notes in FTB the last 8 (67% or 2/3) appear in 10K.

d) Harmonies

As discussed above, in both songs the title or signature theme of both songs are set to nearly identical melodies. The harmony underlying these passages is given below.

Passages at issue (see example 7):

First Time	C F C
10,000	C A- F C

As can be seen above both songs these passages are set to very similar chords and harmonic rhythm. In the second measure the return to the tonic (C) is anticipated (played before the downbeat).

In FTB the melodic passage at issue is also set to another harmonic progression (see example 8).

First Time	C Bb F
10,000	C A- F C

e) Melody and accompaniment

In addition to the nearly identical melodies and similar harmonies, the songs share similar accompaniment figures. As can be seen in examples 7 and 8, the drum patterns are similar. Though not unusual, both use a steady stream of 8th-notes on the hi-hat and back beat on the snare. More significantly, the kick or bass drum in the second measure of the pattern is sounded on the “and” of two and the “and” of three. The bass in each song also follows this pattern.

Example 7. Melody and rhythm section parts

The musical score for Example 7 displays the melody and rhythm section parts for two songs: 'First Time' and '10,000'. The score is written in 4/4 time and includes three staves: Lead Vocal, Bass, and Drumset.

First Time:

- Lead Vocal:** THE FIRST TIME__ BA- BY WAS A HOL-I - DAY.
- Bass:** Chords C, F, C are indicated below the staff.
- Drumset:** The pattern shows a steady stream of 8th notes on the hi-hat and back beat on the snare.

10,000:

- Lead Vocal:** I'd spend TEN THOU-SAND HOURS_____ and ten thou-sand more,
- Bass:** Chords C, A-7, F(sus2), C are indicated below the staff.
- Drumset:** The pattern shows a steady stream of 8th notes on the hi-hat and back beat on the snare.

f) Finally, both songs share an important detail – the same five-note pickup figuration in the bass and in the guitar (see example 8). While similar figurations appear in other songs, here it is generally coupled with the signature phrase. This melodic phrase is contiguous with the signature vocal melodies of each song.

Example 8. Melody and rhythm section parts with pickup figuration

The image displays two musical examples, 'First Time' and '10,000', each featuring a Lead Vocal, Bass, and Drumset. The time signature for all parts is 4/4.

First Time:

- Lead Vocal:** The melody begins with a five-note pickup figuration (G4, A4, B4, C5, B4) leading into the phrase 'We packed up our bags and we went a-way. You'. The lyrics are: 'We packed up our bags and we went a-way. You'.
- Bass:** The bass line features a five-note pickup figuration (G3, A3, B3, C4, B3) leading into the phrase 'We packed up our bags and we went a-way. You'. The lyrics are: 'We packed up our bags and we went a-way. You'. Chords C, Bb, and F are indicated above the bass line.
- Drumset:** The drumset part shows a consistent rhythmic pattern of eighth notes and quarter notes.

10,000:

- Lead Vocal:** The melody begins with a five-note pickup figuration (G4, A4, B4, C5, B4) leading into the phrase 'I'd spend ten thousand hours and ten thousand more, oh, if'. The lyrics are: 'I'd spend ten thousand hours and ten thousand more, oh, if'.
- Bass:** The bass line features a five-note pickup figuration (G3, A3, B3, C4, B3) leading into the phrase 'I'd spend ten thousand hours and ten thousand more, oh, if'. The lyrics are: 'I'd spend ten thousand hours and ten thousand more, oh, if'. Chords (guitar 8va) C, A-7, F(sus2), and C are indicated above the bass line.
- Drumset:** The drumset part shows a consistent rhythmic pattern of eighth notes and quarter notes.

In FTB this instrumental melodic phrase occurs in the intro, the verse⁸ and the central guitar section. In 10K it occurs at the beginning of each chorus. As such, it is part and parcel of the overall expression heard in these sections.

⁸ As previously noted, this section also functions like a chorus as can be seen in the deposit copy version.

This figuration also appears in the guitar and keyboard part of the intros of both pieces as seen below. Example 9 provides the guitar, piano and vocal parts of the first two measures of each song.

Example 9.

Intros

First Time

0:00

The musical score for the 'First Time' intro consists of two staves. The top staff is for the Guitar, and the bottom staff is for the Electric Piano. Both are in 4/4 time. The Guitar staff shows a complex melodic line with orange note heads. The Electric Piano staff shows a simpler melodic line with orange note heads. A blue box highlights a specific phrase in the Electric Piano staff, and a red box highlights a similar phrase in the Guitar staff.

10,000 Hours

0:00

2

The musical score for the '10,000 Hours' intro consists of two staves. The top staff is for the Lead Vocal, and the bottom staff is for the Guitar. Both are in 4/4 time. The Lead Vocal staff shows a simple melodic line. The Guitar staff shows a simple melodic line. A blue box highlights a specific phrase in the Guitar staff, and a red box highlights a similar phrase in the Lead Vocal staff.

Do you love the rain, does it make you dance,

The note heads in orange above indicate the signature phrase in FTB as it is played by the guitar and keyboard during the intro. Similar phrases sounded by the guitar appear during the third verse of "First Time."

5. Quantitative Analysis

The signature phrase melody and hook phrase appear fourteen times FTB and at least eight times in 10K (a variation appears in the last chorus). In FTB the signature phrase is heard twice instrumentally in the intro, four times in the vocal of each of the two verses, and four times again in the guitar during the last verse. These fourteen iterations comprise a total of 1:17 seconds in the 3:02 song or approximately 42% of the entire length. In 10K the phrases at issue provide the main theme of the choruses which account for 1:18 or approximately 46% of the total length of the song (2:48).

6. Qualitative Analysis

Qualitatively, these themes are the most important expression in each song. The lyrics of the titles are set to them (“The first time baby was a holiday” and “I’d spend ten thousand hours and ten thousand more”). The phrases containing the words “for the rest of my life” that conclude these sections form the hook of each song. In the popular music industry, it is an article of faith that, to become successful, a song must have at least one “hook” or memorable passage. As the title or signature phrases of each song, this distinctive expression in these sections must be considered the “hooks” or most valuable parts of the songs. In FTB the signature melody also appears at the very beginning of the composition and is the first expression heard by the listener (see example 9). In 10K this content comprises the beginning of each chorus. The nearly identical phrases on “...remember for the rest of my life” and “...hours or the rest of my life” occur in the fourth phrase that conclude the sections. In assessing the overall value of musical expression in a composition, the standard practice is to adjust the quantitative analysis according to qualitative factors. In this case, because this expression is the most important in each song, the quantitative value must be adjusted upward significantly.

7. Conclusions

The musical expression at issue in this case is significant both quantitatively and qualitatively to each song. These signature phrases and hooks are distinctive and a prior art search has uncovered no other songs nearly as similar to these songs as they are to each other. As discussed above, the phrases occur repeatedly in both songs in important places and contain the lyrics referencing the titles. These sections of both songs are constructed from four phrases and the rhythms and metric placement of all four phrases match almost perfectly. The fourth concluding phrase ends with the same words (“for the rest of my life”) set to the same melody. Overall, pitch sequences are nearly identical, particularly in the first and third phrases and in the last 2/3 of phrases two and four. Clearly, these sections and the phrases within them form the most valuable expression in these compositions. In fact, at least as regards this core expression, First Time Baby and 10,000 Hours are practically the same song. Given the degree of similarity in these passages and other details, I consider it almost impossible that 10K was created independently from FTB.

As a preliminary inquiry, this report is not intended to be exhaustive, and I retain the right to amend or supplement it should further information become available.

Respectfully submitted,



Alexander Stewart, Ph.D. LLC

Attachments

- | | |
|-----------|---|
| Exhibit 1 | Melodies, lyrics, and rhythms: signature phrases and hooks compared |
| Exhibit 2 | “First Time Baby” Deposit Copy Sheet Music (1980) |
| Exhibit 3 | “10,000 Hours” Sheet Music |
| Exhibit 4 | Alexander Stewart, Ph.D. Curriculum Vitae |

Melodies

The First Time Baby

$\text{♩} = 84$

THE FIRST TIME BABY WAS A HOL-I-DAY. We packed up our bags and we went a-way. You treat-ed me ten-der, so per-fect-ly right, a time I'll re-mem-ber for the rest of my life.

10,000 Hours

$\text{♩} = 89$

I'd spend TEN THOU SAND HOURS and ten thou sand more, oh, if that's what it takes to learn that sweet heart of yours. And I might nev-er get there, but I'm gon na try, if it's TENTHOU SAND HOURS or the rest of my life.

Rhythms

The First Time Baby

$\text{♩} = 84$

THE FIRST TIME BABY WAS A HOL-I-DAY. We packed up our bags and we went a-way. You treat-ed me ten-der, so per-fect-ly right, a time I'll re-mem-ber for the rest of my life.

10,000 Hours

$\text{♩} = 89$

I'd spend TEN THOU SAND HOURS and ten thou sand more, oh, if that's what it takes to learn that sweet heart of yours. And I might nev-er get there, but I'm gon na try, if it's TENTHOU SAND HOURS or the rest of my life.

THE FIRST TIME BABY WAS A HOLIDAY

1. FIRST TIME BA-BY WAS A HOL-I-DAY_ YOU PACKED UP MY BAGS AND YOU
2. BA-BY BA-BY THERE'S A PLACE NOT FAR_ AN HOUR_ OR TWO_

TOOK ME A-WAY_ TREAT-ED ME TEN-DER SO PER-FECT AND RIGHT. TIME I'LL RE-MEM-BER FOR THE
DRIV-IN' BY CAR_ BA-BY RE-CITE PO-E-TRY IN MY EAR. LOVE IS THE MUS-IC THAT I

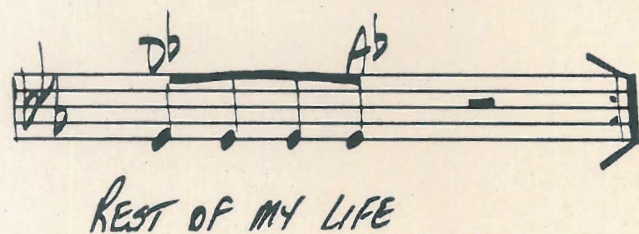
REST OF MY LIFE. I WAS A-FRAID_ BUT YOU SHOWED ME HOW_ I'M SO
WANT TO HEAR.

GLAD THAT IT DON'T_ HURT NOW YOU WERE MY SYM-PHON-Y_ THAT PLAYED THE WHOLE DAY

THROUGH. AND LOVE WAS THE MUS-IC THAT WE DANCED TO_

2. WE DANCED TO_ THAT WE DANCED TO_ THE FIRST TIME BA-BY WAS

"... HOLIDAY" P. 2



10,000 Hours

by

JASON BOYD, JESSIE JO DILLON,
JORDAN REYNOLDS, JUSTIN BIEBER,
SHAY MOONEY and DAN SMYERS

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10,000 HOURS

Words and Music by
DAN SMYERS, SHAY MOONEY,
JUSTIN BIEBER, JASON BOYD,
JORDAN REYNOLDS and JESSIE JO DILLON

Moderately ♩ = 88 – 92

D D(add9)/F# G D

Do you love the rain, does it make you dance, - when you're drunk - with your friends - at a par - ty?

D(add9)/F#

G

D

What's your fa - v'rite song, - does it make you smile? - Do you think of me? _____ When you

Bm7

G

D

close your eyes, tell me, what are you dream - in'? Ev - 'ry -

Bm7 G D

thing, I wan - na know it all. Mm. I'd spend

Bm7 Gsus2 D

ten thou - sand ho - urs and ten thou - sand more, oh, if

Bm7 Gsus2 D

that's what it takes to learn that sweet heart of yours. And I

Bm7 Gsus2 D

might nev - er get there, but I'm gon - na try, if it's

Bm7 Gsus2 D

ten thou - sand ho - urs or the rest of my life. I'm gon - na love

Bm7 Gsus2 D

you. (Ooh)

mp

D(add9)/F# G D

Do you miss the road that you grew up on? Did you get your mid-dle name from your grand - ma?

mf

D(add9)/F# G D

When you think a - bout your for - ev - er now, do you think of me? When you

Bm7 G D

close your eyes, tell me, what are you dream - in? Ev - 'ry -

Bm7 G D

thing, I wan - na know it all. I'd spend

Bm7 Gsus2 D

ten thou - sand ho - urs and ten thou - sand more, oh, if

Bm7 Gsus2 D

that's what it takes to learn that sweet heart of yours. And I

Bm7 Gsus2 D

might nev - er get ____ there, ____ but I'm gon - na try, ____ if it's

Bm7 Gsus2 D

ten thou - sand ho - urs or the rest of my life. ____ I'm gon - na love _

Bm7 Gsus2 D

____ you. (Ooh) ____ I'm gon - na love _

Bm7 Gsus2 D

____ you. (Ooh) ____

6

Dmaj9/F# G(add9)

Ooh, ___ want the good and the bad ev - 'ry - thing in be - tween. _____

Dmaj9/F# G(add9)

___ Ooh, ___ got - ta cure my cu - ri - os - i - ty. _____

N.C. D Bm7 Gsus2 D

Oh, _ yeah. ___ I'd spend ten thou-sand ho - urs ___ and ten thou-sand more, _ oh, if

Bm7 Gsus2 D

that's what it takes ___ to learn that sweet heart of yours. ___ And I

might nev - er get _ there, _ but I'm gon - na try, _ if it's ten thou-sand ho - urs or the

rest of my life. _ I'm gon-na love _ you. (Ooh) _ I'm gon-na love _

_ you. (Ooh) _ Yeah! And I _ (Ooh) _

I'm gon - na love _ you. I _ (Ooh) _ I'm gon' love _ you. _

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EDUCATION

GRADUATE CENTER: THE CITY UNIVERSITY OF NEW YORK

Ph.D. in Music (Ethnomusicology Concentration), 2000

Dissertation: *Composition and Performance in Contemporary New York City Big Bands (1989-1999)* Advisor: Stephen Blum

MANHATTAN SCHOOL OF MUSIC

Master of Music, Jazz and Commercial, 1991

LONG ISLAND UNIVERSITY, C.W. POST

B.F.A., *summa cum laude*, in Music Education, 1988

TEACHING EXPERIENCE

UNIVERSITY OF VERMONT

Professor, 2012-present

Associate Professor, 2005-2012

Assistant Professor, 1999-2005

Jazz Studies Coordinator, 2003-present

Director, Integrated Fine Arts Program, 2008-2012

Director, Latin American Studies Program, Spring 2006; 2011-16

LONG ISLAND UNIVERSITY, C.W. POST

Instructor in Music, 1988-1999

Director of Jazz Studies

Additional courses at:

The New School (Jazz and American Culture), 1995-1997

John Jay College of CUNY (History of Jazz and Rock), 1995

COURSES TAUGHT

Jazz History

Jazz Improvisation I & II

World Music Cultures

Seminar in Ethnomusicology

Alex Stewart

Music Business & Copyright
 Music Theory
 Musical Avant-Gardes
 Music of Cuba, Puerto Rico, and the Dominican Republic
 Duke Ellington
 Jazz Ensembles (Big Band and Combos)
 Seminar in World Music (Honors College)
 Music of Latin America and the Caribbean
 Latin Jazz Summer Immersion
 Culture and Politics of Latin American Protest Music (team taught with professors from Political Science, Romance Languages, and Global Studies)

PUBLICATIONS

Books

Making the Scene: Contemporary New York City Big Band Jazz, Berkeley: University of California Press, 2007.

Spanish translation from the French and German: Hans Bodenmann, *El ABC de la Flauta Dulce*. Zurich: Anton Peterer Music & Books, 2003 (Recorder method book).

Forthcoming

“Music, Media, and Anarchism in the ‘Oaxaca Commune,’” In *Oxford Handbook of Protest Music*, edited by Noriko Manabe and Eric Drott, New York: Oxford University Press [2022].

Articles, Book Chapters, Reviews, Entries

“Been Caught Stealing”: A Musicologist’s Perspective on Unlicensed Sampling Disputes” *University of Missouri Kansas City Law Review* 83(2): 340-61 (Winter 2014).

“Make It Funky: Fela Kuti, James Brown and the Invention of Afrobeat.” *American Studies* 52(4) (2013): 99-118.

“*La chilena mexicana es peruana*: Multiculturalism, Regionalism, and Transnational Musical Currents in the Hispanic Pacific.” *Latin American Music Review/Revista de Música Latinoamericana* 34(1) (Spring 2013) Austin: University of Texas Press.

“‘Funky Drummer’: New Orleans, James Brown and the Rhythmic Transformation of American Popular Music,” edited by Tom Perchard. Reprinted in *From Soul to Hip Hop*, Routledge 2017. (originally published in *Popular Music* 19(3) October 2000 Cambridge University Press).

“‘Funky Drummer’: New Orleans, James Brown and the Rhythmic Transformation of American Popular Music.” Reprinted in *Roots Music*, edited by Mark F. DeWitt. London: Ashgate, 2011 (originally published in *Popular Music* 19(3) October 2000 Cambridge University Press).

Review of Ben Ratliff, *Coltrane: The Story of a Sound*. *Jazz Perspectives* 2(1):103-109 (2008).

Alex Stewart

“Contemporary New York City Big Bands: Composition, Arranging, and Individuality in Orchestral Jazz,” *Ethnomusicology* 48(2) (Spring/Summer 2004): 169-202.

Review of *The New Grove Dictionary of Jazz* in *Ethnomusicology* 47(3) (Fall 2003):376-80.

“Second Line,” *Encyclopedia of Popular Music of the World*. London: Cassell 2003.

Essay review of Lewis Porter, *John Coltrane: His Life and Music*. *Annual Review of Jazz Studies* 11, 2000-1 [2002]: 237-52.

“‘Funky Drummer’: New Orleans, James Brown and the Rhythmic Transformation of American Popular Music,” *Popular Music* 19(3) (Winter 2000): 293-318.

Review of Scott DeVeaux, *The Birth of Bebop*. *Yearbook of Traditional Music* 30 (1998): 135-7.

LECTURES, COLLOQUIA, CONFERENCE PAPERS

"Blurred Lines IV: Legal Considerations When Writing." Canadian Film Centre Slaight Music Residency Panel Talk. Toronto, Canada. May 27, 2021

“Melody, ‘Beats,’ and Minimalism: Copyright in Contemporary Popular Music.” *Substantial Similarity and the Role of Forensic Musicology in Music Copyright Litigation*. American Musicological Society/Society for Music Theory Annual Meeting, Minneapolis, MN. November 15, 2020.

Silicon Flatirons Conference: *The Future of Copyright Infringement Analysis in Music*. Invited panelist and Speaker. March 5, 2020, Colorado Law, University of Colorado, Boulder, CO.

Composition, Jazz Improvisation, and Copyright,” Jazz Educators Network (JEN) annual conference, New Orleans, January 8, 2020

"Blurred Lines III: Legal Considerations When Writing." Canadian Film Centre Slaight Music Residency Panel Talk. Toronto, Canada. August 7, 2019

"Blurred Lines II: Legal Considerations When Writing." Canadian Film Centre Slaight Music Residency Panel Talk. Toronto, Canada. August 13, 2018

“The Future of Sampling: Transformative Art or Copyright Infringement?” Alexander von Humboldt Institute for Internet and Society, Berlin, Germany. February 28, 2018.

"Blurred Lines: Legal Considerations When Writing." Canadian Film Centre Slaight Music Residency Panel Talk. Toronto, Canada. August 2, 2017

“Creativity and Copyright,” Champlain College, November 11, 2015

Invited Speaker: Symposium on Hip Hop, Technology, and Copyright. Utah State University. (March 28, 2015).

Alex Stewart

“Make It Funky: Fela Kuti, James Brown and the Invention of Afrobeat.” Annual Conference of the American Studies Association. Washington DC, November 23, 2013.

“Creativity and Copyright,” Champlain College, October 25, 2013

“Lila Downs: Music, Culture, and Politics in Oaxaca, Mexico.” Pre-Concert Lecture. Flynn Center for the Performing Arts. Burlington, VT. April 26, 2013.

“Music, Media, and Anarchism in the Oaxaca Commune” Paper presented at Music and War Panel. AMS/SEM/SMT Annual Conference. New Orleans. Nov. 2, 2012.

“*Pasos cromáticos en la improvisación del jazz* (Chromatic Passing Tones in Jazz Improvisation).” Lecture/workshop (in Spanish) at Instituto Projazz, Santiago, Chile. May 31, 2012.

“Musicology CSI: Sampling, Interpolation, and Copyright.” Thursdays at One Performance/Lecture Series, UVM Music Department.

“Music, Media, and Anarchism in the ‘Oaxaca Commune,’” Presentation to University of Vermont Global Village, 15 February 2011.

“*Son de las barricadas*: Protest song and revolution on Oaxaca’s Radio APPO.” Paper read at the annual conference of Society for Ethnomusicology (SEM) in Los Angeles, CA, Nov. 2010.

“*Son mexicano*” OLLI (Osher Life Long Learning Institute). Pre-Concert Lecture Sones de México, Lane Series 8 October 2010.

“*Música popular* and the Ideology of *mestizaje* in Postrevolutionary Mexico.” 1 October 2010, UVM Hispanic Forum.

Musicology CSI: Sampling, Interpolation, and Copyright.” Invited lecture, State University of New York (SUNY) Albany, 28 April 2010.

“La Chilena Mexicana: Transnational Musical Currents in the Hispanic Pacific” Global and Regional Studies Lecture, 17 March 2010 Billings Marsh Lounge.

“Copyrights and Copywrongs: Introduction to Forensic Musicology” Invited lecture, State University of New York (SUNY) Plattsburgh, 11 March 2010.

FLYNNsights: Lecture on Charles Mingus opening the residency of the Mingus Repertory Ensembles (Mingus Dynasty, Mingus Orchestra, and Mingus Big Band along with dance troupe choreographed by Danny Buraczeski at the Flynn Center for the Performing Arts. 17 October 2010.

“Supergenre, genre, subgenre: Mexican *son* and the *chilena* complex.” Paper presented at the annual conference of the Society for Ethnomusicology (SEM) in Mexico City, November 2009.

Alex Stewart

“Socialismo con pachanga: Music in Revolutionary Cuba.” Hispanic Forum, University of Vermont, 22 October 2009.

“Performing Race: Afro-Mexicans and Multiculturalism in Oaxaca’s Guelaguetza.” Paper presented at the Latin American Studies Association (LASA) XXVIII International Congress, “Rethinking Inequalities” Rio de Janeiro, Brazil, 12 June 2009.

La chilena oaxaqueña: “El gusto de mi region.” Paper presented at the annual conference of the Sonneck Society for American Music (SAM), Denver, CO, 19-22 March 2009.

Insights FlynnArts. Pre-concert lecture on Maria Schneider and her Orchestra. 22 January 2009. Amy E. Tarrant Gallery at the Flynn Center for the Performing Arts.

“Performing Race: Afro-Mexicans and Multiculturalism in Oaxaca’s Guelaguetza Festival.” Paper presented at the annual meeting of the Society for Ethnomusicology (SEM), Wesleyan University, Middletown, CT, 28 October 2008.

“La Danza de las Diablas”? Race, Gender, and Local Identity in Afro-mestizo communities of Mexico’s Costa Chica. Paper presented at the annual meeting of the Society for Ethnomusicology (SEM), Columbus, OH, 28 October 2007.

“Son de las Barricadas”: Songs of Protest from the Spanish Civil War to the Present on Oaxaca’s Radio APPO.” Hispanic Forum, University of Vermont, 10 October 2007.

“Cross-Cultural Learning through Music and Dance: A UVM Class in Guantánamo, Cuba.” Presentation to the UVM College of Arts and Sciences Advisory Board, April 2004.

“Beauty and the Beast: Maria Schneider’s Wyrgly.” Paper presented at special session of the joint meetings of Society for Music Theory (SMT) and the American Musicological Society (AMS), “Women in Jazz: Voices and Roles,” Columbus, OH, 1 November 2002.

“On the Edge: Sue Mingus and the Mingus Big Band.” Colloquium at the University of Illinois (Urbana and Champaign), 6 March 2002.

“Blood on the Fields: Wynton Marsalis and the Transformation of the Lincoln Center Jazz Orchestra.” Paper read at the 2001 annual meeting of the Society for Ethnomusicology (SEM), Detroit, October 2001.

“The Jazz Concerto as Collaborative Work: Jim McNeely’s ‘Sticks.’” Paper read at the joint meeting of the Society for Music Theory (SMT) and other major music societies in Toronto, 4 November 2000.

“New York City Big Bands and the Professional Jazz Musician.” Paper read at the annual meeting of the Society for Ethnomusicology (SEM) in Bloomington, IN, 24 October 1998.

“From Mardi Gras to Funk: Professor Longhair, James Brown and the Transformation of Rhythm and Blues.” Paper read at joint meeting of the Society for Ethnomusicology (SEM) and

Alex Stewart

the International Association for the Study of Popular Music (IASPM) in Pittsburgh, PA, October 1997.

GRANTS AND AWARDS

Coor Collaborative Fellowship, Rethinking African Art. 2020-2021.

UVM Humanities Center Public Humanities Fellowship for sabbatical travel to Uganda. 2019.

International Travel Funds Award. College of Arts and Sciences. Travel to and residency in Uganda. Jazz Performance and Workshops; Research in Traditional Music. October and November 2019.

Interdisciplinary Experiential Engagement Award for course proposal, *Culture and Politics of Latin American Protest Music*, to be taught in collaboration with Political Science, Romance Languages, Global Studies, and Music Departments. January 2013.

Lattie F. Coor Award for International Travel to present paper and chair panel at the Society for Ethnomusicology conference (SEM) Mexico City. November 2009.

Joan Smith Faculty Research Support Award *Performing Race: Afro-Mexicans, Multiculturalism, and the "Black Pacific."*

Lattie F. Coor Award for International Travel to present paper at the Latin American Studies Association (LASA) Congress in Rio de Janeiro, Brazil. June 2009.

Fulbright Research Fellowship to Mexico, Afro-Mexican music, 2006-7.

Award for Contribution to Vermont Jazz Education, presented by Wynton Marsalis and the Flynn Center for the Performing Arts, October 2005.

UVM Arts and Sciences Dean's Fund for Faculty Development (to initiate fieldwork in the Costa Chica of Mexico), Fall 2005.

UVM Humanities Center Research Grant, Spring 2004.

UVM Global Outreach Committee Grant, March 2003.

UVM Arts and Sciences Faculty Development Grant for study in Cuba, May 2002.

2001 Barry S. Brook Award for best dissertation in music CUNY.

CUNY Dissertation Year Fellowship 1998-1999.

MUSIC COPYRIGHT & RELATED

Alex Stewart

Expert Report in *Bridgeport Music, Inc. v. Dimension Films*, 410 F.3d 792 (6th Cir. 2005). Case recognized as setting new “bright line” standard for use of samples of copyrighted recordings.

Testimony in trial in Federal District Court, Nashville TN, Case No. 3:01-780, *Bridgeport Music v. Universal Music*. February 2007. “Atomic Dog” and “D.O.G. in Me.” Affirmed by US Sixth Circuit Court of Appeals, No. 07-5596, November 4 2009. Case examined issues concerning fragmented literal similarity, originality, and fair use.

Testimony in Federal District Court, Nashville, TN Case No. 3:01-0155 involving rap artist, the Notorious B.I.G and the Ohio Players. (March 2006). Affirmed by US Sixth Circuit Court of Appeals, No. 06-6294, October 17 2007.

Testimony by Deposition (for the Plaintiff), Case No. 1:09-cv-21597-DLG (Florida Southern District Court) *Kernel Records Oy v. Timothy Z. Mosley p/k/a Timbaland, UMG Recordings, Inc, et al.* New York City, May 27, 2010.

Testimony by Deposition (for the Defense), Case No. 37-2008-00098508-CU-BT CTL (California Southern District Court) *Sixuvus v. Victor Willis*, New York City, July 7, 2010.

Testimony by Deposition (Los Angeles, September 2011). Case No. 10-CV-08123 *Phoenix Phenom v. William Adams, Jr. Stacy Ferguson, et. al.*

Testimony by Deposition (New York City, January 2012). Case No. SACV10-1656JST(RZx) *Pringle v. William Adams, Jr. Stacy Ferguson, et. al.*

Testimony by Deposition (New York City, June 3, 21, 2013). Case No. CV12-5967 *VMG Salsoul, LLC v. Madonna Ciccone, Shep Pettibone, et al.*

Testimony by Deposition (New York City, September 11, 2013). 11-cv-6811. *Marino v. Usher*.

Testimony by Deposition (Burlington, VT, May 20, 2015). RALEIGH, NC #301280 *Absent Element v. Daughtry*.

Testimony by Deposition (Burlington, VT, May 17, 2016) and in Trial (June 17, 2016) Federal District Court, Los Angeles Case No. 15-cv-03462 RGK (AGRx). *Skidmore v. Led Zeppelin, et al.*

Testimony by Deposition (New York, NY, November 3, 2017) Supreme Court of the State of New York, Index No. 650427/2016. *Pai v Blue Man Group Publishing, LLC, et al.*

Testimony by Deposition (New York, NY, May 30, 2018) *Griffin v. Sheeran*. 1:17-cv-05221 New York Southern District Court

Testimony by Deposition (Burlington, VT, January 2, 2020). *Beatbox Music Pty, Ltd. v. Labrador Entertainment, et al.* Case No. 2:17-cv-6108. Central District of California.

Testimony by Deposition (Burlington, VT, May 27, 2020). *Smith v. Tesfaye*. Case No. 2:19-cv-02507-PA-MRWx Central District of California.

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Testimony by Deposition (Burlington, VT, November 1, 2021). SA Music, LLC v. Apple, Inc. et al. Case No. 20-cv-02146-WHO (JSC), (N.D. Cal. Aug. 11, 2021).

Los Angeles: Warner Bros. Entertainment Inc.; Universal Music Group; Hiscox Insurance Co.; Clair G. Burrill P.C.; Sheppard Mullin Richter & Hampton LLP; Doniger Burroughs, APC; Pen Music Group; Microhits; Robert S. Besser Law Offices; Foran Glennon; etc.

New York: BMG Group; Schwartz Ponterio & Levenson, PLLC; Grubman Shire & Meiselas, P.C.; Eisenberg Tanchum & Levy; Sample Clearance Limited; Lastrada Entertainment Company; etc.

Nashville: King and Ballow; Riser House Entertainment, LLC; DeSalvo Law Firm, PLLC; Beckett Law Office; etc.

Elsewhere: K & L Gates (London); Schwartz Cooper (Chicago); Brooks Pierce (Raleigh NC); Frank & Rice (Florida); Francis Alexander, LLC (Philadelphia); Rawson Merrigan & Litner (Boston); Koeppe Traylor (New Orleans); JPMC (Burlington VT); Kile Goekjian McManus (Washington DC); Arent Fox LLP (Washington DC) Gould Law Group (Chicago); Richardson Patrick Westbrook & Brickman, LLC (Mt. Pleasant SC); Hall Booth Smith & Slover (Atlanta); Miller Canfield Paddock & Stone (Detroit); King Mesdag Music Publishing Limited (United Kingdom); as well as clients in Canada, Australia, Indonesia, Hong Kong, India, United Arab Emirates, Latin America and Europe.

Classes and seminars in Music Business and Copyright (see above for details)

Symposium on Music Copyright. University of Vermont, January 2003.

SELECTED RECORDINGS

Early Heroes, Dan Silverman. Section playing and solo on Chares Mingus' *The Shoes of the Fisherman's Wife*...Around the Slide Recordings 02 (2018).

Rick Davies *Thugtut* – Tenor saxophone Emlyn Music EM 1003 (2017)

Rick Davies and Jazzismo, *Salsa Norteña*, - Tenor saxophone (Recorded in Montreal 2011 (2012).

New York Jazz Repertory Orchestra, *Le Jazz Hot*, featuring Dave Liebman and Vic Juris. Planet Arts 310976 - Baritone saxophone, bass clarinet (2009).

Rick Davies and Jazzismo, *Siempre Salsa*, featuring Wayne Gorbea. Emlyn Music EM1001 - Tenor saxophone (2006).

Anne Hampton Callaway, *To Ella with Love*, featuring Wynton Marsalis, Christian McBride, Lewis Nash, Cyrus Chestnut. Touchwood Records TWCD 2006 - Tenor saxophone and clarinet (1998).

Alex Stewart

Peter Herborn, *Large*, featuring Gene Jackson, Greg Osby, Robin Eubanks, and others. Jazzline JL1154-2 – Baritone saxophone and bass clarinet (1998).

Billy Stritch, *Waters of March: The Brazilian Album*. Sin Drome SD8950 - Tenor saxophone and flute (1998).

Dave Stryker, *Nomad*, featuring Randy Brecker and Steve Slagle. Steeplechase Records SCCD31371 - Baritone saxophone and bass clarinet (1997).

Frankie Lane: *Wheels of a Dream*. Touchwood Records TWCD 2020 - Tenor saxophone, flute, and alto flute (1997).

The Bill Warfield Band, *The City Never Sleeps*. Seabreeze Records CDSB 2048 - Baritone saxophone and bass clarinet (1996).

SELECTED PERFORMANCES: JAZZ AND LATIN

Burlington Discover Jazz Festival Big Band (Music Director, Contractor, Performer)

Birth of the Cool: Music by the Miles Davis Nonet. Featuring Ray Vega, trumpet. Performances in June 2012 (BDJF), and in September 2012 (UVM), and May 2013 (SUNY Plattsburgh).

Textures: Jim Hall with Brass featuring the Jim Hall Trio (Jim Hall, guitar, Scott Colley, bass and Joey Baron, drums) with brass ensemble, Alex Stewart, conductor. Flynn MainStage, 2010 Burlington Discover Jazz Festival.

Paquito D’Rivera Funk Tango. Produced, co-directed, and played saxophone in concert on Flynn MainStage with 17-piece orchestra with guests: Paquito D’Rivera, alto saxophone; Diego Urcola, trumpet; Alex Brown, piano; Massimo Biocalti, bass; Mark Walker, drums; and special guest Ray Vega, trumpet. Burlington Discover Jazz Festival (1 June 2008). Reviews in *Free Press*, *AllAboutJazz*, and other media.

Mary Lou Williams Resurgence with Cecilia Smith, vibraphone and Amina Claudine, piano, 2007 Burlington Discover Jazz Festival, Flynn Center.

Music of Jim McNeely with special guest Jim McNeely, piano 2006 Burlington Discover Jazz Festival, Flynn Center.

Sketches of Spain: Celebrating the Miles Davis/Gil Evans Collaboration with trumpeter Randy Brecker and guest conductor, Joe Muccioli 2005 Burlington Discover Jazz Festival, Flynn Center.

The Grand Wazoo: Music of Frank Zappa, with Ernie Watts, Napoleon Murphy Brock, Ike Willis, and Ed Palermo 2004 Burlington Discover Jazz Festival, Flynn Center.

Alex Stewart

Duke Ellington Sacred Concert, with David Berger, Priscilla Baskerville, Paul Broadnax, and 100-voice Choir, 2003 Burlington Discover Jazz Festival, Flynn Center

Jazz and Latin

Solo Recital: Chasin' the 'Trane: Music of John Coltrane. UVM Southwick Recital Hall, September 27, 2018.

Concert: Ray Vega & the Burlington Latin Jazz Orchestra, FlynnSpace, August 9, 2018.

Recital: Ray Vega & the Burlington Latin Jazz Orchestra, UVM Southwick Recital Hall, October 21, 2018.

Chasin' the Trane: Homage to John Coltrane, with Ray Vega, trumpet. Juniper, Hotel Vermont, 2018 Burlington Discover Jazz Festival June 7 and July 18, 2018.

Chasin' the Trane: Homage to John Coltrane, with Ray Vega, trumpet. Light Club Lamp Shop, Burlington VT, July 26, 2018

Performances of Alex Stewart Quartet on Jazz Wednesdays at Juniper (Hotel Vermont), Lamp Shop Light Club (some performances featured special guest Ray Vega, trumpet), 2018.

Featured soloist – SUNY Plattsburgh Jazz Festival December 2013.

James Harvey and Garuda – opening act for Randy Weston in Discover Jazz Festival (2004); numerous other performances around region.

Beboparaka (featuring poetry of Amiri Baraka) and JazzLit.com – jazz and poetry collaborations with UVM professors Major Jackson, Tina Escaja, John Gennari and UVM students. Performances at the Discover Jazz Festival and local venues. Coverage in the *Burlington Free Press* and *Vermont Quarterly* (2005, 2006).

Grupo Sabor (Salsa and Merengue) – Performances in UVM's Grand Maple Ballroom and Brennan's Pub for Alianza Latina (2010), Higher Ground, Burlington; Red Square; Eclipse Theater, Waitsfield; Onteora Club, New York; Burlington Latino Festival (2001-present).

Performances with UVM jazz faculty (Jeff Salisbury, Joe Capps, Paul Asbell, Patricia Julien, Ray Vega, John Rivers, Tom Cleary, Rick Davies, Steve Ferraris) at recitals, concerts, and other events (1999-present).

The Lionel Hampton Orchestra; featured artists: Dizzy Gillespie, Dee Dee Bridgewater, and others. Extensive tours of Europe and North America and appearances at major jazz festivals including: North Sea, Nice, Montreal, Newport (NY and Saratoga), Biarritz (1989-1991). The Bill Warfield Band, The Dorsey Brothers Orchestra, David Berger, Paquito D'Rivera, Clem DeRosa, Bobby Shew, David Liebman, Andy Farber, Stan Rubin, Lew Anderson, Billy Mitchell, Roland Hanna, Lew Soloff, Randy Brecker and many more (1985-1999).

Alex Stewart

The Lehigh Valley Repertory Jazz Orchestra: *Sketches of Spain* featuring Randy Brecker, *An Evening with David Liebman*, *A Tribute to Benny Goodman* featuring Buddy DeFranco, and *Celebrating Louis Armstrong* featuring Jon Faddis (1997-2000).

Rick Davies & Jazzismo

Burlington Latin Jazz Orchestra, directed by Ray Vega, FlynnSpace, August 9, 2018

Featured Performer: Jazz Education Network Conference, San Diego, CA January 2015.

Workshops and concerts, Colectivo Central, Oaxaca, Mexico. June, July 2011.

With guest pianist/composer Arturo O’Farrill (and sons, Zachary, percussion and Adam, trumpet), FlynnSpace. 2010, 2011, 2012, 2013, 2014, 2015, 2017, 2017. With Jonathan Maldonado, drums, and Papo Ross, vocals and alto saxophone, 2009.

With guest artist Ray Vega, FlynnSpace (July 2003, 2004, 2005, 2006, 2007, 2008).

Appearances at SUNY Plattsburgh Jazz Festival (with Harvie S., 2002; with Chocolate Armenteros 2003; with Ray Vega 2008, 2011; with Curtis Fowlkes 2010); Red Square and other venues.

Oaxaca, Mexico: Colegio Teizcali, Colectivo Central, Spring 2007.

SELECTED PERFORMANCES: POPULAR AND BLUES

Frankie Valli, Ray Charles (Sweden 1999), Mary Wells, Frankie Avalon (Atlantic City), The Drifters, Funk Filharmonik, The Funk Collection, Nick Apollo Forte, Little Wilson, Sandra Wright Band, Jimmy Branca and the Red Hot Instant Combo, Dave Grippo Funk Band, and others (1985-present).

Contractor, musical director. *Joan Rivers*. Flynn Center for the Performing Arts. April 26, 2012.

Orchestra contractor with Bernadette Peters at the Flynn Center of the Arts October 2011.

CLINICS AND GUEST CONDUCTING

Guest Conductor, Connecticut Valley District Jazz Festival, January 30-31, 2015.

Guest Conductor, Winooski Valley Jazz Festival, February 4-5, 2010.

Adjudicator/Clinician, Vermont All-State Festival, International Association of Jazz Educators (IAJE): 2000-2003.

Guest Conductor, Nassau County (Long Island) All-County Jazz Festival, 1997.

Alex Stewart

MEMBERSHIPS

American Musicological Society (AMS)

Society for Ethnomusicology (SEM)

Society for American Music (Sonneck)

Latin American Studies Association (LASA)

Friends of Indian Music and Dance (FIMD), Burlington VT

Burlington Discover Jazz Festival Advisory Board