

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

BRYAN PRINGLE, an individual,
Plaintiff,

vs.

WILLIAM ADAMS, JR.; STACY
FERGUSON; ALLAN PINEDA; and
JAIME GOMEZ, all individually and
collectively as the music group The
Black Eyed Peas, *et al.*,
Defendants

Case No. SACV 8:10-CV-01656 JST
(RZx)

**DECLARATION OF LAWRENCE
FERRARA, PH.D.**

I, LAWRENCE FERRARA, declare as follows:

1. I am a Full Professor of Music and Director Emeritus of all studies in Music and the Performing Arts in The Steinhardt School at New York University. I have written and co-written published books as well as articles published in peer reviewed journals regarding music analysis, methodologies in music research, and other scholarly areas related to music and I sit on editorial boards of peer reviewed journals. I have provided analyses and opinions in connection with music copyright

1 issues for approximately 20 years. My Rule 26 disclosure and cv are attached to this
2 Report as **Visual Exhibit E**.

3 2. I have been asked to complete a comparative musicological analysis of
4 the musical and lyrical compositions in “Take a Dive” by Bryan Pringle and “I
5 Gotta Feeling” as recorded by The Black Eyed Peas. Specifically, I have been asked
6 to compare “I Gotta Feeling” with the version of “Take a Dive” which is Track 15
7 on the CD Deposit Copy entitled *DEADBEAT CLUB* (SRu 387-433) which contains
8 a total of 18 tracks. (Hereafter, “Take a Dive” refers to the musical and lyrical
9 composition embodied in Track 15 on that CD Deposit Copy.) The purpose of my
10 analysis is to offer my professional opinion as to whether or not there are similarities
11 or differences, and to determine whether any similarities, individually or in the
12 aggregate, (1) suggest that copying has occurred and/or (2) represent expression that
13 is common in popular music, or expression that is unique to “Take a Dive.”

14 3. I have also been asked to review the Declarations of Alexander Stewart
15 and Kevin Byrnes, both dated November 18, 2010.

16 4. On the basis of my musicological analysis, it is my opinion that any
17 similarities that exist between “Take a Dive” and “I Gotta Feeling” (1) represent
18 expression that is common and not unique to “Take a Dive” and (2) do not support a
19 claim that the creators of “I Gotta Feeling” copied any musical or lyrical expression
20 from “Take a Dive.” Any similarities between “Take a Dive” and “I Gotta Feeling”
21 are heard within a context of significant differences that far exceed the minimal and
22 commonplace similarities between them. “Take a Dive” and “I Gotta Feeling” do
23 not share any significant structural, harmonic, rhythmic, melodic, or lyrical
24 similarities, individually or in the aggregate. Furthermore, in my professional
25 opinion there are no musicological grounds to support a claim that “Take a Dive”
26 and “I Gotta Feeling” are either substantially similar or strikingly similar.

27 5. Mr. Byrnes and Dr. Stewart’s Declarations are directed at what they
28 term “...the derivative version of Bryan Pringle’s song, “Take a Dive”” (both the

1 Byrnes and Stewart Declarations, page 2:¶#2). In my analysis, I found that the
2 derivative version of “Take a Dive” is identical to the original version that I have
3 analyzed, except that the derivative version omits the vocals and includes a “twangy
4 guitar figuration.”¹ Excluding the “twangy guitar figuration,” Mr. Byrnes and Dr.
5 Stewart find substantial similarities and/or striking similarities between “I Gotta
6 Feeling” and “Take a Dive.” These similarities are based solely on basic musical
7 building blocks, harmonic progressions that have many differences, and/or a bass
8 part that has more differences than similarities and which, as presented by Dr.
9 Stewart, are mere pitch sequences stripped of their very different rhythmic
10 durations. The musical building blocks cited by Mr. Byrnes and Dr. Stewart are
11 commonplace and not unique to “Take a Dive,” and, in any event, are used
12 differently in “Take a Dive” and “I Gotta Feeling.” When one strips away the
13 similarities in musical building blocks, all that is left are sequences of pitches in the
14 bass parts that are not the same. Moreover, when one strips away the different
15 pitches in those pitch sequences, the similarity that is left is minimal and
16 commonplace. Indeed, bass guitar method books and published transcriptions of
17 bass guitar parts in popular songs that pre-date 1998 discussed below demonstrate
18 that the similarity in pitch sequences in the bass parts is commonplace and found in
19 prior works of popular music.

20 6. A musical composition is composed of certain distinct and identifiable
21 components that can be analyzed separately, and in combination. Some components
22 are more important and relevant to determining substantial similarity than others.
23 The principal components in determining whether or not two songs are substantially
24 similar are: (1) structure; (2) harmony; (3) rhythm; (4) melody and (5) lyrics. On
25 the other hand, similarities or differences in the key (e.g., if two compositions are in
26 the same key or in different keys), tempo (i.e., how fast or slow), meter (e.g., 4/4

27 ¹ I understand that this “twangy guitar figuration” is analyzed and discussed in the
28 expert report of Mr. Paul Geluso.

1 time), instrumentation (e.g., the use of guitars, drums, synthesizers, etc.), and style
2 or genre (e.g., hip hop, country, etc.) are less significant insofar as they represent
3 musical building blocks and/or commonplace practices used in countless musical
4 compositions.

5 (a) **Structure** is the organization of musical units or musical groups,
6 often dictated by the development of the melody and/or lyrics. The
7 larger portions or sections of songs are generally referred to as Verses
8 and Choruses. The material within Verses and Choruses consist of
9 phrases.

10 (b) **Harmony** refers to the tonal relationship of pitches that sound
11 simultaneously, especially (but not exclusively) with respect to the use
12 and organization of “chords.” A “triad” is a particular type of chord
13 consisting of three pitches – the “root” or name of the chord and pitches
14 that are respectively a third and a fifth above the root -- built on
15 intervals of a third. (An interval names the number of tones or space
16 between two pitches.) A sequence of chords is referred to as a
17 harmonic progression.

18 (c) **Rhythm** is the organization of the time values of sounds and
19 silences as well as the overall rhythmic flow and feel.

20 (d) **Melody** is a single line of music that consists primarily of pitch
21 sequences and their rhythmic durations. Pitch is the specific high or
22 low placement of a musical sound, often within a musical scale.

23 (e) **Lyrics** are the words that are sung or spoken in a song.

24
25
26
27 7. I used the following materials in my analysis: (1) a copy of the Deposit
28 Copy of Mr. Pringle’s *DEADBEAT CLUB* which I received from Defendants’

1 counsel and on which “Take a Dive” is Track 15; (2) an mp3 of what Plaintiff’s
2 experts call “the derivative version” of “Take a Dive” which I received from
3 Defendants’ counsel; (3) the CD album, *THE E-N-D* by The Black Eyed Peas which
4 was already in my CD collection and on which “I Gotta Feeling” is Track 5; (4)
5 published sheet music of “I Gotta Feeling” downloaded from musicnotes.com and
6 attached as **Visual Exhibit A**; (5) another version of published sheet music of “I
7 Gotta Feeling” downloaded from musicnotes.com and attached as **Visual Exhibit B**;
8 (6) a bass guitar method book and published transcriptions of bass parts in popular
9 songs attached as **Visual Exhibit C**; (7) published sheet music of “Dancing With
10 Myself” written by Billy Idol and Tony James, downloaded from musicnotes.com
11 and attached as **Visual Exhibit D**; (8) full transcriptions I prepared of “Take a Dive”
12 and “I Gotta Feeling”²; and (9) sound recordings of related music.

13 8. I compared “Take a Dive” and “I Gotta Feeling” by using the overall
14 methodology of (1) reviewing the musical and lyrical compositions in their entirety,
15 (2) reviewing and comparing each of the component elements in “Take a Dive” and
16 “I Gotta Feeling” individually and in combination, (3) reviewing related music, and
17 (4) once again reviewing “Take a Dive” and “I Gotta Feeling” in their entirety
18 within the context of the analysis of their component parts and related music.

19 9. A structural chart provides a map of the sections in a musical
20 composition. The charts of the respective structures in “Take a Dive” and “I Gotta
21 Feeling” presented immediately below include the number of bars³ and
22 commencement times.

23

24

25 ² In this report, I present portions of those transcriptions in order to facilitate the
analysis under discussion herein.

26 ³ A “bar” is a unit of musical time demarcated by “bar lines” which are vertical lines
27 in musical scores. The meter in “Take a Dive” and “I Gotta Feeling” is 4/4 time
28 (also known as “common time) in which there are 4 beats per bar.

<u>“Take a Dive”</u> : Structural Chart	<u>“I Gotta Feeling”</u> : Structural Chart
0:00 Ambient sounds Intro.	0:00 Intro. (16 bars)
0:07 Meas. Intro. (12 bars)	0:30 Chorus 1 (16 bars)
0:29 Verse 1 (16 bars)	1:00 Chorus 2 (16 bars)
0:58 Chorus 1 (16 bars)	1:30 Verse 1 (8 bars)
1:28 Verse 2 (16 bars)	1:45 Verse 2 (8 bars)
1:57 Chorus 2 (16 bars)	2:00 Verse 3 (8 bars)
2:27 Bridge (16 bars)	2:15 Verse 4 (8 bars)
2:56 Chorus 3 (24 bars)	2:30 Chorus 3 (16 bars)
3:41 Outro (app. 26 bars)	3:00 Verse 5 (16 bars)
(*Ends at approx. 4:35	3:30 Verse 6 (8 bars)
including a long fade ⁴)	3:45 Verse 7 (16 bars)
	4:15 Chorus 4 (16 bars)
	4:45 Outro (2 bars)
	(*Ends at approx. 4:48 but no fade)

10. As demonstrated in the chart immediately above, “Take a Dive” and “I Gotta Feeling” incorporate a generic structural building block in music through the use of Introduction, Verse, and Chorus sections. Furthermore, the phrase structures are 8 bars in duration with the exception of the “measured” Introduction and Outro sections in “Take a Dive,” and the Outro section in “I Gotta Feeling.” However, there are many structural differences in “Take a Dive” and “I Gotta Feeling” including:

- The Introduction in “Take a Dive” begins with ambient, atmospheric sounds

⁴ Although my CD track time reader lists 4:38 as the total recording time of “Take a Dive,” there are approximately 3 seconds of silence after the “fade” at the end of the track. Consequently, the musical composition embodied in “Take a Dive” is approximately 4:35 in total.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

that are not clearly separated in bars, but the Introduction in “I Gotta Feeling” begins with clear beats within bars;

- The Introduction beginning at 0:07 (i.e., 7 seconds into the sound recording) in “Take a Dive” is 12 bars in duration, but the Introduction in “I Gotta Feeling” is 16 bars in duration;
- There are 2 Verse sections in “Take a Dive,” but there are 7 Verse sections in “I Gotta Feeling”;
- There are 3 Chorus sections in “Take a Dive,” but there are 4 Chorus sections in “I Gotta Feeling”;
- There is a Bridge section in “Take a Dive,” but there is no Bridge section in “I Gotta Feeling”;
- Both Verse sections in “Take a Dive” are 16 bars in duration, but Verses 1, 2, 3, 4 and 6 are 8 bars in duration in “I Gotta Feeling”;
- Thus, within “Take a Dive” all Verse sections have the same number of bars (16), but there is diversity in the durations of Verse sections in “I Gotta Feeling” at 8 or 16 bars;
- Verse 1 and Verse 2 in “Take a Dive” are separated by a Chorus section, but Verses 1 through 4 and 5 through 7 run concurrently without separation by a Chorus section;
- Chorus 1 and Chorus 2 in “Take a Dive” are 16 bars and Chorus 3 is 24 bars in duration, but all Chorus sections in “I Gotta Feeling” are 16 bars in duration;
- Thus, within “I Gotta Feeling” all of the Chorus sections have the same number of bars (16), but there is diversity in the durations of the Chorus sections in “Take a Dive” at 16 or 24 bars; and
- The Outro section in “Take a Dive” is approximately 26 bars including a fade out, but the Outro in “I Gotta Feeling” is only 2 bars with no fade out.

1 11. On the basis of the above analysis, I found that there are no significant
2 structural similarities, individually or in the aggregate, but the aggregate of
3 structural differences is significant between “Take a Dive” and “I Gotta Feeling.”
4 Moreover, there are no structural similarities that suggest that any structural
5 practices in “I Gotta Feeling” were copied from “Take a Dive.”

6 **HARMONY**

7 12. The harmony in “Take a Dive” and “I Gotta Feeling” is not the same.
8 There are more differences than similarities. Furthermore, what is similar is
9 commonplace.

10 13. “Take a Dive” and “I Gotta Feeling” are recorded in a G Mixolydian
11 mode, which is a commonplace musical building block.⁵ While the chords
12 essentially change at a rate of every 2 bars in both “Take a Dive” and “I Gotta
13 Feeling”—with a few exceptions—the chord progressions in each song are not the
14 same. I prepared the transcriptions of the Chorus sections in “I Gotta Feeling” and
15 “Take a Dive” presented respectively as **Musical Example 1** on page 9 and **Musical**
16 **Example 2** on pages 10-11 below. I used “Sibelius” music notation software to
17 create these transcriptions at my computer. Listening carefully to the respective
18

19 ⁵ The published sheet music of “I Gotta Feeling” places one sharp (“#”) sign in the
20 key signature, which could suggest that “I Gotta Feeling” is in the key of G major.
21 However, a Mixolydian mode is often categorized as a “major” mode, whose scale
22 degrees can be understood as a major scale with a lowered scale degree 7. Scale
23 degree “7” in G major is F#; scale degree “7” in G Mixolydian is F natural. There
24 are no F#’s in “I Gotta Feeling.” All of the F’s are natural. On that basis as well as
25 an analysis of the harmony, I believe it is more accurate to analyze “I Gotta Feeling”
26 in G Mixolydian. Moreover, published sheet music of popular music in a
27 Mixolydian mode sometimes uses the key signature of the parallel major key.
28 Therefore, the G “major” key signature in the published sheet music of “I Gotta
Feeling” is in keeping with this practice in the publication of compositions in a G
Mixolydian mode; it lists the key signature (1 sharp) of G major even though “I
Gotta Feeling” is in G Mixolydian as analyzed above.

1 sound recordings, I typed in each pitch, rhythm, harmony, melody, and lyric.

2 **MUSICAL EXAMPLE 1**

3 "I Gotta Feeling" Chorus 2 (at 1:00)

4 vocal mel. 

5 8-bar gtr. loop 

6 gtr./ 

7
8
9
10 vocal mel. 

11 8-bar gtr. loop 

12 gtr./ 

13
14
15
16 vocal mel. 

17 8-bar gtr. loop 

18 gtr./ 

19
20
21
22
23 vocal mel. 

24 8-bar gtr. loop 

25 gtr./ 

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MUSICAL EXAMPLE 2

“Take a Dive” Chorus 1 (at 0:58)

vocal mel. ¹ So maybe it's all my fault (you) left me hang - ing on the line (and)

2-bar synth. loop

synth.

bass

vocal mel. ⁵ may-be it's all my fault all the time And

2-bar synth. loop

synth.

bass

vocal mel. ⁹ may-be it's all my fault that I don't be-lieve the lies and

2-bar synth. loop

synth.

bass

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2

vocal mel. 13
may-be it's all my-fault all the time

2-bar synth. loop

synth.

bass

14. The Chorus sections in “Take a Dive” and “I Gotta Feeling” consist of two, 8-bar segments. An 8-bar Chorus is a commonplace structure employed in countless popular songs and is a basic musical building block.⁶ In “I Gotta Feeling,” the 8-bar harmonic progression (and the melody embodied and contextualized therein) in the first 8 bars of the Chorus repeats in the second 8 bars, which is not unique.⁷ However, the vocal melody in bars 6-7 in the first iteration of the 8-bar harmonic progression in the Chorus in “Take a Dive” is different from the vocal melody in the second iteration of the 8-bar harmonic progression in the Chorus in “Take a Dive,” and one of the synthesizer parts is different in the 6th bar of the second iteration as compared with the first iteration. Thus, there is a change

⁶ For example, “Moondance” recorded by Van Morrison (1970), “Bad, Bad Leroy Brown” recorded by Jim Croce (1973), “Jump” recorded by Van Halen (1984), “Big Love” recorded by Fleetwood Mac (1987), “Another Brick in the Wall (Part 2)” recorded by Pink Floyd (1979), “Knockin’ on Heaven’s Door” recorded by Bob Dylan (1973), and countless other popular songs use 8-bar Chorus structures.

⁷ Well known examples of the first 8 bars in a Chorus repeating in the second 8 bars of that Chorus are “Mambo Italiano” recorded by Rosemary Clooney (1954), “Your Cheatin’ Heart” recorded by Hank Williams (1952), and “Backfield in Motion” recorded by Mel & Tim (1969).

1 in vocal melody (in bars 6-7) and harmony (in bar 6⁸) in the second iteration of the
 2 8-bar Chorus harmonic progression within “Take a Dive,” which is not the case in “I
 3 Gotta Feeling.” The following comparative harmonic chart of the Chorus sections
 4 in “Take a Dive” and “I Gotta Feeling” represents the basic chords in bars 1-8 in the
 5 respective Chorus sections.

6 Chord Progressions

	<u>bar 1</u>	<u>bar 2</u>	<u>bar 3</u>	<u>bar 4</u>
7				
8	“Take a Dive”:	G*	G G*	F F
9	“I Gotta Feeling”:	G G5	Gsus4 G*	C5 C C5 C
10				
11		<u>bar 5</u>	<u>bar 6</u>	<u>bar 7</u>
12	“Take a Dive”:	NC/a	Asus Am*	C5 C5
13	“I Gotta Feeling”:	Em Em	C5 C	C5 C

14 15. “G” chords with an asterisk “*” charted immediately above are missing
 15 the “fifth” of the chord. However, on the basis of other elements that are sounding
 16 at the same time and before (such as the “2-bar synthesizer loop” in “Take a Dive”),
 17 a “G” chord is implied. “C5” denotes a “5” chord.⁹ In bars 3 and 4 in “Take a
 18 Dive,” the “F” chords are not fully realized in every beat but they are fully realized
 19 in some beats; this is also the case with respect to the “C” chords in bars 3, 4, 7 and

20 _____
 21 ⁸ The harmony in beats three and four in bar 6 in the second iteration of the 8-bar
 22 harmonic progression in the Chorus in “Take a Dive” (see bar 14 in **Musical**
 23 **Example 2**) is “NC/a,” i.e., “no chord” with the pitch “a” in the bass. The absence
 24 of the repeating “c” pitches in the vocal melody and the half-note “c” pitch in one of
 25 the synthesizer parts in beats three and four in bar 6 in the second iteration of the 8-
 26 bar harmonic progression (as compared with the first iteration thereof) removes the
 27 basis for labeling the chord “Am*,” i.e., an “A minor” chord that omits the “fifth” of
 28 the Chord, and thereby relegates the “c” pitches in the 2-bar synthesizer loop to non-
 harmonic “passing tones.”

⁹ In a “C5” chord, the “third” of the chord is omitted, leaving just two notes, the
 “root” and “fifth” of the chord.

1 8 in “I Gotta Feeling.” In bar 5 in “Take A Dive” simultaneously sounding notes do
2 not represent a full chord. Consequently, the harmony is labeled “NC” (“no
3 chord”). In keeping with musicological practices, all chord symbols are in “root
4 position” (i.e., the pitch that names the chord is in the bass) unless there is a “/” sign
5 after the chord symbol, which signals that the chord is not in root position. The
6 pitch after the “/” sign names the bass pitch.

7 16. Chorus 2 rather than Chorus 1 in “I Gotta Feeling” was selected for
8 transcription in **Musical Example 1** because Chorus 1 does not include the bass
9 part. As charted in paragraph 14 above, harmonic similarities and differences
10 include the following:

- 11 • There is a full “G” chord in the beginning of bar 1 in “I Gotta Feeling” (due to
12 the pitch “b” in the vocal part) that changes to a “G5” chord (omitting the
13 “third” of the “G” chord), but bar 1 in “Take a Dive” does not have a full “G”
14 chord and, unlike the “G5” chord in “I Gotta Feeling,” the harmony in bar 1
15 in “Take a Dive” omits the “fifth” of the “G” chord;
- 16 • Bar 2 in “Take a Dive” begins with a G chord, but bar 2 in “I Gotta Feeling”
17 begins with a “Gsus4” (i.e., a G chord in which the “third” of the chord—the
18 note “b”—is omitted and substituted by adding the “fourth” of the chord—the
19 note “c”);
- 20 • Bar 2 in “Take a Dive” and “I Gotta Feeling” end with an incomplete “G”
21 chord in which the “fifth” is missing;
- 22 • The “F” chords in bars 3 and 4 in “Take a Dive” are significantly different
23 from the “C5” chords in bars 3 and 4 in “I Gotta Feeling”¹⁰;

24
25
26 ¹⁰ A “C5” chord consists of “c” and “g” pitches but an “F” chord consists of “f,”
27 “a,” and “c” pitches. Moreover, the harmonic function of an “F” chord, which is
28 built on the (lowered) 7th scale degree, is different from the harmonic function of a
“C” chord, which is built on the 4th scale degree, in G Mixolydian.

- 1 • The “F” chords in bars 3 and 4 in “Take a Dive” are significantly different
2 from the “C” chords in bars 3 and 4 in “I Gotta Feeling”¹¹;
- 3 • There is no full chord in bar 5 in “Take a Dive” and there is a repeating “a”
4 bass pitch in bar 5 in “Take a Dive,” but there is an E minor chord in bar 5 in
5 “I Gotta Feeling” which is different in harmony and in its repeating “e” bass
6 pitch;
- 7 • The harmony in bar 6 in “Take a Dive” is “Asus” (which includes a
8 suspension on scale degree 4 and an added scale degree 2) and an “A minor”
9 chord that omits the “fifth” of the chord and there is a repeating “a” bass pitch
10 in bar 6 in “Take a Dive,” but there is an E minor chord in bar 6 in “I Gotta
11 Feeling” which is different in harmony and in its repeating “e” bass pitch;
- 12 • The harmony in bar 7 in “Take a Dive” and beats 1 and 2 in bar 7 in “I Gotta
13 Feeling” is the same, “C5”, but the “third” of the C chord is in the vocal
14 melody in the second half of the bar in “I Gotta Feeling” thereby completing a
15 full C chord, whereas there is no “third” of the C chord in bar 7 in “Take a
16 Dive”; and
- 17 • The harmony in bar 8 in “Take a Dive” and beats 1 and 2 in bar 8 in “I Gotta
18 Feeling” is the same, “C5,” but the “third” of the C chord is very briefly heard
19 in the vocal melody in the second half of the bar in “I Gotta Feeling” thereby
20 briefly completing a full C chord, whereas there is no “third” of the C chord
21 in bar 8 in “Take a Dive.”

22
23 17. The 8-bar harmonic progression in “Take a Dive” that is transcribed in
24 **Musical Example 2** above is in the Introduction, Verse and Chorus sections, but not
25 in the Bridge or Outro sections in “Take a Dive.” By way of structural difference,
26 the 8-bar harmonic progression in “I Gotta Feeling” that is transcribed in **Musical**

27 ¹¹ In the second half of bars 3 and 4 in “I Gotta Feeling,” the “third” of the C chord
28 is in the vocal melody, thereby completing a full C chord.

1 **Example 1** above is largely present in *all* sections of “I Gotta Feeling” insofar as the
2 same root notes are present in all sections. In some sections, there are some
3 differences in the chords depending on the additional instrumental parts that are
4 present. For example, the “third” of the G and C chords are missing when there is
5 no vocal melody, and the “Gsus4” chord does not remain when the 8-bar guitar loop
6 is not present.

7 18. By way of comparison of the overall 8-bar harmonic progressions in
8 “Take a Dive” and “I Gotta Feeling” analyzed above:

- 9 • The harmonies in the corresponding bars 1 and 2 have similarities and
10 differences;
- 11 • The harmonies in bars 3, 4, 5, and 6 are significantly different; and
- 12 • The harmonies in bars 7 and 8 have similarities and differences.

13
14 Thus, there are more harmonic differences than similarities. Furthermore, the
15 similarities that do exist reflect a basic building block in music: beginning a
16 progression with a “I” chord (built on scale degree 1) and ending it with a “IV”
17 chord (built on scale degree 4).

18 19. The basic harmonic structure in the Chorus sections in “I Gotta
19 Feeling” is I-IV-vi-IV, with the understanding that the “I” and the “IV” chords often
20 omit the third of the chord, and the “I” chord in bar 2 is a “Gsus4” for 2 beats (when
21 the 8-bar guitar loop is present). As noted above, even at a basic level, “I Gotta
22 Feeling” and “Take a Dive” only share the use of the “I” chord at the beginning of
23 the progression and the “IV” chord at the end of the progression. On the other hand,
24 the very commonly used I-IV-V-IV progression shares three chords with “I Gotta
25 Feeling”: the first two chords in the progression, “I-IV” and the final chord in the
26 progression, “IV.” Therefore, the use of the I-IV-V-IV chord progression in the
27 following 13 musical works represents a greater harmonic similarity to the chord
28

1 progression in “I Gotta Feeling” than the similarity between the chord progressions
2 in “Take a Dive” and “I Gotta Feeling.” The following 13 songs, some of them
3 huge hits, use the I-IV-V-IV chord progression.

- 4 • “Sweets for My Sweet,” The Drifters (1961);
- 5 • “The Game of Love,” Wayne Fontana and the Mindbenders
- 6 (1965);
- 7 • “Get Off of My Cloud,” The Rolling Stones (1965);
- 8 • “Hang on Sloopy,” The McCoys (1965);
- 9 • “Say I Am (What I Am),” Tommy James and the Shondells
- 10 (1966);
- 11 • “Wild Thing,” The Troggs (1966);
- 12 • “Good Lovin’,” The Young Rascals (1966);
- 13 • “Soul Sister,” Allen Toussaint (1972);
- 14 • “Duppy Conqueror,” Bob Marley (1973);
- 15 • “Dancing With Myself,” Billy Idol (1982);
- 16 • “Walking on Sunshine,” Katrina and the Waves (1985);
- 17 • “Back Where It All Begins,” Allman Brothers (1994); and
- 18 • “Take It From Me,” Paul Brandt (1996).

21 The Bass Parts in “Take a Dive” and “I Gotta Feeling”: The Pitches

22 20. A “bass” pitch is not only analyzed as an important part of a chord; the
23 bass part is also a single line of music that consists of a sequence of *pitches* (i.e., a
24 sequence of ascending, descending, or repeating pitches) and their *rhythmic*
25 *durations* (i.e., the lengths of each of the pitches within a series of sounds and
26 silences in the melodic line). Thus, a bass part also has a melodic function.
27 Therefore, in the following analysis, bass parts in “Take a Dive” and “I Gotta
28

1 Feeling” are compared in terms of their pitch sequences and their rhythmic
2 durations.

3 21. The analysis of the bass parts in “Take a Dive” and “I Gotta Feeling”
4 begins with their *pitch* sequences. Pitches can be identified by their placement in a
5 scale, which consists of scale degrees 1-7. In G Mixolydian, the following 7 pitches
6 correspond to scale degrees 1-7:

7

8 G Mixolydian scale

9 g	scale degree 1
10 a	scale degree 2
11 b	scale degree 3
12 c	scale degree 4
13 d	scale degree 5
14 e	scale degree 6
15 f	scale degree 7

16 22. The main bass pattern in “I Gotta Feeling” consists of repeating eighth
17 notes within each bar. The comparison of bass parts in “I Gotta Feeling” and “Take
18 a Dive” begins with the repeating eighth note bass pattern in “I Gotta Feeling.”

19 The repeating eighth note bass pattern in “I Gotta Feeling” compared with the bass
20 pattern in “Take a Dive”: The Pitch Sequences

21 23. The primary bass patterns in “I Gotta Feeling” and “Take a Dive” are
22 transcribed above respectively in **Musical Example 1** (on page 9) and **Musical**
23 **Example 2** (on pages 10-11) as parts that include a vocal melody and other
24 instrumental music. In order to facilitate a comparison of the bass parts alone, the
25 bass lines in **Musical Example 1** and **Musical Example 2** are presented without
26 any of the other parts in **Musical Example 3** below; therein, the 8-bar bass part in
27
28

1 "Take a Dive" is placed over the 8-bar bass part in "I Gotta Feeling."¹² This bass
 2 part in "I Gotta Feeling" consists of 8 repeating eighth notes per bar. This repeating
 3 eighth-note bass pattern occurs during Chorus 2, Verses 1, 2, 3, and 4 (from 1:00
 4 through 2:29), and Verse 7 through Chorus 4 (from 3:45 through 4:44) in "I Gotta
 5 Feeling."

6
 7 **Musical Example 3**
 8 Bass part in "Take a Dive"
 9 Repeating eighth note bass part in "I Gotta Feeling"

10 "Take a Dive" 

11 "I Gotta Feeling" 

12

13 "Take a Dive" 

14 "I Gotta Feeling" 

15

16

17 24. As transcribed in **Musical Example 3** above, there are 8 bass part
 18 pitches in each bar in "I Gotta Feeling" but only 7 pitches per bar in "Take a Dive."
 19 Based on the transcription of the bass parts above, the repeating bass pitches in
 20 "Take a Dive" and "I Gotta Feeling" change every 2 bars as follows.

21
 22
 23
 24

25 ¹² A heavy delay (echo) effect appears to have been applied to the bass part later in
 26 the sound recording in "Take a Dive." The transcription in **Musical Example #3**
 27 represents an attempt to transcribe the notes as played, but not the "echo" effect
 28 which is more pronounced later in the sound recording.

1 **Bass Parts**

2					
3		<u>bar 1</u>	<u>bar 2</u>	<u>bar 3</u>	<u>bar 4</u>
4	“Take a Dive”:	g	g	f	f
5	“I Gotta Feeling”:	g	g	c	c
6		<u>bar 5</u>	<u>bar 6</u>	<u>bar 7</u>	<u>bar 8</u>
7	“Take a Dive”:	a	a	c	c
8	“I Gotta Feeling”:	e	e	c	c

9
 10 25. The basic melodic “contour” (i.e., shape) of the bass parts in “Take a
 11 Dive” and “I Gotta Feeling” that is charted above as individual bars is charted
 12 immediately below. In the chart immediately below, each pitch letter or scale
 13 degree number represents 2 bars of music.

14		<u>as letters</u>	<u>as scale degrees</u>
15	Bass contour in “Take a Dive”:	g f a c	1 7 2 4
16	Bass contour in “I Gotta Feeling”:	g c e c	1 4 6 4

17 26. While the first and last bass pitches match as charted immediately
 18 above, the two pitches in the middle are different. There is a helpful analogy in
 19 ordinary language. The words “salt” and “soft” both use the same four letters, two
 20 of which – “s” and “t” – are the first and last letters in each word. This is analogous
 21 to the pitch sequences in the bass parts in “Take a Dive” and “I Gotta Feeling”: the
 22 first and last pitches -- “g” and “c” pitches (scale degrees “1” and “4”) -- are the
 23 same, as in the first and last letters in “salt” and “soft,” but the two letters in the
 24 middle are different. Just as “salt” and “soft” are different words due to their
 25 different sequences of letters, the bass parts in “Take a Dive” and “I Gotta Feeling”
 26 are different due to their different sequences of pitches. Moreover, unlike sequences
 27 of letters that constitute words, bass parts consist of sequences of *pitches* and, in
 28 addition, the *rhythmic durations* of those pitches. (As analyzed below, the *rhythmic*

1 *durations of the pitch sequences in the bass parts in “Take a Dive” and “I Gotta*
2 *Feeling” are significantly different.)*

3 The repeating eighth note bass pattern in “I Gotta Feeling” compared with the bass
4 pattern in “Take a Dive”: The Rhythmic Durations

5
6 27. The bass parts presented above repeat in 8-bar segments. Within each
7 8-bar segment, there are 7 repeating pitches per bar in “Take a Dive” and 8
8 repeating pitches per bar in “I Gotta Feeling.” In addition to the difference in the
9 number of pitches per bar and the fact that the corresponding pitches are different in
10 bars 3, 4, 5, and 6, the *rhythmic durations* of the pitch sequences in the bass parts
11 *are significantly different throughout the entire 8-bar chord progressions* in “Take a
12 Dive” and “I Gotta Feeling.” The rhythmic durations of the pitch sequences in the
13 bass part in “Take a Dive” are heavily syncopated (i.e., played off of and
14 interrupting the beat) in every bar, but by contrast, the rhythmic durations in “I
15 Gotta Feeling” are virtually opposite: they are all evenly placed eighth notes.¹³

16 28. The importance of this difference in *rhythmic durations* between the
17 bass parts in “Take a Dive” and “I Gotta Feeling” can be demonstrated through the
18 use of a musical building block: a descending major scale of exactly 8 pitches, all in
19 equal eighth-note rhythms. Countless students throughout the world practice major
20 “scales” in this rhythm every day. However, if the rhythmic durations of those
21 pitches were changed, the identical sequence of pitches could become the famous
22 opening melody in “Joy to the World.” The sequence of pitches in a descending
23 major scale *is identical* to the sequence of pitches in the famous opening melody in
24 “Joy to the World.” The only difference is the rhythmic durations of those pitches.
25 No one hearing 8, equal eighth notes in a descending major scale would hear that

26 ¹³ In some bars, this eighth-note pattern is interrupted. For example, see bars 1 and
27 9 on page 4 and bars 1 through 3 on page 5 of the published sheet music of “I Gotta
28 Feeling” in **Visual Exhibit A**.

1 scale as the opening 8 notes in “Joy to the World.” The difference in rhythmic
2 durations makes *all* of the difference in a descending scale and “Joy to the World”;
3 the pitch sequences in both are the same.

4 29. The differences between the bass parts in “Take a Dive” and “I Gotta
5 Feeling” are even more dramatic than in the example of a descending scale and the
6 opening melody in “Joy to the World.” More than 50% of the *pitch sequences* in the
7 bass parts in “Take a Dive” and “I Gotta Feeling” are different, and the *rhythmic*
8 *durations* of those pitch sequences in all 8 bars are significantly different in “Take a
9 Dive” and “I Gotta Feeling.” On the other hand, the pitch sequences in a
10 descending major scale and the opening melody in “Joy to the World” are *identical*,
11 *i.e., the pitches in a descending major scale and “Joy to the World” match.* Thus,
12 there are significant differences in the combination of pitch sequences and rhythmic
13 durations of the bass parts in “Take a Dive” and “I Gotta Feeling” analyzed above.

14 The low synthesizer pattern in “I Gotta Feeling”

15 30. There is a sustained note pattern played on a low synthesizer in “I Gotta
16 Feeling.” This pattern consists of sustained (long) notes as transcribed in **Musical**
17 **Example 4** immediately below and occurs during the Introduction, Chorus 3, and
18 Verse 5 in “I Gotta Feeling.” The “d” pitch in bars 4 and 6 is syncopated in Chorus
19 3 and Verse 5, and is not audible in Verse 6.

21 **MUSICAL EXAMPLE 4**

22 Low synthesizer in “I Gotta Feeling”



1 31. The pitches in the low synthesizer pattern in “I Gotta Feeling” and the
 2 repeating bass pitches in “Take a Dive” are charted immediately below based on
 3 transcriptions thereof in **Musical Example 3** of the bass part in “Take a Dive” and
 4 **Musical Example 4** of the low synthesizer in “I Gotta Feeling.” Pitches inside
 5 parentheses “()” are held over from the same pitch in the previous bar; i.e., those
 6 pitches are not re-iterated but simply continue the sustained pitch in the previous
 7 bar.

	<u>bar 1</u>	<u>bar 2</u>	<u>bar 3</u>	<u>bar 4</u>
8				
9				
10	“Take a Dive”:	g g g g g g g	g g g g g g g	f f f f f f f
11	“I Gotta Feeling”:	g	(g)	c
12				(c) d
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				

16 32. There are seven pitches in each bar in the bass in “Take a Dive,” but
 17 there are only 1 or 2 pitches per bar in the low synthesizer pattern in “I Gotta
 18 Feeling.” Moreover, in bars with 2 pitches in “I Gotta Feeling,” only the second
 19 pitch is actually iterated, as explained in paragraph 31 and charted above. While
 20 both patterns begin with scale degree 1 (a “g” pitch) and end with scale degree 4 (a
 21 “c” pitch), the corresponding pitches in bars 3 through 6 are significantly different.
 22 This is demonstrated in the chart of the basic “contour” (i.e., shape) of the bass parts
 23 immediately below.

	<u>as letters</u>	<u>as scale degrees</u>
24		
25	Bass contour in “Take a Dive”:	g f a c 1 7 2 4
26	Synth. contour in “I Gotta Feeling”:	g c d e d c 1 4 5 6 5 4
27		
28		

1 33. While the first and last pitches match as charted immediately above, the
2 pitches in the middle are significantly different. Furthermore, while there are six
3 pitches within the melodic *contour* in the bass pattern in “I Gotta Feeling,” there are
4 only 4 pitches within the melodic *contour* of the low synthesizer pattern in “Take a
5 Dive.”

6 34. The *rhythmic durations* of the pitch sequences in the bass and low
7 synthesizer parts charted and transcribed above *are significantly different*
8 *throughout the entire 8-bar chord progressions* in “Take a Dive” and “I Gotta
9 Feeling.” As analyzed earlier, the rhythmic durations of the pitch sequences in the
10 bass part in “Take a Dive” are short and heavily syncopated (*i.e.*, played off of and
11 interrupting the beat) in every bar. But, by contrast, the rhythmic durations in “I
12 Gotta Feeling” are virtually opposite: they are long sustained notes without
13 syncopation in the iterations in the Introduction and Verse 6, and very limited
14 syncopation (on only 2 notes) in Chorus 3 and Verse 5 in “I Gotta Feeling.”

15 35. Thus, there are significant differences in the combination of pitch
16 sequences and rhythmic durations of the bass part in “Take a Dive” and the low
17 synthesizer part in “I Gotta Feeling” analyzed immediately above.

18 A secondary bass pattern in “Take a Dive”

19 36. The bass pattern in “Take a Dive” analyzed in paragraphs 23-35 above
20 occurs in the Introduction, both Verses, and all three Choruses. On the other hand, a
21 secondary bass pattern occurs in the Bridge and Outro sections in “Take a Dive.”
22
23 *The bass pattern in the Bridge in “Take a Dive” as compared with “I Gotta*
24 *Feeling”*

25 37. Starting with the Bridge in “Take a Dive,” the Bridge consists of a total
26 of 16 bars. In the chart immediately below, those bass pitches in the Bridge in
27 “Take a Dive” are charted above the bass and low synthesizer patterns in “I Gotta
28

1 Feeling” analyzed above. The pitches in the bass pattern in the Bridge in “Take a
 2 Dive” are on the top line, the pitches in the repeating eighth note bass pattern in “I
 3 Gotta Feeling” (analyzed in paragraphs 23-29 above) are placed in the middle line,
 4 and the pitches in the low synthesizer in “I Gotta Feeling” (analyzed in paragraphs
 5 30-35 above) are placed in the third (lowest) line in the chart immediately below.
 6 Insofar as the Bridge and its bass pattern in “Take a Dive” are 16 bars, but the bass
 7 pattern and low synthesizer pattern in “I Gotta Feeling” are only 8 bars each, the 8-
 8 bar patterns in “I Gotta Feeling” are charted 2 times in order to align them with the
 9 16-bar bass pattern in “I Gotta Feeling.”

	<u>as pitch letters</u>	<u>as scale degrees</u>
11	“Take a Dive”: <i>e c e c e f a c</i>	6 4 6 4 6 7 2 4
12	“I Gotta Feeling”: <i>g c e c g c e c</i>	1 4 6 4 1 4 6 4
13	“I Gotta Feeling”: <i>g c d e d c g c d e d c</i>	1 4 5 6 5 4 1 4 5 6 5 4

14
 15 38. In the chart immediately above, the corresponding pitches in “Take a
 16 Dive” and the patterns in “I Gotta Feeling” that are the same are presented without
 17 emphasis, those that are different are emphasized: 50% of the corresponding pitches
 18 are different between the bass pattern in “Take a Dive” and the repeating bass
 19 pattern in “I Gotta Feeling” (the latter represented in the middle line in the chart
 20 immediately above) and 66% are different between the bass pattern in “Take a
 21 Dive” and the sustained bass pattern in “I Gotta Feeling” (the latter on the lowest
 22 line in the chart immediately above). Furthermore, as transcribed in **Musical**
 23 **Examples 3 and 4**, the number of pitches within each corresponding bar is different:
 24 there are 7 pitches per bar in “Take a Dive” but, there are 8 pitches per bar in the
 25 repeating eighth note bass pattern in “I Gotta Feeling” and only 1 or 2 pitches per
 26 bar in the low synthesizer pattern represented in “I Gotta Feeling.” Thus, in addition
 27 to different pitch names (e.g., “e” as compared with “g”) and different scale degrees
 28 (e.g., “6” as compared with “1”), there is a difference in the number of pitches per

1 bar in “Take a Dive” as compared with both patterns in “I Gotta Feeling.”
2 Moreover, the *rhythmic durations* of those pitches are significantly different in
3 “Take a Dive” as compared with both patterns in “I Gotta Feeling” as analyzed
4 earlier in this report. Therefore, the combined differences in *pitch sequences* and
5 *rhythmic durations* far outweigh any pitch similarity between the bass part in the
6 Bridge in “Take a Dive” and the bass and low synthesizer patterns in “I Gotta
7 Feeling.”

8 *The bass pattern in the Outro in “Take a Dive” as compared with “I Gotta Feeling”*

9
10 39. Now moving to the Outro section in “Take a Dive,” the bass pattern in
11 the first (not second) 8 bars of the Bridge section in “Take a Dive” is also used in
12 the Outro. In the Outro section, the vocal part is only present during the first 7 bars.
13 Thereafter, there is no vocal part to the end of “Take a Dive.” Notably, within the
14 remaining instrumental parts starting at approximately 3:56, there are two oscillating
15 bass notes which repeat for 2 bars each: 2 bars of repeating “e” pitches and 2 bars of
16 repeating “c” pitches combined with the 2-bar synthesizer loop, a 2-bar figure. (The
17 2-bar synthesizer loop is transcribed in **Musical Example 2** above in the second line
18 from the top of the musical score.) Consequently, the bass pattern (as well as the
19 harmonic pattern¹⁴) changes every 4 bars, not every 8 bars, in the Outro in “Take a
20 Dive” from 3:56 to the end. Immediately below, the repeating 4-bar bass pattern in
21 the Outro in “Take a Dive” (on pitches “e” and “c” or scale degrees “6” and “4”) is
22 charted 2 times in order to align it with the 8-bar patterns in “I Gotta Feeling.” The
23 pitches in the bass pattern in the Outro in “Take a Dive” are on the top line, the
24 pitches in the repeating eighth note bass pattern in “I Gotta Feeling” (analyzed in
25 paragraphs 23-29 above) are placed in the middle line, and the pitches in the low
26 synthesizer part in “I Gotta Feeling” (analyzed in paragraphs 30-35 above) are

27
28 ¹⁴ The harmonic pattern in the Outro section in “Take a Dive” includes an “E minor”
chord in bar 1 and a “C5” in bar 3 of each 4-bar phrase.

1 placed in the third (lowest) line in the chart immediately below.

2

3 Contours in the Outro in “Take a Dive” as compared with “I Gotta Feeling”

4

	<u>as pitch letters</u>	<u>as scale degrees</u>
5 “Take a Dive”:	<i>e</i> <i>c</i> <i>e</i> <i>c</i>	6 4 6 4
6 “I Gotta Feeling”:	<i>g</i> <i>c</i> <i>e</i> <i>c</i>	1 4 6 4
7 “I Gotta Feeling”:	<i>g</i> <i>c</i> <i>d</i> <i>e</i> <i>d</i> <i>c</i>	1 4 5 6 5 4

8

9

10 40. The corresponding pitches in “Take a Dive” and the bass and low
11 synthesizer patterns in “I Gotta Feeling” that are different are emphasized in the
12 chart above; the corresponding pitches that are the same are presented without
13 emphasis. While 50% of the corresponding pitches are the same between the bass
14 pattern in “Take a Dive” and the repeating bass pattern in “I Gotta Feeling,” and
15 75% are the same between the bass pattern in “Take a Dive” and the low
16 synthesizer pattern in “I Gotta Feeling,” within each bar, the number of pitches is
17 different: there are 7 pitches per bar in “Take a Dive” but, there are 8 pitches per
18 bar in the repeating bass pattern represented in “I Gotta Feeling,” and only 1 or 2
19 pitches per bar in the low synthesizer pattern in “I Gotta Feeling” in (the third line of
20 the chart) immediately above. Thus, in addition to different pitch names (e.g., “e”
21 as compared with “g”) and different scale degrees (e.g., “6” as compared with “1”),
22 there is a difference in the number of pitches. Moreover, the *rhythmic durations* of
23 those pitches are significantly different in “Take a Dive” as compared with both
24 bass patterns in “I Gotta Feeling,” as analyzed earlier in this report. Therefore, the
25 combined differences in *pitch sequences* and *rhythmic durations* outweigh the
26 similarity between the pitch sequences in the bass part in the Outro in “Take a Dive”
27 and the bass and low synthesizer patterns in “I Gotta Feeling.”

28

1 Summary of similarities and differences in the bass parts

2 41. The similarity in the bass parts in “Take a Dive” and “I Gotta Feeling”
3 is limited to the pitch sequences. However, the corresponding pitch sequences are
4 not the same, and have many differences. Furthermore, there are an unequal
5 number of pitches per bar: 7 in “Take a Dive” compared with 8 in “I Gotta
6 Feeling.” Moreover, while there are 7 pitches per bar in “Take a Dive” there are
7 only 1 or 2 pitches per bar in the low synthesizer pattern in “I Gotta Feeling.” And,
8 the pitch sequences are set to very different rhythmic durations.

9 42. In addition, as analyzed earlier in this report, the corresponding
10 harmonies in “Take a Dive” and “I Gotta Feeling” have more differences than
11 similarities, and the similarities are commonplace. Thus, the harmonic context for
12 the bass parts in “Take a Dive” and “I Gotta Feeling” is largely different.

13 A Bass Method Book and Transcriptions of Bass Parts in 4 Prior Art Works

14
15 43. In order to demonstrate the commonplace status of the limited
16 similarity in the bass parts of “I Gotta Feeling” and “Take a Dive,” in **Visual**
17 **Exhibit C** I have attached copies of pages from the following bass guitar books.

- 18 a. *Bass Grooves* (©2004): Exercises #3, #4, #5, and #7 (pages 61-63) in this
19 bass guitar method book consist of 2 bars of eighth notes on scale degree “1”
20 followed by 2 bars of eighth notes on scale degree “4,” (when the exercise is
21 understood as being in an A pitch center.¹⁵) Thus, the bass part therein has
22 the same corresponding pitches and the same rhythmic durations as the bass
23 part in bars 1, 2, 7, and 8 in “I Gotta Feeling”: 16 identical pitches with
24 identical rhythmic durations as compared with bars 1 and 2 and an additional
25 16 identical pitches with identical rhythmic durations as compared with bars 7

26
27 ¹⁵ The repeated number “5” on the “TAB” staff denotes the 5th fret on the bass
28 string and does not represent a scale degree.

1 and 8 in the repeating eighth note bass pattern in “I Gotta Feeling.”
2 Importantly, there are the only four bars in the repeating eighth note bass
3 pattern in “I Gotta Feeling” that have a modicum of similarity with the bass
4 part in “Take a Dive.” The main bass part in “Take a Dive” has 7, not 8
5 pitches per bar and the rhythm is exceedingly different from “I Gotta
6 Feeling.” Thus, while the only similarity in the bass parts in “I Gotta
7 Feeling” and “Take a Dive” is the pitch sequence, but not the same number of
8 pitches *and* the rhythmic durations are significantly different, the *Bass*
9 *Grooves* method book exercises #3, #4, #5 and #7 are identical in pitch
10 sequences and rhythmic durations in the same bars at issue in “I Gotta
11 Feeling.”

12 b. *Hal Leonard Bass Method: Easy Pop Bass Lines*: Pages 26-29 consist of the
13 bass part in “All The Small Things” (by Blink-182, ©1999) which is very
14 similar to the bass patterns in “I Gotta Feeling” because:

- 15 • The Verse and Chorus sections in “All The Small Things” consist of 8-
16 bar cycles, which is also the case in “I Gotta Feeling”;
- 17 • The rhythmic durations of the bass in the Verse and Chorus sections in
18 “All The Small Things” consists of 8 eighth-notes per bar, which is
19 also the case in the repeating eighth note bass note pattern in “I Gotta
20 Feeling”;
- 21 • Bar 1 in the Verse and the Chorus sections in “All The Small Things”
22 consists of repeating eighth-notes in the bass on scale degree 1
23 combined with a chord built on scale degree 1 which omits the “third”
24 of the chord (a “C5” chord in the key of “C”), which is also the case in
25 a portion of bar 1 in the repeating bass note pattern in the Chorus
26 sections in “I Gotta Feeling” (a “G5” chord in G Mixolydian);
- 27 • Bars 4 and 8 in the Chorus sections in “All The Small Things” consist
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

of repeating eighth notes in the bass on scale degree 4 combined with a chord built on scale degree 4 which omits the “third” of the chord (an “F5” chord in the key of “C”), which is also the case in a portion of bars 4 and 8 in the repeating bass pattern in the Chorus sections in “I Gotta Feeling” (a “C5” chord in G Mixolydian);

- In addition to its repeating bass note pattern, “All The Small Things” also includes a sustained bass note pattern (see bars 1 and 2 in the Pre-Chorus and bars 1- 4 in the Coda), which is also the case in the low synthesizer pattern in “I Gotta Feeling” analyzed in paragraphs 30-35 above;
- The Pre-Chorus and the Coda sections in “All The Small Things” begin with a sustained note that is held over 2 bars (bars 1 and 2) for a total of eight beats, which is also the case in the low synthesizer pattern in “I Gotta Feeling”;
- The sustained bass note in bars 1 and 2 in the Pre-Chorus and Coda sections in “All The Small Things” is scale degree 1, which is also the case in the low synthesizer pattern in “I Gotta Feeling”; and
- The second and third pitches in the bass pitch sequence in the Coda section in “All The Small Things” are respectively scale degrees 4 and 5, which is also the case in the low synthesizer in “I Gotta Feeling.”

c. *Hal Leonard Bass Method: Easy Pop Bass Lines* (see #b immediately above): Page 39 consists of the first page of the bass part in “My Girl” (The Temptations, ©1964) which has similarities to "I Gotta Feeling" including:

- Bar 1 in the Verse in “My Girl” consists of repeating bass notes on scale degree 1 combined with a chord built on scale degree 1 which omits the “third” of the chord (a “C5” chord in the key of “C”), which is also the case in a portion of bar 1 in the repeating bass note pattern in

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

the Chorus in “I Gotta Feeling” (repeating bass notes on scale degree 1 combined with a “G5” chord in G Mixolydian);

- The chord built on scale degree 1 is followed by a chord built on scale degree 4 in the first part of the Verse in “My Girl,” which is also the case in the repeating bass pattern in the Chorus in “I Gotta Feeling”; and
- The repeating bass pitch that is played during the “IV” chord in the Verse in “My Girl” referenced in the bullet immediately above is on scale degree 4, which is also the case in the repeating bass pattern during the “IV” chord that follows the “I” chord in the Chorus in “I Gotta Feeling.”

d. *Hal Leonard Bass Method: More Easy Pop Bass Lines*: Page 39 consists of the first page of the bass part in “Jet Airliner” (The Steve Miller Band, ©1977) which has similarities to “I Gotta Feeling” including:

- Bar 1 in the Verse in “Jet Airliner” consists of repeating eighth notes in the bass on scale degree 1 combined with a chord built on scale degree 1 which omits the “third” of the chord (a “C5” chord in the key of “C”), which is also the case in a portion of bar 1 in the repeating bass note pattern in the Chorus in “I Gotta Feeling” (a “G5” chord in G Mixolydian); and
- This combined bass and chord pattern in the opening of the Verse in “Jet Airliner” changes to repeating eighth notes in the bass on scale degree 4 (in bar 2) combined with a chord built on scale degree 4 which omits the “third” of the chord (an “F5” chord in the key of “C”), which is also the case in the repeating bass pattern in the Chorus in “I Gotta

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Feeling.”¹⁶

44. The examples above, which were found in a preliminary search of bass guitar books which could be expanded in a subsequent report, establish that the “similarity” in the main bass patterns in “Take a Dive” and “I Gotta Feeling”—which is no more than repeating pitches on scale degrees “1” and “4”—is commonplace. Furthermore, a portion of the bass in “All The Small Things” has greater similarity to the bass in “I Gotta Feeling” than any similarities in the bass parts between “I Gotta Feeling” and “Take a Dive.”

45. Another prior art example in connection with the bass parts is “Dancing With Myself” by Billy Idol (Billy Idol’s “single” of “Dancing With Myself” was released in 1981) which is also listed in paragraph 19 above. The 13 songs listed in paragraph 19 above incorporate the commonplace I-IV-V-IV chord progression, which is more similar to the basic chord progression in “I Gotta Feeling” than any harmonic similarity between “Take a Dive” and “I Gotta Feeling.” As analyzed in paragraph 19, the basic chord progression in “I Gotta Feeling” is I-IV-vi-IV, which shares three chords with the commonplace I-IV-V-IV chord progression. In addition, the harmonic rhythm in “I Gotta Feeling” and “Dancing With Myself” is the same: 1 chord changing every 2 bars.

46. The main bass part in Billy Idol’s “Dancing With Myself” is much more similar to the repeating eighth note bass pattern in “I Gotta Feeling” than any bass part similarity between “I Gotta Feeling” and “Take a Dive.” This is

¹⁶ By way of difference, as transcribed in the “Jet Airliner” attachment, the C5 harmony changes to an F5 harmony on the last eighth beat of the bar. In addition, in the bar with repeating scale degree “4,” the F5 harmony changes to a C5 harmony, and then changes back to an F5 harmony.

1 demonstrated in **Musical Example 5** on page 33 below in which the bass parts in
2 “Take a Dive,” “I Gotta Feeling,” and “Dancing With Myself” are transcribed.¹⁷

3 47. First, the *pitch sequences* are much more similar in “Dancing with
4 Myself” and “I Gotta Feeling” than any similarity in “Take a Dive” and “I Gotta
5 Feeling”: 48 pitches in “Dancing with Myself” and “I Gotta Feeling” match
6 identically but only 28 pitches in “Take a Dive” and “I Gotta Feeling” match out of
7 a total of 64 pitches in the 8-bar bass part in “I Gotta Feeling.” Thus, almost twice
8 as many pitches match in “Dancing with Myself” and “I Gotta Feeling” as compared
9 with “Take a Dive” and “I Gotta Feeling”.

10 48. Second, the *rhythmic durations* in all 64 bass notes, *i.e.*, 100% of the
11 notes in “Dancing with Myself” and “I Gotta Feeling” match *identically*: steady
12 eighth notes without syncopation. By way of significant difference, the bass part in
13 “Take a Dive” is marked by heavy syncopation, dotted eighth notes, and sixteenth
14 notes, but there are no syncopated notes, no dotted eighth notes, and no sixteenth
15 notes at all in the repeating eighth note bass pattern in “I Gotta Feeling” and
16 “Dancing with Myself” transcribed in **Musical Example 5** on page 33 below.

17 49. On that objective basis, (1) the bass parts in “Dancing with Myself” and
18 “I Gotta Feeling” are substantially and demonstrably more similar than any
19 similarity in the bass parts between “Take a Dive” and “I Gotta Feeling” *and* (2) the
20 chord progressions in “Dancing with Myself” and “I Gotta Feeling” are more similar
21 than the chord progressions in “Take a Dive” and “I Gotta Feeling.”

22

23

24

25

26

27 ¹⁷ The published sheet music of “Dancing With Myself,” downloaded from
28 musicnotes.com in the key of E major and in the key of G major, is attached as
Visual Exhibit D.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MUSICAL EXAMPLE 5

Bass part in “Dancing With Myself” compared with
bass parts in “I Gotta Feeling” and “Take a Dive”

The image displays three sets of musical notation for bass parts in 4/4 time. The first set (lines 5-8) shows the bass line for "Take a Dive" (line 5), "I Gotta Feeling" (line 6), and "Dancing With Myself" (line 8). The second set (lines 10-14) shows the bass line for "Take a Dive" (line 10), "I Gotta Feeling" (line 12), and "Dancing With Myself" (line 14). A small number '5' is positioned above the second set of notation. The notation includes clefs, time signatures, and various rhythmic values such as quarter notes, eighth notes, and sixteenth notes.

50. In summary, on the basis of my analysis of the harmony combined with the bass parts, I found that there are no significant harmonic similarities, but there are significant harmonic differences between “Take a Dive” and “I Gotta Feeling.” Moreover, when combined with my findings regarding Structure, I found that there are no structural and/or harmonic similarities, individually or in the aggregate, that suggest that any expression in “I Gotta Feeling” was copied from “Take a Dive.”

RHYTHM

51. “Take a Dive” and “I Gotta Feeling” are in 4/4 meter, also termed “common time,” which is probably the most common meter in popular music. Countless musical compositions are in 4/4 meter. In 4/4 meter, music is divided into bars, in which there are 4 quarter beats. As such, 4/4 meter is a basic and

1 foundational musical building block, not an example of musical expression, and
2 certainly not unique.

3 52. The tempo (i.e., the speed of music) in “Take a Dive” is 130 beats per
4 minute (BPM) and the tempo in “I’ve Got a Feeling” is 128 BPM. This is very
5 similar but, that similarity in tempo is not meaningful. Countless compositions are
6 in this tempo. For example, the tempos in the following compositions which can be
7 broadly categorized as Club/Dance style are at 128 or 130 BPM. The format for
8 each example is:

9 Performer(s)
10 Song title
11 *Album title* and release year
12 Record label
13 bpm.

- 13 1. Mathew Jonson
14 “Return of the Zombie Bikers”
15 (single) (2005)
16 Wagon Repair
17 130 BPM
- 17 2. Moderat
18 “Seamonkey”
19 *Moderat* (2009)
20 BPitch Control
21 130 BPM
- 20 3. Gregory Shiff
21 “October”
22 *Exit and Entrance, Vol. 2* - EP (2003)
23 Persona Records
24 130 BPM
- 24 4. Benny Benassi & The Biz
25 “Satisfaction (Radio Edit)”
26 *Satisfaction* (2003)
27 You Records
28 130 BPM

1 53. Additionally, the following three compilations of “workout/dance”
2 music consist of music at 128 BPM.

- 3 1. iSweat Fitness Music Vol. 46: Pilates Rhythms (2007)
4 2. iSweat Fitness Music Vol. 140: Dance! (2010)
5 3. iSweat Fitness, Vol. 19: Girl Power! (2007)
6

7 54. Moreover, the following four compilations of “workout/dance” music
8 consist of music at 130 BPM.

- 9 1. Mamma Mia! Fitness Grooves from iSweat Fitness Music (2008)
10 2. Oxygen Workout Music Vol. 4 - Cardio Dance (2007)
11 3. iSweat Fitness Music Vol. 60: Diva Invasion (2008)
12 4. iSweat Fitness Music, Vol. 98: Tribute to Electric Light Orchestra (2008)
13

14 55. Finally, insofar as “I Gotta Feeling” includes hip hop elements, the
15 following the tempos in the following hip hop songs are 128 or 130 BPM.

- 16 1. Salt-n-Pepa
17 "Push It"
18 *Hot, Cool & Vicious*
19 Next Plateau Records (1987)
20 128 BPM
21 2. Run DMC
22 "It's Tricky"
23 *Raising Hell*
24 Profile Records (1986)
25 128 BPM
26 3. Flo Rida feat. T Pain
27 "Low"
28 *Mail on Sunday*
 Atlantic (2007)
 128 BPM

- 1 4. Flo Rida feat David Guetta
2 "Club Can't Handle Me"
3 Atlantic (2010)
4 *Step Up 3D* and *Only One Flo (part 1)*
5 128 BPM
- 6 5. Kid Cudi vs. Crookers
7 "Day 'N' Night (Nightmare)"
8 *Man on the Moon: The End of Day*
9 Universal/Motown (2009)
10 130 BPM

11 56. The overall rhythmic feel and flow are different in "Take a Dive" and
12 "I Gotta Feeling." As transcribed in **Musical Examples 1** and **2** above, based on
13 my full transcriptions of both works in their entirety, and as can be readily heard in
14 the sound recordings:

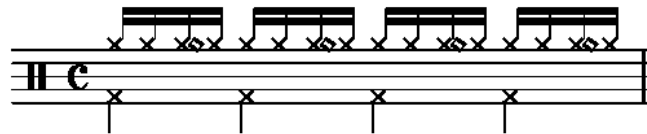
- 15 • The rhythmic expression in the vocal parts is very different – the rhythms in
16 the vocal parts do not match, and the rhythms in the vocal parts in "Take a
17 Dive" are different from the rhythms in the instrumental parts in "I Gotta
18 Feeling," as well as the reverse;
- 19 • The rhythmic expression in the "2-bar synthesizer loop" in "Take a Dive" and
20 the "8-bar guitar loop" in "I Gotta Feeling" is very different – there are twice
21 as many notes per bar in the 2-bar synthesizer loop in "Take a Dive" as
22 compared with the 8-bar guitar loop in "I Gotta Feeling," and note attacks in
23 the 2-bar synthesizer loop in "Take a Dive" are on eighth beats, but note
24 attacks in the 8-bar guitar loop in "I Gotta Feeling" are on quarter beats;
- 25 • The rhythmic expression in the bass parts is exceedingly different as analyzed
26 above; and
- 27 • The rhythmic expression in the drum parts has many differences, with
28 similarities limited to commonplace practices as analyzed immediately below.

1 57. Looking more closely at the drum patterns and based on my
2 transcriptions thereof, there are four basic drum patterns in “Take a Dive” as
3 follows:

- 4 • Commencing at approximately 0:21, there is a “four-on-the-floor” kick drum
5 pattern that is varied every 4 bars and there are sixteenths in a quasi sound-
6 effect timbre that start in measured time at approximately 0:07 and fade out at
7 approximately 0:44;
- 8 • Commencing at approximately 0:58, the “four-on-the-floor” kick drum
9 continues, but now with a closed hi-hat pattern that consists of sixteenths (16
10 per bar), and an open hi hat on the second half of each quarter beat as
11 illustrated in **Musical Example 6** immediately below;

12
13 **MUSICAL EXAMPLE 6**

14 Drum pattern in “Take a Dive” at 0:58

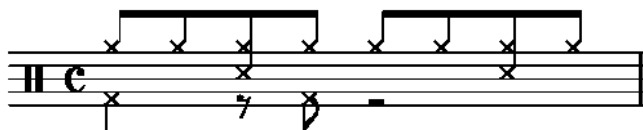


- 19 • Commencing at approximately 1:28, the pattern is eighths (8 per bar) on the
20 hi-hat, “backbeats” (accentuations on beats 2 and 4) on snare drum (with a
21 variation at the end of the 8th bar), and kick drum on every down beat as well
22 as on the second half of beat 2 (thereby breaking away from the “four-on-the-
23 floor” pattern heard in the previous section) as illustrated in **Musical**
24 **Example 7** on page 38 immediately below; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MUSICAL EXAMPLE 7

Drum pattern in "Take a Dive" at 1:28



- Commencing at 1:57, the kick drum pattern analyzed and illustrated in **Musical Example 7** immediately above continues, but the straight eighths on the hi-hat therein are replaced with the hi-hat pattern that commenced at 0:58 (closed hi hat sixteenths--16 per bar--and open hi hat eighths on the second half of every quarter beat) as illustrated in **Musical Example 8** immediately below.

MUSICAL EXAMPLE 8

Drum pattern in "Take a Dive" at 1:57



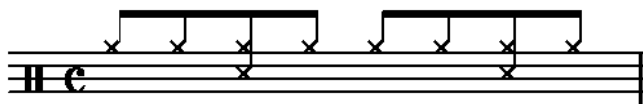
58. On the other hand, there are two basic drum patterns in "I Gotta Feeling":

- Commencing at 1:00, there are eighths (8 per bar) on the hi-hat with "backbeats" on doubled snare drums as illustrated in **Musical Example 9** on page 39 immediately below; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MUSICAL EXAMPLE 9

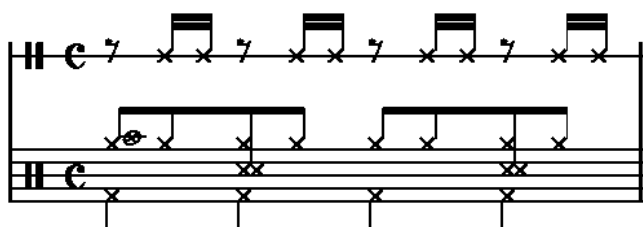
Drum pattern in “I Gotta Feeling” at 1:00



- Commencing at 1:30, there is a “four-on-the-floor” kick drum pattern, “backbeats” by doubled snare drums and synthesized hand-claps, a synthesized shaker pattern consisting of a pair of sixteenths commencing on the second half of each quarter beat, a hi-hat consisting of eighths (8 per bar), and a crash cymbal on the downbeat of each 8-bar cycle as illustrated in **Musical Example 10** below.

MUSICAL EXAMPLE 10

Drum pattern in “I Gotta Feeling” at 1:30



59. The discrete similarities in the basic drum patterns in “Take a Dive” and “I Gotta Feeling” are limited to:

- A “four-on-the-floor” kick drum pattern in which the kick drum is iterated on every beat of the bar;
- Snare drum playing the “backbeats”; and
- Straight eighths on the hi hat.

However, these similarities are never combined the same way in “Take a Dive” and

1 “I Gotta Feeling.” For example:

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- The “four-on-the-floor” kick drum pattern in “Take a Dive” includes eighths on beat 4 of bars 4 and 8 and a sixteenth before beat 4 in bar 8 cycles, which is different than the “four-on-the-floor” kick drum pattern in “I Gotta Feeling”;
- The rhythmic variations in the “backbeat” in the snare drum in “Take a Dive” are different than the “backbeat” pattern in the snare drum in “I Gotta Feeling”;
- “Sixteenth pairs” on the synthesized shaker *off* the beats in "I Gotta Feeling" are different from any drum/percussion pattern in “Take a Dive”; and
- There is a kick drum pattern starting at Verse 2 (1:28) in “Take a Dive” and continuing to the end of “Take a Dive” in which there are attacks on the down beat and the second half of beat 2, but that kick drum pattern is not in “I Gotta Feeling.”

60. Thus, the overall expression in the drumbeats is different, and when combined with the significantly different rhythms in the vocal melodies, instrumental melodies, and bass parts, the overall rhythmic feel and flow in “Take a Dive” and “I Gotta Feeling” is very different.

61. In summary, on the basis of my analysis, I found that there are no significant rhythmic similarities, but there are significant rhythmic differences between “Take a Dive” and “I Gotta Feeling.” Moreover, when combined with my findings regarding Structure and Harmony, I found that there are no structural, harmonic and/or rhythmic similarities, individually or in the aggregate, that suggest that any expression in “I Gotta Feeling” was copied from “Take a Dive.”

1 **MELODY**

2 62. On the basis of my analysis, I found that there are no similarities in the
3 vocal or instrumental melodies in “Take a Dive” and “I Gotta Feeling.” Moreover,
4 the insignificant similarity in some of the pitch sequences and the significant
5 rhythmic differences in the bass parts were analyzed earlier in this report.

6 63. In summary, on the basis of my analysis, I found that there are no
7 significant melodic similarities, but there are significant melodic differences
8 between “Take a Dive” and “I Gotta Feeling.” Moreover, when combined with my
9 findings regarding Structure, Harmony, and Rhythm, I found that there are no
10 structural, harmonic, rhythmic, and/or melodic similarities, individually or in the
11 aggregate, that suggest that any expression in “I Gotta Feeling” was copied from
12 “Take a Dive.”

13 **LYRICS**

14 64. On the basis of my analysis, I found that there are no relevant
15 similarities in the lyrics in “Take a Dive” and “I Gotta Feeling.” There are
16 significant lyrical differences. Moreover, when combined with my findings
17 regarding Structure, Harmony, Rhythm, and Melody, I found that there are no
18 structural, harmonic, rhythmic, melodic, and/or lyrical similarities, individually or in
19 the aggregate, that suggest that any expression in “I Gotta Feeling” was copied from
20 “Take a Dive.”

21 **“TAKE A DIVE” AND “I GOTTA FEELING” IN THEIR ENTIRETY**

22 65. On the basis of my analysis, I found that in their entirety, “Take a
23 Dive” and “I Gotta Feeling” are very different compositions. Significant differences
24 in Structure, Harmony, Rhythm, Melody, and Lyrics far exceed any similarities.
25 Furthermore, as demonstrated above, the similarities represent musical building
26 blocks and commonplace expression and practices.
27
28

1 66. There is an influence of rap and contemporary R&B in the vocal parts
2 in "I Gotta Feeling" that is absent in the vocal parts in "Take a Dive." The Black
3 Eyed Peas have a history in rap music, and its influence is apparent in "I Gotta
4 Feeling." For example, vocal parts in "I Gotta Feeling" are rapped/chanted and the
5 sung vocals are manipulated through "auto-tune"-like software. By way of
6 considerable contrast and difference, the vocal parts in "Take a Dive" do not appear
7 to be influenced by contemporary R&B and there are no rapped or chanted vocals.

8 67. Broadly, "Take a Dive" can be categorized as in a "Club/Dance" style.
9 In my opinion, "I Gotta Feeling" can be categorized as a cross-over of
10 "Club/Dance" and "Pop/Rap" styles.

11 **RESPONSE TO THE DECLARATION OF KEVIN BYRNES**

12 68. Mr. Byrnes' Declaration is directed at "I Gotta Feeling" and what he
13 terms "...the derivative version of Bryan Pringle's song, "Take a Dive"." (Byrnes,
14 page 2:¶#2) As discussed above, the only differences between the original version
15 of "Take a Dive," which I have analyzed herein, and the derivative version, is the
16 addition of the so-called "guitar twang" sequence (or "guitar chord
17 accompaniment"), and the removal of the vocals. Thus, my response to Mr. Byrnes'
18 report is limited to his analysis of the musical elements that the two versions of
19 "Take a Dive" have in common, and does not address the "guitar twang" sequence
20 in the derivative version of "Take a Dive" or the vocals in the original version.

21 69. Mr. Byrnes finds that "The tempo, meter, and key" in "Take a Dive"
22 and "I Gotta Feeling" are "substantially similar (identical or virtually identical)."
23 (Byrnes, page 3: ¶ #6(a)) However, these basic musical building blocks ("key" and
24 "4/4 meter") and commonplace practice (a "tempo" at 128 BPM) in "Take a Dive"
25 do not represent musical expression or suggest that they were copied in "I Gotta
26 Feeling."

1 70. In paragraph 6(b) in his report, Mr. Byrnes finds that the “song
2 structures” in “Take a Dive” and “I Gotta Feeling” are “substantially similar
3 (virtually identical).” However, Mr. Byrnes fails to provide a structural chart to
4 support his finding, as is customary when conducting an expert musicological
5 analysis. Instead, he bases his finding only on the use of a “repeating 8-measure
6 [i.e., bar] module.” But, a repeating 8-measure module is a building block in music
7 (see Paragraph 14 above), and as demonstrated in the section on Structure earlier in
8 this report (see Paragraphs 9-10 above), there are significant structural differences in
9 “Take a Dive” and “I Gotta Feeling.”

10 71. In paragraph 6(c) Mr. Byrnes finds that the “harmonic pattern” in
11 “Take a Dive” and “I Gotta Feeling” is “identical.” Therein, he provides a
12 comparative chart of the chord symbols. However, Mr. Byrnes fails to proffer any
13 transcription of the music that forms the chords he purports to chart. In fact, Mr.
14 Byrnes’ identification of many of the chords in his chart is simply incorrect, and is
15 contradicted by the compositions embodied in the sound recordings themselves as
16 well as the transcriptions in **Musical Examples #1** through **#4** above. For example,
17 bars 3 and 4 in “Take a Dive” contain “F” chords, not “C” chords, and bars 5 and 6
18 in “Take a Dive” do not contain E minor (“Em”) chords, as charted by Mr. Byrnes.

19 72. In paragraph 6(d) Mr. Byrnes discusses what he terms “The guitar
20 chord accompaniment.” However, as noted above, this “guitar chord
21 accompaniment” is not contained in the original version of “Take a Dive” that I
22 have been asked to analyze. Therefore, paragraph 6(d) in Mr. Byrnes’ report is not
23 relevant to the instant report.

24 73. In paragraph 6(e) Mr. Byrnes finds that “the orchestration” in “Take a
25 Dive” and “I Gotta Feeling” is “substantially similar.” His reasoning for this
26 conclusion is that the respective instrumental parts in “each song has essentially
27 three layers...” Even if there were “essentially three layers” in the instrumental
28 parts, and Mr. Byrnes does not explain why he believes that this is the case, dividing

1 up instrumental parts into “layers” is a simple and commonplace musical building
2 block, not a particular musical expression, and it does not even remotely suggest
3 copying. Furthermore, in his paragraph 6(e), while Mr. Byrnes describes the “bass,”
4 “some admixture of cymbals,” and “synthesized string sounds with delays and other
5 synthesized artifacts,” the only scant analysis of musical *expression* he offers that is
6 relevant to the instant report is “the bass drum playing on each quarter note beat”
7 and “synthesized drum sounds” playing on “beats two and four.” That description
8 of rhythmic expression represents one of the most common and basic drum rhythms
9 in dance music, and is certainly not musicologically supportive or even suggestive
10 of a finding of “substantial similarity.” Moreover, Mr. Byrnes fails to analyze the
11 many differences in the bass rhythms and drum rhythms as presented earlier in this
12 report.

13 74. In paragraph 6(f), Mr. Byrnes discusses the “guitar chord
14 accompaniment” which is not relevant to the instant report.

15 75. In summary, Mr. Byrnes fails to provide any transcriptions or
16 musicological support for his findings regarding expression in the original version
17 of “Take a Dive,” some of which, in my opinion, are incorrect. Furthermore, the
18 purported similarities he finds represent musical building blocks and commonplace
19 practices.

20 **RESPONSE TO THE DECLARATION OF ALEXANDER STEWART**

21 76. Like Mr. Byrnes, Dr. Stewart’s Declaration is directed at “I Gotta
22 Feeling” and what he terms “...the derivative version of Bryan Pringle’s song,
23 “Take a Dive”.” (Stewart, page 2:¶#2) As discussed above, the only differences
24 between the original version of “Take a Dive,” which I have analyzed herein, and
25 the derivative version, is the addition of the so-called “guitar twang” sequence (or
26 “guitar chord accompaniment”), and the removal of the vocals. Thus, my response
27
28

1 to Dr. Stewart’s report is limited to his analysis of the musical elements that the two
2 versions of “Take a Dive” have in common, and not the “guitar twang” sequence.¹⁸

3 77. Dr. Stewart finds that “Take a Dive” and “I Gotta Feeling” are
4 “strikingly similar in every fundamental respect: melody or pitch sequence, rhythm,
5 and harmony.” (Stewart, page 3:¶#4) Dr. Stewart’s reference to “melody or pitch
6 sequence” is informative with respect to his analysis of the bass parts he places in
7 issue. In its definition of “melody,” the *Harvard Dictionary of Music* (Fourth
8 Edition, 2003) provides: “It is obviously impossible to separate rhythm completely
9 from melody, since every pitch must have a duration, and duration is part of
10 rhythm.” (page 500) Dr. Stewart’s analysis of the bass parts omits the rhythmic
11 durations of the pitch sequences. Moreover, outside of his transcription of the
12 “twangy guitar figure” which is not relevant to the instant report, he fails to present
13 transcriptions of any of the purportedly “strikingly similar” “melody or pitch,
14 rhythm, and harmony” or to discuss the many differences. In fact, as demonstrated
15 above, there are significant differences in harmony, melody, and rhythm in “Take a
16 Dive” and “I Gotta Feeling.”

17 78. Continuing with Dr. Stewart’s paragraph 4, he also finds that “Take a
18 Dive” and “I Gotta Feeling” are “strikingly similar in instrumentation, timbre (tone
19 color), tempo, key, accompaniment, style, and genre.” However, this litany consists
20 of musical building blocks and commonplace practices that can hardly be the
21 musicological grounds for a finding of “striking similarity.”

22 79. In paragraph 5(a) Dr. Stewart lists the similarities he finds in “Take a
23 Dive” and “I Gotta Feeling” as follows:

24 Genre: Club/Dance
25 Style: Techno/Pop
26

27 _____
28 ¹⁸ As noted above, I understand that the “guitar twang sequence” is addressed in the
expert report of Paul Geluso.

1 Key: G major
2 Meter: 4/4
3 Tempo: 128/130
4 Structure: Repeating 8 bar cycle
5 Instrumentation: Guitar sound, bass, synthesized string & other techno sounds
6

7 But Dr. Stewart fails to acknowledge that these are musical building blocks (key,
8 meter, structure) and commonplace practices (genre, style, tempo and
9 instrumentation) that are not elements of expression, and are not unique or capable
10 of being monopolized by any composition. Moreover, even if it is accurate to
11 classify one or both songs as “Club/Dance” and/or “Techno/Pop,” that two songs
12 happen to be in the same genre or style is not even remotely suggestive that one
13 copied the other.

14 80. Like Mr. Byrnes, Dr. Stewart fails to provide a structural chart to
15 support his finding of structural similarity. Instead, he presents that there are
16 “repeating 8 bar cycles,” which is neither unique nor suggestive of copying. By
17 contrast, as demonstrated in the section on Structure in paragraphs 9-10 in this
18 report, there are significant structural differences in “Take a Dive” and “I Gotta
19 Feeling.” Furthermore, the use of 8-bar phrases is a commonplace musical building
20 block. (See Paragraph 14 above)

21 81. In paragraph 5(c) starting on page 4 of his report, Dr. Stewart presents
22 his only musical transcription. However, the transcription and the paragraph refer to
23 the “twangy guitar figuration” and are thereby not relevant to the instant report.

24 82. In his paragraph 5(d) starting on page 5 of his report, Dr. Stewart
25 presents an analysis of the bass parts. Therein, he glosses over details. For
26 example, he writes:

27 “Throughout much of the song [“I Gotta Feeling”], then, at least 50% of the
28

1 pitches in the bass part match and during *part* of the song the congruence in
2 the bass reaches 75%. Though the rhythms are somewhat different, the
3 number of repeated notes in each measure [bar] of the bass part is almost the
4 same (seven in “Dive” and eight in “Feeling”).” (emphasis in original)

5
6 First, Dr. Stewart finds that there are 8 pitches per bar in “I Gotta Feeling,” but 7
7 pitches per bar in “Take a Dive” and that as many as 50% of the pitches do not
8 match, i.e., they are different in “I Gotta Feeling” as compared with “Take a Dive.”
9 Moreover, this purported “matching” pitch sequence similarity is commonplace as
10 demonstrated in the bass guitar method book and transcriptions of bass parts in prior
11 art songs presented earlier in this report and attached to this report as **Visual**
12 **Exhibits C and D**. Dr. Stewart fails to mention any prior art and the commonplace
13 status of the pitch similarity he presents.

14 83. Dr. Stewart also fails to present an analysis of the rhythmic durations of
15 the bass parts. The transcriptions and analysis presented in the report above
16 demonstrate that there are significant differences in the rhythmic durations of the
17 bass part pitch sequences Dr. Stewart places in issue. These differences in the
18 rhythmic durations, and the commonplace status of the pitch sequence similarity in
19 the bass parts in “Take a Dive” and “I Gotta Feeling” are not discussed in Dr.
20 Stewart’s report. Dr. Stewart’s only analysis of the rhythmic durations in the bass
21 parts--“the rhythms are somewhat different”--falls far short to support his claims.

22 84. Dr. Stewart’s final finding in paragraph 5(d) is as follows:

23 “But, most important, *all* of the bass pitches heard in the eight-measure cycle
24 in “Feeling” can be found in the same position of the cycle somewhere in
25 “Dive.”

26
27 However, the sequences of bass *pitches* in the entire “8-bar cycle” in “I Gotta
28 Feeling” is not found anywhere in “Take a Dive.” Furthermore, the rhythmic

1 durations in the “8-bar cycles” in the bass parts in “I Gotta Feeling” and “Take a
2 Dive” are significantly different throughout the entirety of both compositions. In
3 fact, the differences between the bass parts in “I Gotta Feeling” and “Take a Dive”
4 far outweigh the commonplace similarity in pitch sequence.

5 85. In paragraph 5(e), Dr. Stewart opines: “The harmony used in both
6 songs is substantially similar due to the many common notes in the main theme and
7 the bass part.” First, Dr. Stewart’s “main theme” (i.e., what Dr. Stewart also calls
8 the “twangy guitar figuration”) in the “derivative version” of “Take a Dive,” is not
9 in the original version of “Take a Dive” and therefore is not relevant to the instant
10 report. Second, Dr. Stewart fails to present any transcription or chart of the
11 harmonic progressions, as is customary in an expert musicological analysis. Third,
12 with respect to “the bass part,” Dr. Stewart’s analysis of the *pitches* established
13 many differences as well as similarities. Dr. Stewart’s discussion of the purported
14 similarities and differences in the use of an F-natural in “Take a Dive” and “I Gotta
15 Feeling” is irrelevant: both compositions are in G Mixolydian and therefore scale
16 degree 7 is an “F-natural.” Thus, this purported similarity is merely a function of
17 the “F-natural” being part of the musical scale used in both compositions. This
18 represents a commonplace musical building block common to any composition set
19 in G Mixolydian. Moreover, Dr. Stewart fails to present any musical transcription
20 of any musical expression that includes an “F-natural” in either composition. (He
21 merely lists a single “F” in the bass pattern in “Take a Dive” in his charts on page 5
22 of his report.) In my opinion, Dr. Stewart fails to present any musicological support
23 for his finding that the harmony in “Take a Dive” and “I Gotta Feeling” is
24 substantially similar.

25 86. In paragraph 5(f), Dr. Stewart opines: “Take a Dive” and “I Gotta
26 Feeling” “...contain many of the same sounds, electronic effects, musical devices,
27 and other details.” However, Dr. Stewart fails to explain what similarities in
28

1 “sounds” and “electronic effects” he refers to, or name and provide any analysis of
2 the “musical devices, and other details” to which he refers.

3 87. Paragraph 6 on page 6 of Dr. Stewart’s report is directed at the “twangy
4 guitar passage” which is not in the original version of “Take a Dive” and not
5 relevant to the instant report.

6

7 **ANALYSIS OF THE BASS DRUM PATTERN IN THE DERIVATIVE**
8 **VERSION OF “TAKE A DIVE”**

9

10 88. I have been asked to respond to a written statement by Plaintiff Bryan
11 Pringle regarding the bass drum (also termed “kick drum”) pattern in the “derivative
12 version” of “Take a Dive.” I reviewed what I understand are a series of emails
13 between Plaintiff Bryan Pringle and Mr. Chad Becker of the U.S. Copyright Office.
14 In an email dated 1/20/2010 to Mr. Becker, Mr. Pringle writes about the differences
15 between the 1998 Deposit Copy (original version) of “Take a Dive” and the
16 “derivative version.” In addition to the added “guitar twang sequence,” Mr. Pringle
17 writes:

18

19 “The bass drum placement adds an additional (2) bass drum beats per
20 measure (for a total of 4 bass drum hits per measure, in a 4/4 “dance-club”
21 style time, instead of just (2) beats per measure).”

22

23 89. However, the “4 bass drum hits per measure” pattern in the “derivative
24 version” of “Take a Dive” already existed in the 1998 Deposit Copy of “Take a
25 Dive.” In the Deposit Copy, this same bass drum pattern commences at
26 approximately 21 seconds (0:21) into the sound recording, and continues for more
27 than 1 minute until approximately 1:27. This portion of the 1998 Deposit Copy of
28 “Take a Dive” constitutes the latter part of the Introduction and the entire Verse 1

28

1 sections. The same “4 bass drum hits per measure” pattern referenced in Mr.
2 Pringle’s email to the U.S. Copyright Office commences at approximately 0:24 into
3 the “derivative version” of “Take a Dive” and continues thereafter.¹⁹

4 90. Therefore, the bass drum pattern referenced in Mr. Pringle’s email to
5 the U.S. Copyright does not reflect new expression in the “derivative version” in
6 “Take a Dive.” Rather, this bass drum pattern is simply used in more sections of the
7 “derivative version” as compared with its use in the Deposit Copy of “Take a Dive.”

8 CONCLUSIONS

9
10 91. On the basis of my musicological analysis, it is my opinion that any
11 similarities that exist between “Take a Dive” and “I Gotta Feeling” (1) represent
12 expression that is commonplace and not unique to “Take a Dive,” (2) do not support
13 a claim that the creators of “I Gotta Feeling” copied any musical or lyrical
14 expression from “Take a Dive,” and (3) do not support a finding of substantial
15 similarity or striking similarity between “I Gotta Feeling” and “Take a Dive.”

16 92. Excluding the “twangy guitar figuration,” which is not included in the
17 original version of “Take a Dive” that I have been asked to analyze, Mr. Byrnes and
18 Dr. Stewart find substantial similarities and/or striking similarities based solely on
19 (1) musical building blocks and commonplace practices, (2) harmonic progressions
20 that have many significant differences, and (3) bass parts in which there are
21 significant differences in sequences of pitches and significant differences in
22 rhythmic durations.

23

24

25

26 ¹⁹ The “4 bass drum hits per measure” pattern referenced by Mr. Pringle includes an
27 eighth in the second half of beat 4 and a sixteenth immediately before beat 4 in
28 some bars in both the 1998 Deposit Copy of “Take a Dive” and the “derivative
version” of “Take a Dive.”

1 93. The similarities in musical building blocks and commonplace practices
2 cited by Mr. Byrnes and Dr. Stewart are used differently in “Take a Dive” and “I
3 Gotta Feeling.”

4 94. When one strips away the insignificant similarities in musical building
5 blocks and commonplace practices in “Take a Dive” and “I Gotta Feeling,” all that
6 is left is sequences of pitches that are not the same. Moreover, when one strips
7 away the different pitches in the pitch sequences, the similarity that is left is
8 minimal and commonplace.

9 95. A bass method book, published transcriptions of bass parts in three
10 compositions, and the bass in “Dancing With Myself” demonstrate the
11 commonplace status of the similarities presented by Mr. Byrnes and/or Dr. Stewart.

12 96. Any similarities between “Take a Dive” and “I Gotta Feeling” are
13 heard within a context of significant differences that far exceed the minimal and
14 commonplace similarity between them.

15 97. On the basis of my musicological analyses and review of the reports of
16 Mr. Byrnes and Dr. Stewart, it is my opinion that “Take a Dive” and “I Gotta
17 Feeling” do not share any significant structural, harmonic, rhythmic, melodic, or
18 lyrical similarities, individually or in the aggregate. Furthermore, there are no
19 musicological grounds to support a claim that “Take a Dive” and “I Gotta Feeling”
20 are either substantially similar or strikingly similar.

21 I declare under penalty of perjury under the laws of the United States of
22 America that the foregoing is true and correct. Executed this 14th day of November,
23 2011 in Short Hills, New Jersey.

24

25

26 By: Lawrence Ferrara, Ph.D.

27 For: Lawrence Ferrara, Inc.

28

