

1 Dean A. Dickie (appearing *Pro Hac Vice*)
 Dickie@MillerCanfield.com
 2 Kathleen E. Koppenhoefer (appearing *Pro Hac Vice*)
 Koppenhoefer@MillerCanfield.com
 3 MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.
 225 West Washington Street, Suite 2600
 4 Chicago, IL 60606
 Telephone: 312.460.4200
 5 Facsimile: 312.460.4288

6 George L. Hampton IV (State Bar No. 144433)
 ghampton@hamptonholley.com
 7 Colin C. Holley (State Bar No. 191999)
 cholley@hamptonholley.com
 8 HAMPTONHOLLEY LLP
 2101 East Coast Highway, Suite 260
 9 Corona del Mar, California 92625
 Telephone: 949.718.4550
 10 Facsimile: 949.718.4580

11 Attorneys for Plaintiff
 BRYAN PRINGLE

13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA
 15 SOUTHERN DIVISION

16 BRYAN PRINGLE, an individual,

17 Plaintiff,

18 v.

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

22 Defendants.

Case No. SACV 10-1656 JST(RZx)

**DECLARATION OF ALEX NORRIS
 IN OPPOSITION TO
 DEFENDANTS' MOTION FOR
 SUMMARY JUDGMENT**

DATE: January 30, 2012

TIME: 10 a.m.

CTRM: 10A

1 I, Alex Norris, declare as follows:

2 1. I have personal knowledge of the facts set forth in this Declaration.
3 If called as a witness I could and would testify competently to the following
4 facts.

5 2. I was requested to prepare a musicological analysis of four different
6 tracks encompassing "Take A Dive" (two versions) by Bryan Pringle and "I
7 Gotta Feeling" (two versions) by the Black Eyed Peas. The reason for this
8 analysis was to ascertain the similarities, if any, between two versions of "I
9 Gotta Feeling" and two versions of "Take A Dive." With this analysis, I was
10 asked to examine the following criteria: (a) whether there are any striking or
11 significant similarities between these four tracks; (b) whether these similarities
12 coincide with elements of the songs that are protectable or non-protectable; (c)
13 whether the similarities in the protectable elements are strong enough in
14 importance or volume to demonstrate that copying of "Take A Dive" had
15 occurred as to "I Gotta Feeling" or whether the similarities could have been
16 coincidental, and (d) if there are similarities in the non-protectable elements that
17 support evidence of copying.

18 3. In my analysis, I compared recordings from the internet, from tracks
19 I listened to and reviewed, and my own transcriptions of sections of all four
20 works that are relevant.

21 4. My analysis is in line with what I understand to be an allowed
22 format for claiming substantial similarity employed by the court, and should be
23 read and understood as meeting those declarations.

24 5. Based on my review and analysis, it is my professional opinion that
25 Track #1 ("Take A Dive"), and Tracks #3 and #4 ("I Gotta Feeling"), are
26 substantially similar, if not identical. The similarities in both songs are
27 significant enough in volume, content, and peculiarity that the Black Eyed Peas
28

1 could not have written “I Gotta Feeling” without first having listened to and
2 then copied a certain portion of “Take A Dive.” Accordingly, I also believe that
3 these similarities could not have been coincidental.

4 6. Originally, I viewed internet links via YouTube to two songs. One
5 link was to Bryan Pringle’s “Take A Dive” recorded in 1999 and the other was
6 to the Black Eyed Peas “I Gotta Feeling.” Afterwards, I listened to and reviewed
7 a CD recording that contained a remix of the song “I Gotta Feeling” without the
8 lyrics. Additionally, I heard a CD entitled “Deadbeat Club” from 1998, which
9 contains 18 of Bryan Pringle’s songs, including a version of “Take A Dive” with
10 lyrics, but without a critical guitar hook that I had heard before in a previous
11 version. After reviewing both the version of “Take A Dive” that I heard on
12 YouTube and the version of “Take A Dive” I heard from the CD entitled
13 “Deadbeat Club,” I have determined that the version of “Take A Dive” that I
14 first heard on YouTube which was recorded in 1999 is an obvious derivative
15 version of this version that I heard on “Deadbeat Club,” which was recorded in
16 1998. The exact same ambient sounds at the beginning of both versions, the
17 identical keyboard motifs at :09 seconds, the identical bass parts, the identical
18 chord progression, the identical sonic sweeps at similar points in time of both
19 tracks, the identical changes in the bass parts at similar points in each track, the
20 identical key, the identical tempo, and the identical timbre’s with regard to all of
21 the aforementioned similarities indicate to me that these two tracks are the same
22 song. The difference is that the derivative version contained no lyrics, contained
23 a central guitar hook, and contained a drum beat with a bass drum pattern of
24 four quarter-notes per measure (one on each beat in 4/4 time), which contributed
25 to a contemporary Dance/Pop feel. The bass drum pattern, which may seem
26 incidental, is a peculiarity in this case because the four quarter notes per
27 measure of the derivative version of “Take A Dive” bring the underlying
28 rhythmic feel of “Take A Dive” closer to the underlying rhythmic feel of “I

1 Gotta Feeling.”

2 7. In this Declaration, I will be presenting analyses on four (4)
3 different submissions, and specify each of the four tracks that are in question.
4 Track #1 will be the derivative version of “Take A Dive” that I listened to on
5 YouTube; Track #2 will be the original version of “Take A Dive” that I listened
6 on the CD entitled “Deadbeat Club”; Track #3 will be the final version of “I
7 Gotta Feeling” in its completed stage (the stage that is well known to the
8 public); and finally, Track #4 will be the version of “I Gotta Feeling” via CD
9 that consists of an unfinished mix of the song with no lyrics. True and correct
10 copies of Tracks #1, 2, 3 and 4 are appended to this Declaration as Exhibits 1, 2,
11 3, and 4 respectively. My analysis was originally contained within my
12 November 28 Expert Report, a true and correct copy of which is attached to this
13 Declaration as Exhibit 5.

14 8. Dr. Lawrence Ferrara of New York University has written a
15 musicological comparison of the same songs. I was asked to review this report,
16 and I have responded to part of Dr. Ferrara’s report.

17 9. After careful review, I have made the conclusion that Tracks #1 and
18 Tracks #3 and #4 share significant similarities in both protectable elements and
19 the manner in which non-protectable elements surround the protectable. As will
20 be seen in my analysis below, while some of these elements, by themselves,
21 may be considered incidental, when taken into view alongside the protectable
22 elements, they demonstrate copying of parts of Track #1 in Tracks #3 and #4
23 that cannot be the result of coincidence. Throughout this Declaration, care will
24 be taken to distinguish protectable elements from non-protectable elements.
25 Although there are some dissimilarities between these two songs, these
26 dissimilarities do not detract from my conclusion that these two songs contain
27 substantial similarities, and these similarities are a result of copying rather than
28 coincidence.

1 10. My conclusions and opinions are based on my opinion that Track #1
2 and Track #3 and #4 are substantially, if not strikingly, similar with regard to the
3 following protectable element, which is a major consideration. Both songs
4 contain an identical instrumental hook. In Western Pop Music, the Hook is
5 considered one of the most critical elements of a song, as it commands the
6 listener's attention, and gives the listener a concrete element that is memorable,
7 thus giving the song its musical "fingerprint"; meaning, the element that
8 distinguished this song from other songs. In this case, the instrumental hook is
9 the eight-measure long guitar part¹ in Track #1 ("Take A Dive") that, I believe,
10 the Black Eyed Peas copied and used as a hook in Tracks #3 and #4 ("I Gotta
11 Feeling").

12 11. Alongside the similarities with the protectable elements of all four
13 tracks, there are similarities of non-protectable elements shared by all tracks.
14 While these similarities by themselves are not protectable, when taken into the
15 context of each song with regard to the protectable elements and in the context
16 of other similarities (i.e. tempo, key, modality, length, etc.), it appears to be very
17 unlikely, if not impossible, that the similarities of "Take A Dive" (Tracks #1 and
18 #2) and "I Gotta Feeling" (Tracks #3 and #4) are incidental or coincidental.

19 12. The following similarities in non-protectable elements support my
20 conclusion that Tracks #3 and #4 ("I Gotta Feeling") were copied from Track #1
21 ("Take A Dive"):

- 22 a. Both songs contain a nearly identical tempo between 128-130 beats per
23 minute;
- 24 b. Both songs have G Mixolydian as a key center;

26 ¹ As I understand, the guitar part is referred to as the "twangy guitar configuration"
27 in other reports concerning this case. I refer to it as the guitar hook because I
28 conclude that this guitar figure is, in fact, a hook as it applies to the content of each
track and the hook is a crucial element of Western Pop Music.

- 1 c. Both songs are based on a formal structure of eight measures (the same
2 length as the hook of the song) that repeats throughout the entire song.
3 In “Take a Dive,” the bass notes change around 2:30, change back to
4 the original part at 2:59, then change back to the same part as 2:30
5 around 3:44, but the other surrounding parts remain unchanged;
- 6 d. Although the composer of “I Gotta Feeling” alters the root from “Take
7 A Dive” in measures 3-6, those measures still maintain a shared
8 modality of G Mixolydian, which is further enforced later in the song
9 when one of the Black Eyed Peas’ Female Vocalists sings a melodic
10 line (a secondary theme, in this case) which contains the note F natural;
- 11 e. Track #1 (“Take A Dive”) contains a similar drum beat pattern to both
12 Tracks #3 and #4 (“I Gotta Feeling”) at key moments of each
13 respective song.

14 **B. QUALIFICATIONS**

15 13. I have made my living as a performer/composer/arranger and educator
16 in music since 1993. Before then, I was a music student and made my living
17 primarily in music. I have a Bachelor’s Degree in Music Education from the
18 Peabody Institute of the Johns Hopkins University, I have a Master’s Degree in
19 Jazz/Commercial Music from the Manhattan School of Music and I have a Doctor
20 of Musical Arts Degree in Studio Music and Jazz from the University of Miami
21 Frost School of Music. I have taught on the music faculties of Towson University,
22 City College of New York, The University of Miami, and now currently at the
23 Peabody Institute of the Johns Hopkins University. I have made musical
24 arrangements for many artists such as Vocalist Betty Carter, Arturo O’Farril’s Latin
25 Jazz Orchestra, The Glenn Miller Orchestra, Philip Bailey of Earth, Wind and Fire,
26 have made dozens of transcriptions of Jazz tunes, Latin tunes, and Pop tunes for
27 commercial bands in the New York Area, and have a career that spans over twenty
28

1 years as a performer in Jazz, Latin, Rock, and R &B idioms which includes live and
2 studio performance.

3 As a performer, in addition to my Jazz work, I have toured and recorded with
4 the UK based R&B group Incognito, Rock and Roll legend Steve Winwood, Gloria
5 Estefan and Miami Sound Machine, Hip-Hop artist US3, Pop music legend Paul
6 Anka, Latin Pop sensation Jon Secada; and Alligator Records recording artist J.J.
7 Grey and Mofro, for whom I also did arranging and music preparation. Furthermore,
8 since 2003, I have worked as a composer for Selectracks, Inc.; a music licensing
9 company which assigns to me a wide variety of composing, arranging, and
10 transcription assignments in many different musical idioms, including 40's style big
11 band, Latin ensembles of various combinations, Pop groups recalling sounds of the
12 1960's and 1970's, 1950's era small group Jazz, and Contemporary Pop. My
13 attached CV gives complete details of my music career up to this point.

14
15 14. My musical education, my professional musical experience, and my
16 perception of musical detail is extremely high, and this qualifies me to make
17 professional musical comparisons in this arena.

18 15. I have not testified as an expert at trial or by deposition in any matter
19 during the previous four years.

20 **C. METHODOLOGY**

21 16. The system I use for analyzing music is as follows: I listen repeatedly
22 to that piece of music², determine certain criteria, and I decide what would be the
23 best method for demonstrating my analysis with that particular piece. The elements
24 that I consider noteworthy are tempo, key or modality, form, harmony, melody,
25 orchestration, timbre, arrangement, genre, and the related characteristics within a
26 genre. If I am in a situation where I need to analyze and/or compare several pieces

27 ² Can be considered a track, a song, or a large scale piece of music, such as a symphonic work or
28 any kind of multi-movement work.

1 of music, I first isolate each individual piece of music before drawing comparisons.

2 Where applicable, I have analyzed each track and made clear by way of text.

3 For the purpose of comparing form, I have listed the formal structure of each track
4 with regards to orchestration changes, use of motifs, and manipulation of form, by
5 way of time code. To analyze other aspects of these four tracks, I have transcribed
6 certain passages that I feel are pertinent to this comparison, and have put into
7 Western musical notation those relevant portions for the purpose of comparing
8 rhythm, harmony, melody, and if applicable, form and orchestration. Aspects of
9 tone, timbre, articulation, texture, and arrangement are also considered.

10
11 17. My analysis and comparison is grouped into the following categories:
12 (1) general musical characteristics; (2) comparison of protectable elements; and (3)
13 comparison of nonprotectable elements.

14 18. While building my analysis, I also consider the following elements of
15 music and how they will figure into this demonstration:

- 16 a. rhythm- occurrence of sounds that can be related to a definite
17 pulse
- 18 b. harmony- notes, or sounds of definite pitch, resounding together
- 19 c. melody- notes, sounds of definite pitch, occurring in succession
- 20 d. thematic or motivic material
- 21 e. tone and timbre- quality of sound or sounds
- 22 f. dynamics- loudness and softness
- 23 g. articulation- the quality and length of both the attack and the
24 decay of a note or set of notes
- 25 h. lyrical content.

26 **General Musical Characteristics**

27 19. All four tracks require a comparison of general musical characteristics.
28 These elements by themselves are incidental. However, when combined, they

1 contribute greatly to a sonic gravity that enhances similarities perceived by the
2 listener.

3 **a. Tempo**

4 20. All four tracks are performed at a medium tempo and they are similar,
5 but not exact.

6 Tracks #1 and #2 = 130 Beats per minute

7 Tracks #3 and #4 = 128 Beats per minute

8 **b. Genre**

9 21. Tracks #1 and #2 and Tracks #3 and #4 contain many similarities.
10 However, the exact genre for Tracks #1 and #2 is slightly ambiguous. Whereas the
11 tempo, key, modality, and orchestration suggest a Dance/Pop style, the sweeping
12 textural sounds that occur in the beginning before tempo is established (at :09
13 seconds) and at 8 and 16 bar intervals once tempo is established suggest that Track
14 #1 could fall in the category of ambient sounds, or even a soundtrack for film or
15 television. Track #2 is within the Dance/club music idiom, but the lyrical content of
16 this Track could place it in a sub-category of the Dance/club music genre. Track #3,
17 “I Gotta Feeling,” is most definitely a Dance/Pop song. The lyrics, which depict
18 people having fun, in conjunction with the driving, pulsating rhythms, excessive use
19 of repetition, and the use of the Mixolydian mode which is common in Rock, R&B,
20 and Pop idioms, and the digital electronic sounds point towards that style and genre
21 more than any other genre. Track #4 contains all of the sonic elements in Track #3
22 minus the lyrics, but the musical content is still within the Dance/Pop realm.

23 22. Lyrical content will be used as a point of argument in this testimony,
24 but only as it applies to Tracks #2 and #3, since Tracks #1 and #4 contain no lyrics.

25 **c. Length**

26 23. Tracks #1-#3 contain a similar length. However, they are not exact.
27 Track #4 is significantly longer than the other 3 tracks:
28

24. The length of Track #1 is 4:40; the length of Track #2 is 4:38; the length of Track #3 is 4:52; and the length of Track #4 is 5:52.

d. Orchestration

25. Track #1 makes use of electric guitar, synthesizer keyboards of various kinds, synthesizer bass, and electronic drums possibly pre-programmed. Track #2 uses the same instrumentation, with the subtraction of electric guitar, and the addition of a singular Male Vocalist. Track #3 makes use of electric guitar, synthesizer keyboards of various kinds, synthesizer bass, electronic drums possibly pre-programmed, and solo vocalists and vocal groups with electronic enhancement (autotune, to be specific). Track #4 uses the same instrumentation with the subtraction of vocals.

e. Form

26. The form in each song is slightly different. I constructed a guide indicating the form of each song as I perceive them. Since the harmonic structure of each track never changes, I use points of orchestration and lyrical content to indicate the form.

Track #1- Take A Dive

00:00-00:08- Ambient sounds surrounding tonal center of A Minor
00:10 - Keyboard riff suggests key of G Major or Mixolydian
00:17 - Guitar Hook in conjunction with synthesizer bass part confirms key of G Mixolydian by the 3rd measure
00:47 - First sonic sweep
01:02 - Second sonic sweep- add more layers or sound
01:32 - Add full drum beat
01:48 - More subdued sonic envelope
02:02 - Third Sonic Sweep
02:15 - Fourth Sonic Sweep
02:30 - Notes of the bass part change, but other surrounding parts remain unchanged
02:32 - Fifth Sonic Sweep
02:47 - Re-emergence of Guitar Hook as being prominent in the mix
02:59 - Original bass notes
03:16 - Sixth Sonic Sweep
03:44 - Bass notes from 2:30 return, with minor alteration
04:14 - Beginning of long fade until the end of the song

Track #2- Take A Dive

00:00-00:08- Ambient sounds surrounding tonal center of A Minor
00:10 - Keyboard riff suggests key of G Major or Mixolydian
00:17 - Synthesizer bass part confirms key of G Mixolydian by the 3rd measure
00:28 - Vocals introduced/First verse
00:44 - First sonic sweep
00:59 - Refrain/ second sonic sweep
01:12 - Second sonic sweep-
01:32 - Add full drum beat (different than Track #1)/ Second verse/third sonic sweep
01:57 - 2nd Refrain/fourth sonic sweep
02:13 - Fifth sonic sweep
02:28 - New bass notes, surrounding parts remain unchanged
02:32 - Various iterations of “Maybe It’s All My Fault...” occur from here until the end of the track
02:55 - Electronic bass drum riff
02:57 - Sixth sonic sweep; original bass part
03:13 - Seventh Sonic Sweep
03:28 - Eighth Sonic Sweep
03:41 - Bass part from 2:30 returns, with minor alteration
03:56 - Beginning of long fade until the end of the song

Track #3- I Gotta Feeling

00:00 -Guitar Hook (identical to Track #1) in conjunction with synthesizer bass
00:16 -Synthesizer countermelody
00:29 -Introduction of Male vocalist and Vocal Hook and single line guitar part (not hook); bass drops out
01:00 -Drum kit sans bass drum introduced, electric bass part introduced, also counter vocal line
01:30 -Spoken Vocal Chant 1, several voices; bass drum quarter notes introduced; second counter-line
01:46 -Introduction of Female vocalist 1
02:01 -Spoken Vocal Chant 2
02:16 -Male vocalist repeated figure
02:30 -Reintroduction of Vocal Hook with Guitar Hook and original bass part; drums drop out
03:01 -Reintroduction of Spoken Vocal Chant 1& 2 (with vocal interjections between each iteration); third counter-line introduced (arpeggios)
03:31 -Reintroduction of Male vocalist repeated figure from 2:16 (with spoken vocal interjections)
03:46 -Spoken Vocal Chant 3

04:01 - Sung Vocal Chant (lists the days of the week starting with "Monday...")
 04:17 - Third iteration of Vocal Hook with backing track from 01:00
 04:47 - Sustained bass note "G" with final iteration of counter vocal line

Track #4- I Gotta Feeling

00:00-00:29- Drum beat; bass drum quarter notes
 00:30 - Single line guitar part (not Hook)
 01:00 - Guitar Hook introduced, drums drop out
 01:15 - Drums come back in sans bass drum; bass part introduced
 02:15 - Synth counter line, Guitar Hook drops out; return of bass drum in drum part
 02:45 - Synth bass plays roots of chords on off-beats
 03:15 - Reintroduction of Guitar Hook with sustained synth bass part; drums drop out
 03:30 - Second synth "string" counter line
 03:46 - Third counter line introduced (arpeggios)
 04:00 - Synth string counter line from 03:30 double
 04:17 - Bass part from 1:15 re-introduced
 04:45 - Full drum part reintroduced
 05:18 - Arpeggiated synth part drops out
 05:45 - All remaining parts drop out except for synth bass and counter melody

D. COMPARISON OF PROTECTABLE ELEMENTS

Hook

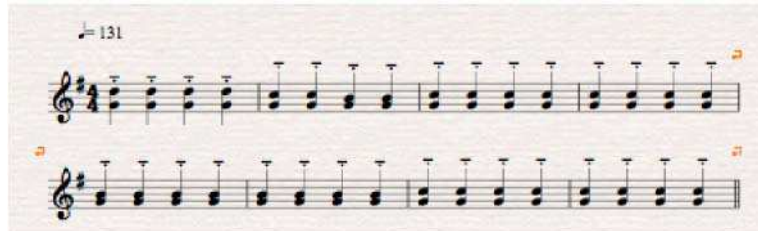
27. As noted earlier, the most striking similarity between these tracks is the Guitar Hook in Tracks #1, #3 and #4. There is no Guitar Hook in Track #2.
 Example (a) - Guitar Hook from Track #1 "Take A Dive"



Example (b) - Guitar Hook from Track #3 "I Gotta Feeling"



Example (c) - Guitar Hook from Track #4



28. The following is a list of specific qualities that establish the Hook in Track #1 as being identical to Tracks #3 and #4:

- a. All three hooks have the exact same sequence of rhythms
- b. All three hooks contain the exact same notes in the same sequence
- c. All three hooks are the exact same length before they are repeated
- d. All three hooks are articulated the same way
- e. All three hooks contain a nearly identical timbre, or tone quality
- f. All three hooks are in the exact same key
- g. All three hooks are in nearly identical tempo; only 2 beats per minute of a difference
- h. All three hooks are placed within the overall mix of each track in a point of prominence

E. COMPARISON OF NON-PROTECTABLE ELEMENTS

Shared Modality

29. The Guitar Hooks in Track #1, Track #3 and Track #4 are identical, as

1 stated earlier. However, the notes that occur in the bass voice of any song dictate
2 the underlying harmony. The following examples demonstrate how the underlying
3 harmony is different in each song:

4 Example (a) - "Track #1 "Take A Dive"

5 **Take A Dive- Guitar Hook and bass part together**

6 Electric Guitar

7 Synth Bass

8 E. Gtr.

9 Synth Bass

10
11
12 30. I indicated the chord symbols, as to indicate what the underlying or
13 implied harmony is at each harmonic change.

14 Example (b) - "I Gotta Feeling" Tracks #3 and #4

15 **I Gotta Feeling- Guitar and Bass Together**

16 Electric Guitar

17 synth bass

18 E. Gtr.

19 synth bass

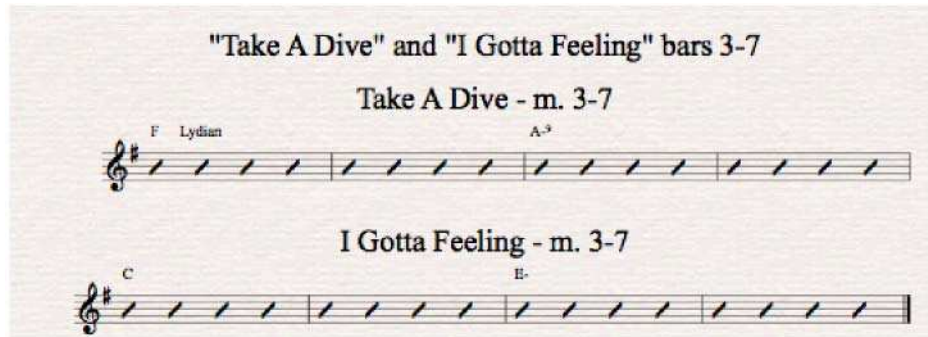
20

21 31. In both cases, bars 1-2 are in G Major (we will discover later that we
22 are more specifically in the key of G Mixolydian, but without any occurrence of the
23 note F natural, no indication of G Mixolydian is present at that specific moment and
24 so G Major is assumed) and bars 7-8 are in C major. In "Take A Dive," bars 3-4 are
25 in F Lydian; in "I Gotta Feeling," bars 3-4 are in C Major. In "Take A Dive," bars 5-
26 6 are in A minor; in "I Gotta Feeling," bars 5-6 are in E minor.

27 32. The harmonic differences between both songs occur in bars 3-7, and
28

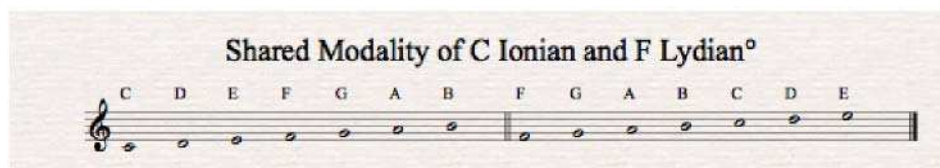
can be broken down as follows:

33. Example (c) - Bars 3-7 of Tracks #1 and #2 (“Take A Dive”) and Bars 3-7 of Tracks #3 and #4 (“I Gotta Feeling”)



34. Every chord has at least one scale that corresponds with itself. In the case of F Lydian (bars 3-4 in “Take A Dive”), it is the Lydian mode in the Key of F. The notes of that scale are F,G,A,B,C,D and E. In the case of C Major (bars 3-4 in “I Gotta Feeling”), it is the scale of C Major, or the mode of C Ionian (the exact same thing). The notes of that scale are C,D,E,F,G,A and B. The notes of F Lydian and C Ionian are identical.

Example (d) - Common tones between C Ionian and F Lydian



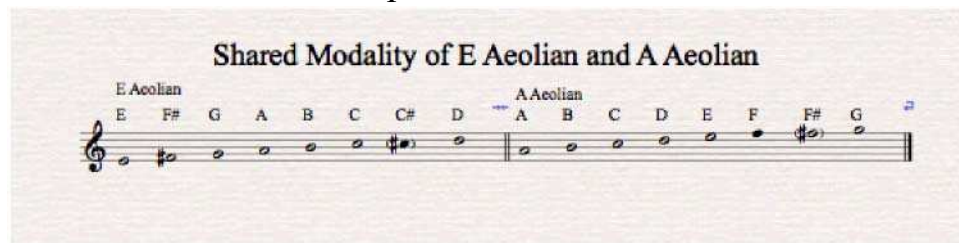
35. In the case of A minor 9th (bars 5-6 of “Take A Dive”) and E minor (bars 5-6 of “I Gotta Feeling”), they each have a couple of choices for the scale that is most closely related to its parent chord. In the case of A minor 9th, the notes A,B,C,D,E and G are definite, 1st, 2nd, 3rd, 4th, 5th and 7th scale degrees, respectively. With regards to the 6th scale degree, either F or F# could be perceived as an ideal 6th scale degree, thus making the most closely related scale either A Aeolian (with the F natural) or A Dorian (with the F#). In the case of such a discrepancy, I look to the Key of the song to decide; and in this case with the song

being in G Mixolydian, the scale with the F natural is the best choice- A Aeolian.

36. The closest related scale to E minor is a little more challenging to determine. The best choices for this chord are either E Aeolian (E,F#,G,A,B,C,D) or E Dorian (E,F#,G,A,B,C#,D). Neither F# nor C# are in the home key of G Mixolydian. The only other choice would be E Phrygian (E, F, G, A, B, C, D). So, in the case of the E minor chord, the closest related scale choice is E Phrygian; this is an unusual choice, but the home key dictates this unusual choice.

37. One could argue that the closest related scale choice could be either E Aeolian or E Dorian. Even when that is taken into account, they still share the notes E,G,A,B and D which are a part of A minor 9th, the chord that “Take A Dive” uses in bars 5-6. The following example illustrates the shared modality that exists in bars 5-6 of Tracks #1 and #2 and Tracks #3 and #4. The notes in White indicate shared common tones while the notes in Black indicate tones that are not in common between the two modes:

38. Example (e) - Common tones between E Aeolian and A Aeolian with Dorian modes considered with parenthetical indication



39. Throughout the entire eight-measure sequence, which makes up the harmonic structure of both songs in their entirety, these two songs share very strongly the modality of G Mixolydian, even when they have different underlying chords. Although this is a non-protectable musical element, this supports the perception of similarity in both songs, especially considering the facts that they both occupy the root note of G as a tonal center, and are nearly identical in tempo (also non-protectable elements). Additionally, I further conclude that these similarities

1 highlight the very striking similarity in the guitar hook as indicated earlier, which is
2 a protectable element, and that it is highly unlikely that this is coincidental.

3 **Tone/Timbre**

4
5 40. The main element in scrutiny is the Guitar Hook. With the degree of
6 accuracy that the sounds of certain instruments can be duplicated through the
7 “sampling” process in modern day musical technology, it is nearly impossible to
8 determine if the hook in either Track #1, Track #3 or Track #4 was performed on
9 electric guitar or an electronic sample. The range of sonic possibilities on the
10 electric guitar, even with minimal effects, is remarkable. When one considers the
11 guitar sounds made by a traditional Jazz guitarist, such as Wes Montgomery or
12 Charlie Christian, and compare that to the sounds of a Hard Rock guitarist, such as
13 Jimi Hendrix or Eddie Van Halen, that alone indicates the wide range of timbral
14 possibilities on that instrument.

15 41. Whether it was sampled or not, I find it very peculiar that the Guitar
16 Hook in “I Gotta Feeling” bears a striking similarity to the Guitar Hook in “Take A
17 Dive” in, besides all the other aforementioned criteria, in timbre, also. This is
18 especially peculiar when considering the enormous range of timbral possibilities on
19 the electric guitar.

20 **F. REVIEW OF DR. FERRARA’S DECLARATION**

21 42. Dr. Ferrara made a musicological comparison in his submission #172
22 entitled Declaration of Lawrence Ferrara, Ph.D. In my review, I came across some
23 points with which I disagree.
24
25
26
27
28

1 43. In paragraph #5 of that declaration, Dr. Ferrara states .”..I found that
2 the derivative version of “Take A Dive”³ is identical to the original version⁴ that I
3 have analyzed, except that the derivative version omits the vocals and includes a
4 “twangy guitar figuration.” One non-protectable element that Dr. Ferrara neglects to
5 point out is that the drum pattern is different from Track #1 to Track #2. The drum
6 pattern in Track #1 contains a bass drum playing four quarter-notes per measure,
7 and the drum pattern on Track #2 contains a bass drum playing on beats 1 and 3.
8 This is an important point because the bass drum pattern of Track #1 creates a
9 rhythmic feel that is much more similar to Tracks #3 and #4 than Track #2 is, which
10 highlights the similarities of Track #1 to Tracks #3 and #4.

11 44. In paragraph #9 of the same document, Dr. Ferrara offers a structural
12 analysis that indicated lyrical form rather than orchestration and/or motivic usage,
13 which is valid. However, his analysis omits the usage of the Guitar Hook, which is
14 crucial to the sonic identity of Track #1 and Tracks #3 and #4.

15 45. In paragraph #12 of the same document, Dr. Ferrara states that the
16 harmony contains “more differences than similarities” and further states that “what
17 is different is commonplace.” I refer back to my own assertion from this document,
18 article #23. First of all, two chords are exactly the same; bars 1-2 (G major) and 7-8
19 (C major) of all four tracks. Secondly, I maintain that bars 3-6 of all tracks have a
20 shared modality which contributes to the similarities between Tracks #1 and #2
21 (“Take A Dive”) and Tracks #3 and #4 (“I Gotta Feeling”).

22 46. In paragraph #16 of the same document, in the fourth bullet point, Dr.
23 Ferrara states that the F chords in bars 3 and 4 of “Take A Dive” are significantly
24 different from the C5 chords in bars 3 and 4 of “I Gotta Feeling,” then in the fifth
25

26 ³ Here, what I refer to as “Track #1,” Dr. Ferrara refers to as the derivative
27 version of “Take A Dive.”

28 ⁴ Here, what I refer to as “Track #2,” Dr. Ferrara refers to as the original
version of “Take A Dive.”

1 bullet point, he repeats the same statement except he refers to the C5 chord as C.
2 Firstly, calling the same chord two different things is confusing; secondly, that C5
3 chord cannot be considered a C5 chord entirely, because the melody sung around it
4 includes the pitches B natural (the major 7th scale degree of a C chord) and E natural
5 (the 3rd scale degree of a C chord) when in conjunction with the C5 harmonic
6 emphasis from the rhythm section, the tonality is fully established as C Major;
7 thirdly, aside from the difference in root (F in Tracks #1 and #2, C in Tracks #3 and
8 #4), those two chords share all of the scale tones in common, which contributes
9 greatly to similarity, thus making those two chords not quite “significantly
10 different.”

11 47. Dr. Ferrara writes a very lengthy report on the many aspects of the two
12 songs in question that are different. He then proceeds to cite many examples in
13 American Pop Music History that validate his claim that the similarities between the
14 two songs, Tracks #1 and #2 being “Take A Dive” (2 versions) and Tracks #3 and
15 #4 being “I Gotta Feeling” (2 versions). I don’t dispute the fact that there are a
16 number of differences between the songs. When one is given the assignment to
17 write a song that is suggestive of another song, part of that assignment is to create an
18 arrangement that masks the copied elements, so that the copy does not sound
19 obvious. Furthermore, there are some aspects of these two works that can’t be
20 protected by copyright law. However, that does not take away from the fact that
21 these two works, Track #1 (final version of “Take A Dive”) and both Tracks #3 and
22 #4 (both versions of “I Gotta Feeling”) have an identical musical hook, and it is my
23 opinion that this is a violation of intellectual property.

24 48. A vast explanation of the multitude of elements contained in Dr.
25 Ferrara’s report is unnecessary. Yes, there are many differences that don’t support a
26 similarity; however, there are some key similarities that do (key, tempo, timbre,
27 orchestration) and the Hook, referred to as either the “Guitar Twang” or the
28 “Twangy guitar figuration,” is identical, and because it is not only identical, but also

1 prominent in each of the versions in which it appears, it is important that it be
2 viewed as a violation of intellectual property.

3 **G. CONCLUSION**

4
5 49. Based on my review of all four tracks in question, I have determined
6 that Track #1 is an obvious derivative version of Track #2. Based on that same
7 review of all four tracks, I conclude that there is a striking similarity between Tracks
8 #1 and Tracks #3 and #4. In light of the striking similarities between Tracks #1 and
9 Tracks #3 and #4, it is unlikely that Tracks #3 and #4 could have been composed
10 and created independently without copying key elements of Track #1.

11 50. It is my professional opinion that the Guitar Hook used in Track #3 and
12 #4 (“I Gotta Feeling”) was copied from the Guitar Hook used in Track #1 (“Take A
13 Dive”). This is a protectable element, and the similarity is so strong that any
14 coincidence is extremely unlikely.

15 51. The key of the two songs, the shared modality of the two songs, the
16 nearly similar tempo, and the similar repeated eight-measure form that repeats
17 throughout the song are all non protectable elements. Although they are non-
18 protectable elements, they support the similarities between the two songs, and
19 further enhance my conclusion that the Guitar Hook, which is a key element of the
20 songs “Take A Dive” and “I Gotta Feeling,” was copied by the Black Eyed Peas
21 from Bryan Pringle.

22 I declare under penalty of perjury that the foregoing is true and correct.

23 Executed this 19th day of December 2011.

24
25
26 
27 Dr. Alexander Norris
28

EXHIBITS 1, 2, 3 AND 4
(AUDIO EXHIBITS)
FILED MANUALLY

EXHIBIT 5

Alexander Norris, DMA

Music Faculty

Peabody Institute of the Johns Hopkins University

Freelance Trumpeter, Composer, Arranger, Educator, and Producer

REPORT PREPARED RE: “Take A Dive” and “I Gotta Feeling”

A. INTRODUCTION

1. I was requested to prepare a musicological analysis of four different tracks encompassing “Take A Dive” (two versions) by Bryan Pringle and “I Gotta Feeling” (two versions) by the Black Eyed Peas. The reason for this analysis was to ascertain the similarities, if any, between two versions of “I Gotta Feeling” and two versions of “Take A Dive.” With this analysis, I was asked to examine the following criteria: (a) whether there are any striking or significant similarities between these four tracks; (b) whether these similarities coincide with elements of the songs that are protectable or non-protectable; (c) whether the similarities in the protectable elements are strong enough in importance or volume to demonstrate that copying of “Take A Dive” had occurred as to “I Gotta Feeling” or whether the similarities could have been coincidental, and (d) if there are similarities in the non-protectable elements that support evidence of copying.

2. In my analysis, I compared recordings from the internet, from tracks I listened to and reviewed, and my own transcriptions of sections of all four works that are relevant.

3. My analysis is in line with what I understand to be an allowed format for claiming substantial similarity employed by the court, and should be read and understood as meeting those declarations.

4. Based on my review and analysis, it is my professional opinion that Track #1 (“Take A Dive”), and Tracks #3 and #4 (“I Gotta Feeling”), are substantially similar, if not identical. The similarities in both songs are significant enough in volume, content, and peculiarity that the Black Eyed Peas could not have written “I Gotta Feeling” without first having listened to and then copied a certain portion of “Take A Dive.” Accordingly, I also believe that these similarities could not have been coincidental.

5. Originally, I viewed internet links via YouTube to two songs. One link was to Bryan Pringle's "Take A Dive" recorded in 1999 and the other was to the Black Eyed Peas "I Gotta Feeling." Afterwards, I listened to and reviewed a CD recording that contained a remix of the song "I Gotta Feeling" without the lyrics. Additionally, I heard a CD entitled "Deadbeat Club" from 1998, which contains 18 of Bryan Pringle's songs, including a version of "Take A Dive" with lyrics, but without a critical guitar hook that I had heard before in a previous version. After reviewing both the version of "Take A Dive" that I heard on YouTube and the version of "Take A Dive" I heard from the CD entitled "Deadbeat Club," I have determined that the version of "Take A Dive" that I first heard on YouTube which was recorded in 1999 is an obvious derivative version of this version that I heard on "Deadbeat Club," which was recorded in 1998. The exact same ambient sounds at the beginning of both versions, the identical keyboard motifs at :09 seconds, the identical bass parts, the identical chord progression, the identical sonic sweeps at similar points in time of both tracks, the identical changes in the bass parts at similar points in each track, the identical key, the identical tempo, and the identical timbre's with regard to all of the aforementioned similarities indicate to me that these two tracks are the same song. The difference is that the derivative version contained no lyrics, contained a central guitar hook, and contained a drum beat with a bass drum pattern of four quarter-notes per measure (one on each beat in 4/4 time), which contributed to a contemporary Dance/Pop feel. The bass drum pattern, which may seem incidental, is a peculiarity in this case because the four quarter notes per measure of the derivative version of "Take A Dive" bring the underlying rhythmic feel of "Take A Dive" closer to the underlying rhythmic feel of "I Gotta Feeling."

6. In this report, I will be presenting analyses on four (4) different submissions, and specify each of the four tracks that are in question. Track #1 will be the derivative version of "Take A Dive" that I listened to on YouTube; Track #2 will be the original version of "Take A Dive" that I listened on the CD entitled "Deadbeat Club"; Track #3 will be the final version of "I Gotta Feeling" in its completed stage (the stage that is well known to the public); and finally, Track #4 will be the version of "I Gotta Feeling" via CD that consists of an unfinished mix of the song with no lyrics.

7. Dr. Lawrence Ferrara of New York University has written a musicological comparison of the same songs. I was asked to review this report, and I have responded to part of Dr. Ferrara's report.

8. After careful review, I have made the conclusion that Tracks #1 and Tracks #3 and #4 share significant similarities in both protectable elements and the manner in which non-protectable elements surround the protectable. As will be seen in my analysis below, while some of these elements, by themselves, may be considered incidental, when taken into view alongside the protectable elements, they demonstrate copying of parts of Track #1 in Tracks #3 and #4 that cannot be the result of coincidence. Throughout this report, care will be taken to distinguish protectable elements from non-protectable elements. Although there are some dissimilarities between these two songs, these dissimilarities do not detract from my conclusion that these two songs contain substantial similarities, and these similarities are a result of copying rather than coincidence.

9. My conclusions and opinions are based on my opinion that Track #1 and Track #3 and #4 are substantially, if not strikingly, similar with regard to the following protectable element, which is a major consideration. Both songs contain an identical instrumental hook. In Western Pop Music, the Hook is considered one of the most critical elements of a song, as it commands the listener's attention, and gives the listener a concrete element that is memorable, thus giving the song its musical "fingerprint"; meaning, the element that distinguished this song from other songs. In this case, the instrumental hook is the eight-measure long guitar part¹ in Track #1 ("Take A Dive") that, I believe, the Black Eyed Peas copied and used as a hook in Tracks #3 and #4 ("I Gotta Feeling").

10. Alongside the similarities with the protectable elements of all four tracks, there are similarities of non-protectable elements shared by all tracks. While these similarities by themselves are not protectable, when taken into the context of each song with regard to the

¹ As I understand, the guitar part is referred to as the "twangy guitar configuration" in other reports concerning this case. I refer to it as the guitar hook because I conclude that this guitar figure is, in fact, a hook as it applies to the content of each track and the hook is a crucial element of Western Pop Music.

protectable elements and in the context of other similarities (i.e. tempo, key, modality, length, etc.), it appears to be very unlikely, if not impossible, that the similarities of “Take A Dive” (Tracks #1 and #2) and “I Gotta Feeling” (Tracks #3 and #4) are incidental or coincidental.

11. The following similarities in non-protectable elements support my conclusion that Tracks #3 and #4 (“I Gotta Feeling”) were copied from Track #1 (“Take A Dive”):

- a) Both songs contain a nearly identical tempo between 128-130 beats per minute;
- b) Both songs have G Mixolydian as a key center;
- c) Both songs are based on a formal structure of eight measures (the same length as the hook of the song) that repeats throughout the entire song. In “Take a Dive,” the bass notes change around 2:30, change back to the original part at 2:59, then change back to the same part as 2:30 around 3:44, but the other surrounding parts remain unchanged;
- d) Although the composer of “I Gotta Feeling” alters the root from “Take A Dive” in measures 3-6, those measures still maintain a shared modality of G Mixolydian, which is further enforced later in the song when one of the Black Eyed Peas’ Female Vocalists sings a melodic line (a secondary theme, in this case) which contains the note F natural;
- e) Track #1 (“Take A Dive”) contains a similar drum beat pattern to both Tracks #3 and #4 (“I Gotta Feeling”) at key moments of each respective song.

B. QUALIFICATIONS

12. I have made my living as a performer/composer/arranger and educator in music since 1993. Before then, I was a music student and made my living primarily in music. I have a Bachelor’s Degree in Music Education from the Peabody Institute of the Johns Hopkins University, I have a Master’s Degree in Jazz/Commercial Music from the Manhattan School of Music and I have a Doctor of Musical Arts Degree in Studio Music and Jazz from the University of Miami Frost School of Music. I have taught on the music faculties of Towson University, City College of New York, The University of Miami, and now currently at the Peabody Institute

of the Johns Hopkins University. I have made musical arrangements for many artists such as Vocalist Betty Carter, Arturo O’Farril’s Latin Jazz Orchestra, The Glenn Miller Orchestra, Philip Bailey of Earth, Wind and Fire, have made dozens of transcriptions of Jazz tunes, Latin tunes, and Pop tunes for commercial bands in the New York Area, and have a career that spans over twenty years as a performer in Jazz, Latin, Rock, and R &B idioms which includes live and studio performance.

As a performer, in addition to my Jazz work, I have toured and recorded with the UK based R&B group Incognito, Rock and Roll legend Steve Winwood, Gloria Estefan and Miami Sound Machine, Hip-Hop artist US3, Pop music legend Paul Anka, Latin Pop sensation Jon Secada; and Alligator Records recording artist J.J. Grey and Mofro, for whom I also did arranging and music preparation. Furthermore, since 2003, I have worked as a composer for Selecttracks, Inc.; a music licensing company which assigns to me a wide variety of composing, arranging, and transcription assignments in many different musical idioms, including 40’s style big band, Latin ensembles of various combinations, Pop groups recalling sounds of the 1960’s and 1970’s, 1950’s era small group Jazz, and Contemporary Pop. My attached CV gives complete details of my music career up to this point.

My musical education, my professional musical experience, and my perception of musical detail is extremely high, and this qualifies me to make professional musical comparisons in this arena.

I have not testified as an expert at trial or by deposition in any matter during the previous four years.

C. METHODOLOGY

13. The system I use for analyzing music is as follows: I listen repeatedly to that piece of music², determine certain criteria, and I decide what would be the best method for demonstrating my analysis with that particular piece. The elements that I consider noteworthy are tempo, key or modality, form, harmony, melody, orchestration, timbre, arrangement, genre,

² Can be considered a track, a song, or a large scale piece of music, such as a symphonic work or any kind of multi-movement work.

and the related characteristics within a genre. If I am in a situation where I need to analyze and/or compare several pieces of music, I first isolate each individual piece of music before drawing comparisons.

Where applicable, I have analyzed each track and made clear by way of text. For the purpose of comparing form, I have listed the formal structure of each track with regards to orchestration changes, use of motifs, and manipulation of form, by way of time code. To analyze other aspects of these four tracks, I have transcribed certain passages that I feel are pertinent to this comparison, and have put into Western musical notation those relevant portions for the purpose of comparing rhythm, harmony, melody, and if applicable, form and orchestration. Aspects of tone, timbre, articulation, texture, and arrangement are also considered.

My analysis and comparison is grouped into the following categories: (1) general musical characteristics; (2) comparison of protectable elements; and (3) comparison of non-protectable elements.

14. While building my analysis, I also consider the following elements of music and how they will figure into this demonstration:

- a) rhythm- occurrence of sounds that can be related to a definite pulse
- b) harmony- notes, or sounds of definite pitch, resounding together
- c) melody- notes, sounds of definite pitch, occurring in succession
- d) thematic or motivic material
- e) tone and timbre- quality of sound or sounds
- f) dynamics- loudness and softness
- g) articulation- the quality and length of both the attack and the decay of a note or set of notes
- h) lyrical content.

General Musical Characteristics

15. All four tracks require a comparison of general musical characteristics. These elements by themselves are incidental. However, when combined, they contribute greatly to a sonic gravity that enhances similarities perceived by the listener.

a. Tempo

16. All four tracks are performed at a medium tempo and they are similar, but not exact.

Tracks #1 and #2 = 130 Beats per minute
Tracks #3 and #4 = 128 Beats per minute

b. Genre

17. Tracks #1 and #2 and Tracks #3 and #4 contain many similarities. However, the exact genre for Tracks #1 and #2 is slightly ambiguous. Whereas the tempo, key, modality, and orchestration suggest a Dance/Pop style, the sweeping textural sounds that occur in the beginning before tempo is established (at :09 seconds) and at 8 and 16 bar intervals once tempo is established suggest that Track #1 could fall in the category of ambient sounds, or even a soundtrack for film or television. Track #2 is within the Dance/club music idiom, but the lyrical content of this Track could place it in a sub-category of the Dance/club music genre. Track #3, "I Gotta Feeling," is most definitely a Dance/Pop song. The lyrics, which depict people having fun, in conjunction with the driving, pulsating rhythms, excessive use of repetition, and the use of the Mixolydian mode which is common in Rock, R&B, and Pop idioms, and the digital electronic sounds point towards that style and genre more than any other genre. Track #4 contains all of the sonic elements in Track #3 minus the lyrics, but the musical content is still within the Dance/Pop realm.

18. Lyrical content will be used as a point of argument in this testimony, but only as it applies to Tracks #2 and #3, since Tracks #1 and #4 contain no lyrics.

c. Length

19. Tracks #1-#3 contain a similar length. However, they are not exact. Track #4 is significantly longer than the other 3 tracks:

The length of Track #1 is 4:40; the length of Track #2 is 4:38; the length of Track #3 is 4:52; and the length of Track #4 is 5:52.

d. Orchestration

20. Track #1 makes use of electric guitar, synthesizer keyboards of various kinds, synthesizer bass, and electronic drums possibly pre-programmed. Track #2 uses the same instrumentation, with the subtraction of electric guitar, and the addition of a singular Male Vocalist. Track #3 makes use of electric guitar, synthesizer keyboards of various kinds, synthesizer bass, electronic drums possibly pre-programmed, and solo vocalists and vocal groups with electronic enhancement (autotune, to be specific). Track #4 uses the same instrumentation with the subtraction of vocals.

e. Form

21. The form in each song is slightly different. I constructed a guide indicating the form of each song as I perceive them. Since the harmonic structure of each track never changes, I use points of orchestration and lyrical content to indicate the form.

Track #1- Take A Dive

00:00-00:08- Ambient sounds surrounding tonal center of A Minor
00:10 - Keyboard riff suggests key of G Major or Mixolydian
00:17 - Guitar Hook in conjunction with synthesizer bass part confirms key of G Mixolydian by the 3rd measure
00:47 - First sonic sweep
01:02 - Second sonic sweep- add more layers or sound
01:32 - Add full drum beat
01:48 - More subdued sonic envelope
02:02 - Third Sonic Sweep
02:15 - Fourth Sonic Sweep
02:30 - Notes of the bass part change, but other surrounding parts remain unchanged
02:32 - Fifth Sonic Sweep
02:47 - Re-emergence of Guitar Hook as being prominent in the mix
02:59 - Original bass notes
03:16 - Sixth Sonic Sweep
03:44 - Bass notes from 2:30 return, with minor alteration
04:14 - Beginning of long fade until the end of the song

Track #2- Take A Dive

00:00-00:08- Ambient sounds surrounding tonal center of A Minor
00:10 - Keyboard riff suggests key of G Major or Mixolydian
00:17 - Synthesizer bass part confirms key of G Mixolydian by the 3rd measure
00:28 - Vocals introduced/First verse
00:44 - First sonic sweep
00:59 - Refrain/ second sonic sweep
01:12 - Second sonic sweep-
01:32 - Add full drum beat (different than Track #1)/ Second verse/third sonic sweep
01:57 - 2nd Refrain/fourth sonic sweep
02:13 - Fifth sonic sweep
02:28 - New bass notes, surrounding parts remain unchanged
02:32 - Various iterations of “Maybe It’s All My Fault...” occur from here until the end of the track
02:55 - Electronic bass drum riff
02:57 - Sixth sonic sweep; original bass part
03:13 - Seventh Sonic Sweep
03:28 - Eighth Sonic Sweep
03:41 - Bass part from 2:30 returns, with minor alteration
03:56 - Beginning of long fade until the end of the song

Track #3- I Gotta Feeling

00:00 -Guitar Hook (identical to Track #1) in conjunction with synthesizer bass
00:16 -Synthesizer countermelody
00:29 -Introduction of Male vocalist and Vocal Hook and single line guitar part (not hook); bass drops out
01:00 -Drum kit sans bass drum introduced, electric bass part introduced, also counter vocal line
01:30 -Spoken Vocal Chant 1, several voices; bass drum quarter notes introduced; second counter-line
01:46 -Introduction of Female vocalist 1
02:01 -Spoken Vocal Chant 2
02:16 -Male vocalist repeated figure
02:30 -Reintroduction of Vocal Hook with Guitar Hook and original bass part; drums drop out
03:01 -Reintroduction of Spoken Vocal Chant 1& 2 (with vocal interjections between each iteration); third counter-line introduced (arpeggios)
03:31 -Reintroduction of Male vocalist repeated figure from 2:16 (with spoken vocal interjections)
03:46 -Spoken Vocal Chant 3
04:01 -Sung Vocal Chant (lists the days of the week starting with “Monday...”)
04:17 -Third iteration of Vocal Hook with backing track from 01:00
04:47 -Sustained bass note “G” with final iteration of counter vocal line

Track #4- I Gotta Feeling

00:00-00:29- Drum beat; bass drum quarter notes
00:30 - Single line guitar part (not Hook)
01:00 - Guitar Hook introduced, drums drop out
01:15 - Drums come back in sans bass drum; bass part introduced
02:15 - Synth counter line, Guitar Hook drops out; return of bass drum in drum part
02:45 - Synth bass plays roots of chords on off-beats
03:15 - Reintroduction of Guitar Hook with sustained synth bass part; drums drop out
03:30 - Second synth “string” counter line
03:46 - Third counter line introduced (arpeggios)
04:00 - Synth string counter line from 03:30 double
04:17 - Bass part from 1:15 re-introduced
04:45 - Full drum part reintroduced
05:18 - Arpeggiated synth part drops out
05:45 - All remaining parts drop out except for synth bass and counter melody

D. COMPARISON OF PROTECTABLE ELEMENTS

Hook

22. As noted earlier, the most striking similarity between these tracks is the Guitar Hook in Tracks #1, #3 and #4. There is no Guitar Hook in Track #2.

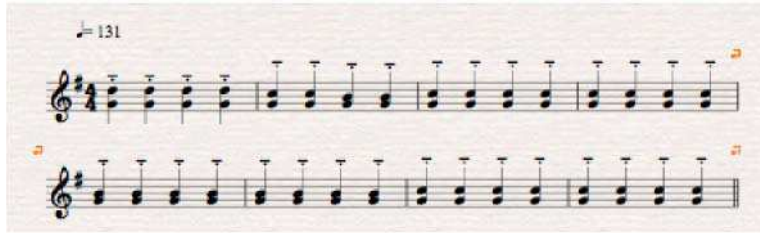
Example (a) - Guitar Hook from Track #1 “Take A Dive”



Example (b) - Guitar Hook from Track #3 “I Gotta Feeling”



Example (c) - Guitar Hook from Track #4



The following is a list of specific qualities that establish the Hook in Track #1 as being identical to Tracks #3 and #4:

- 1) All three hooks have the exact same sequence of rhythms
- 2) All three hooks contain the exact same notes in the same sequence
- 3) All three hooks are the exact same length before they are repeated
- 4) All three hooks are articulated the same way
- 5) All three hooks contain a nearly identical timbre, or tone quality
- 6) All three hooks are in the exact same key
- 7) All three hooks are in nearly identical tempo; only 2 beats per minute of a difference
- 8) All three hooks are placed within the overall mix of each track in a point of prominence

E. COMPARISON OF NON-PROTECTABLE ELEMENTS

Shared Modality

23. The Guitar Hooks in Track #1, Track #3 and Track #4 are identical, as stated earlier. However, the notes that occur in the bass voice of any song dictate the underlying harmony. The following examples demonstrate how the underlying harmony is different in each song:

Example (a) - “Track #1 “Take A Dive”

Take A Dive- Guitar Hook and bass part together

The musical score for 'Take A Dive' features two systems of guitar and bass parts. The first system includes an Electric Guitar and Synth Bass, with a tempo of 130. The second system includes an E. Gtr. and Synth Bass, with a tempo of 128. Chord symbols G, A⁹, and C are indicated above the guitar parts.

I indicated the chord symbols, as to indicate what the underlying or implied harmony is at each harmonic change.

Example (b) - “I Gotta Feeling” Tracks #3 and #4

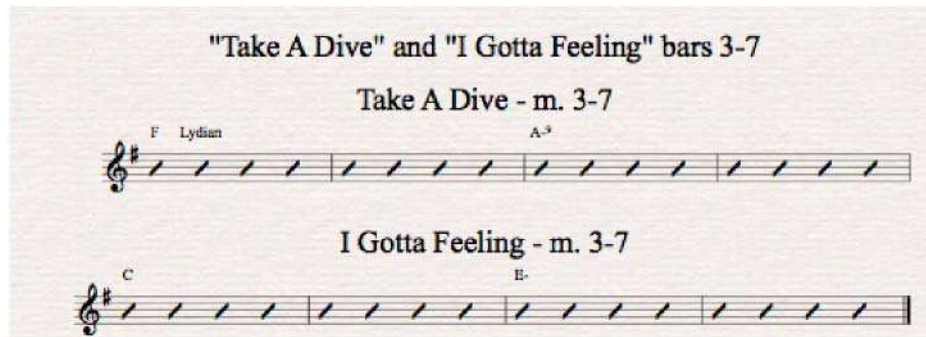
I Gotta Feeling- Guitar and Bass Together

The musical score for 'I Gotta Feeling' features two systems of guitar and bass parts. The first system includes an Electric Guitar and synth bass, with a tempo of 128. The second system includes an E. Gtr. and synth bass, with a tempo of 128. Chord symbols G, C, and E⁻ are indicated above the guitar parts. The score is attributed to Black-Eyed Peas.

In both cases, bars 1-2 are in G Major (we will discover later that we are more specifically in the key of G Mixolydian, but without any occurrence of the note F natural, no indication of G Mixolydian is present at that specific moment and so G Major is assumed) and bars 7-8 are in C major. In “Take A Dive,” bars 3-4 are in F Lydian; in “I Gotta Feeling,” bars 3-4 are in C Major. In “Take A Dive,” bars 5-6 are in A minor; in “I Gotta Feeling,” bars 5-6 are in E minor.

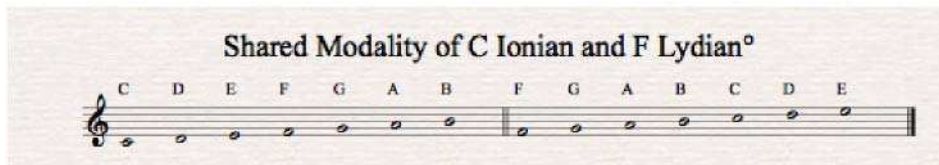
The harmonic differences between both songs occur in bars 3-7, and can be broken down as follows:

Example (c) - Bars 3-7 of Tracks #1 and #2 (“Take A Dive”) and Bars 3-7 of Tracks #3 and #4 (“I Gotta Feeling”)



Every chord has at least one scale that corresponds with itself. In the case of F Lydian (bars 3-4 in “Take A Dive”), it is the Lydian mode in the Key of F. The notes of that scale are F,G,A,B,C,D and E. In the case of C Major (bars 3-4 in “I Gotta Feeling”), it is the scale of C Major, or the mode of C Ionian (the exact same thing). The notes of that scale are C,D,E,F,G,A and B. The notes of F Lydian and C Ionian are identical.

Example (d) - Common tones between C Ionian and F Lydian



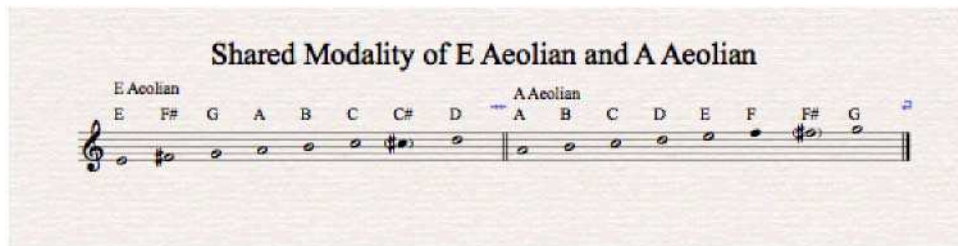
In the case of A minor 9th (bars 5-6 of “Take A Dive”) and E minor (bars 5-6 of “I Gotta Feeling”), they each have a couple of choices for the scale that is most closely related to its parent chord. In the case of A minor 9th, the notes A,B,C,D,E and G are definite, 1st, 2nd, 3rd, 4th, 5th and 7th scale degrees, respectively. With regards to the 6th scale degree, either F or F# could be perceived as an ideal 6th scale degree, thus making the most closely related scale either A Aeolian (with the F natural) or A Dorian (with the F#). In the case of such a discrepancy, I look to the Key of the song to decide; and in this case with the song being in G Mixolydian, the scale with the F natural is the best choice- A Aeolian.

The closest related scale to E minor is a little more challenging to determine. The best choices for this chord are either E Aeolian (E,F#,G,A,B,C,D) or E Dorian (E,F#,G,A,B,C#,D). Neither F# nor C# are in the home key of G Mixolydian. The only other choice would be E

Phrygian (E, F, G, A, B, C, D). So, in the case of the E minor chord, the closest related scale choice is E Phrygian; this is an unusual choice, but the home key dictates this unusual choice.

One could argue that the closest related scale choice could be either E Aeolian or E Dorian. Even when that is taken into account, they still share the notes E,G,A,B and D which are a part of A minor 9th, the chord that “Take A Dive” uses in bars 5-6. The following example illustrates the shared modality that exists in bars 5-6 of Tracks #1 and #2 and Tracks #3 and #4. The notes in White indicate shared common tones while the notes in Black indicate tones that are not in common between the two modes:

Example (e) - Common tones between E Aeolian and A Aeolian with Dorian modes considered with parenthetical indication



Throughout the entire eight-measure sequence, which makes up the harmonic structure of both songs in their entirety, these two songs share very strongly the modality of G Mixolydian, even when they have different underlying chords. Although this is a non-protectable musical element, this supports the perception of similarity in both songs, especially considering the facts that they both occupy the root note of G as a tonal center, and are nearly identical in tempo (also non-protectable elements). Additionally, I further conclude that these similarities highlight the very striking similarity in the guitar hook as indicated earlier, which is a protectable element, and that it is highly unlikely that this is coincidental.

Tone/Timbre

24. The main element in scrutiny is the Guitar Hook. With the degree of accuracy that the sounds of certain instruments can be duplicated through the “sampling” process in modern day musical technology, it is nearly impossible to determine if the hook in either Track #1, Track #3 or Track #4 was performed on electric guitar or an electronic sample. The range of sonic possibilities on the electric guitar, even with minimal effects, is remarkable. When one considers

the guitar sounds made by a traditional Jazz guitarist, such as Wes Montgomery or Charlie Christian, and compare that to the sounds of a Hard Rock guitarist, such as Jimi Hendrix or Eddie Van Halen, that alone indicates the wide range of timbral possibilities on that instrument.

Whether it was sampled or not, I find it very peculiar that the Guitar Hook in “I Gotta Feeling” bears a striking similarity to the Guitar Hook in “Take A Dive” in, besides all the other aforementioned criteria, in timbre, also. This is especially peculiar when considering the enormous range of timbral possibilities on the electric guitar.

F. REVIEW OF DR. FERRARA’S DECLARATION

25. Dr. Ferrara made a musicological comparison in his submission #172 entitled Declaration of Lawrence Ferrara, Ph.D. In my review, I came across some points with which I disagree.

26. In paragraph #5 of that declaration, Dr. Ferrara states “.I found that the derivative version of “Take A Dive”³ is identical to the original version⁴ that I have analyzed, except that the derivative version omits the vocals and includes a “twangy guitar figuration.” One non-protectable element that Dr. Ferrara neglects to point out is that the drum pattern is different from Track #1 to Track #2. The drum pattern in Track #1 contains a bass drum playing four quarter-notes per measure, and the drum pattern on Track #2 contains a bass drum playing on beats 1 and 3. This is an important point because the bass drum pattern of Track #1 creates a rhythmic feel that is much more similar to Tracks #3 and #4 than Track #2 is, which highlights the similarities of Track #1 to Tracks #3 and #4.

27. In paragraph #9 of the same document, Dr. Ferrara offers a structural analysis that indicated lyrical form rather than orchestration and/or motivic usage, which is valid. However, his analysis omits the usage of the Guitar Hook, which is crucial to the sonic identity of Track #1 and Tracks #3 and #4.

³ Here, what I refer to as “Track #1,” Dr. Ferrara refers to as the derivative version of “Take A Dive.”

⁴ Here, what I refer to as “Track #2,” Dr. Ferrara refers to as the original version of “Take A Dive.”

28. In paragraph #12 of the same document, Dr. Ferrara states that the harmony contains “more differences than similarities” and further states that “what is different is commonplace.” I refer back to my own assertion from this document, article #23. First of all, two chords are exactly the same; bars 1-2 (G major) and 7-8 (C major) of all four tracks. Secondly, I maintain that bars 3-6 of all tracks have a shared modality which contributes to the similarities between Tracks #1 and #2 (“Take A Dive”) and Tracks #3 and #4 (“I Gotta Feeling”).

29. In paragraph #16 of the same document, in the fourth bullet point, Dr. Ferrara states that the F chords in bars 3 and 4 of “Take A Dive” are significantly different from the C5 chords in bars 3 and 4 of “I Gotta Feeling,” then in the fifth bullet point, he repeats the same statement except he refers to the C5 chord as C. Firstly, calling the same chord two different things is confusing; secondly, that C5 chord cannot be considered a C5 chord entirely, because the melody sung around it includes the pitches B natural (the major 7th scale degree of a C chord) and E natural (the 3rd scale degree of a C chord) when in conjunction with the C5 harmonic emphasis from the rhythm section, the tonality is fully established as C Major; thirdly, aside from the difference in root (F in Tracks #1 and #2, C in Tracks #3 and #4), those two chords share all of the scale tones in common, which contributes greatly to similarity, thus making those two chords not quite “significantly different.”

30. Dr. Ferrara writes a very lengthy report on the many aspects of the two songs in question that are different. He then proceeds to cite many examples in American Pop Music History that validate his claim that the similarities between the two songs, Tracks #1 and #2 being “Take A Dive” (2 versions) and Tracks #3 and #4 being “I Gotta Feeling” (2 versions). I don’t dispute the fact that there are a number of differences between the songs. When one is given the assignment to write a song that is suggestive of another song, part of that assignment is to create an arrangement that masks the copied elements, so that the copy does not sound obvious. Furthermore, there are some aspects of these two works that can’t be protected by copyright law. However, that does not take away from the fact that these two works, Track #1 (final version of “Take A Dive”) and both Tracks #3 and #4 (both versions of “I Gotta Feeling”) have an identical musical hook, and it is my opinion that this is a violation of intellectual property.

A vast explanation of the multitude of elements contained in Dr. Ferrara's report is unnecessary. Yes, there are many differences that don't support a similarity; however, there are some key similarities that do (key, tempo, timbre, orchestration) and the Hook, referred to as either the "Guitar Twang" or the "Twangy guitar figuration," is identical, and because it is not only identical, but also prominent in each of the versions in which it appears, it is important that it be viewed as a violation of intellectual property.

G. CONCLUSION

31. Based on my review of all four tracks in question, I have determined that Track #1 is an obvious derivative version of Track #2. Based on that same review of all four tracks, I conclude that there is a striking similarity between Tracks #1 and Tracks #3 and #4. In light of the striking similarities between Tracks #1 and Tracks #3 and #4, it is unlikely that Tracks #3 and #4 could have been composed and created independently without copying key elements of Track #1.

32. It is my professional opinion that the Guitar Hook used in Track #3 and #4 ("I Gotta Feeling") was copied from the Guitar Hook used in Track #1 ("Take A Dive"). This is a protectable element, and the similarity is so strong that any coincidence is extremely unlikely.

33. The key of the two songs, the shared modality of the two songs, the nearly similar tempo, and the similar repeated eight-measure form that repeats throughout the song are all non-protectable elements. Although they are non-protectable elements, they support the similarities between the two songs, and further enhance my conclusion that the Guitar Hook, which is a key element of the songs "Take A Dive" and "I Gotta Feeling," was copied by the Black Eyed Peas from Bryan Pringle.

November 28, 2011

DR. ALEXANDER POPE NORRIS

400 West 43rd Street, #32P
New York, NY 10036

917.676.3375
alpopemusic@hotmail.com

EDUCATION:

May 2007	UNIVERSITY OF MIAMI FROST SCHOOL OF MUSIC Doctor of Musical Arts in Instrumental Studio Music and Jazz Performance <ul style="list-style-type: none">Published Doctoral Essay: <i>Latin Jazz as Reflected Through the Performance Practices of Jerry González and the Fort Apache Band</i>	Coral Gables, Florida
May 1995	MANHATTAN SCHOOL OF MUSIC Master of Music in Jazz/Commercial Music Performance	New York, New York
May 1990	PEABODY INSTITUTE OF THE JOHNS HOPKINS UNIVERSITY Bachelor of Music Education <ul style="list-style-type: none">Recipient of Performer's Certificate	Baltimore, Maryland
July–August 1988	BANFF CENTRE FOR THE FINE ARTS Four-week Summer Jazz Workshop	Banff, Canada

PROFESSIONAL HISTORY:

TEACHING – COLLEGE/UNIVERSITY/CAMPS/WORKSHOPS/PRIVATE:

September 2010 to Present	PEABODY INSTITUTE OF THE JOHNS HOPKINS UNIVERSITY Adjunct Jazz Trumpet Professor <ul style="list-style-type: none">Privately instruct students majoring and minoring in Jazz trumpet.Privately instruct students in Jazz ImprovisationCoach Jazz combos.	Baltimore, Maryland
October 2009 to December 2009	NEW YORK JAZZ WORKSHOPS Faculty: Bebop and Hard Bop Classes <ul style="list-style-type: none">Conducting Combos and instruct Jazz Improvisation. Focus on the music of Charlie Parker, Thelonious Monk, Dizzy Gillespie, Horace Silver, Art Blakey, and Cannonball Adderly	New York, New York
September 2007 to May 2008	UNIVERSITY OF MIAMI FROST SCHOOL OF MUSIC Visiting Assistant Professor: Jazz Trumpet <ul style="list-style-type: none">Privately instructed students majoring in jazz trumpet, and coached the Monk/Mingus and Horace Silver Ensembles.Instructed classes in Analysis and Evolution of Jazz Styles, and Advanced Improvisation I, and oversee related responsibilities of Jazz Trumpet Teaching Assistants.Served on the Recital Paper Committee for two Master's Degree Candidates in Studio Music and Jazz.	Coral Gables, Florida
January 2005 to May 2007	UNIVERSITY OF MIAMI FROST SCHOOL OF MUSIC Lecturer: Jazz Trumpet <ul style="list-style-type: none">Privately instructed students majoring and minoring in jazz trumpet.Coached the Miles Davis Ensemble, and substitute-coached the Post-Bop Ensemble, R & B Ensemble, Small Jazz Group Lab; substitute-conducted the Studio Jazz Band and Jazz Band III.Instructed classes in Jazz Pedagogy and Administration, and co-taught Advanced Improvisation classes.	
July 2006, 2008 and 2010	MARYLAND SUMMER JAZZ CAMP Coach: Jazz Combos/Clinician: Trumpet Master Class <ul style="list-style-type: none">Coached Jazz combos and provided group instruction for brass students.Performed as trumpeter on daily basis with faculty jazz groups.	Rockville, Maryland
September 2001 to May 2004	CITY COLLEGE OF NEW YORK Adjunct Faculty: Jazz Trumpet Studio <ul style="list-style-type: none">Substitute-conducted the Jazz Orchestra and performed as trumpeter with the Faculty Jazz Combo.	New York, New York

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PROFESSIONAL HISTORY (Continued):

August 1999 to May 2002	TOWSON UNIVERSITY Adjunct Faculty: Jazz Trumpet <ul style="list-style-type: none">▪ Taught Jazz Trumpet Master Class, coached Latin Jazz Ensemble, substitute-conducted Jazz Band "A," and substitute-coached jazz combos▪ Performed as trumpeter with the Faculty Jazz Combo▪	Baltimore, Maryland
July 1997/1998	MAINE JAZZ CAMP Coach: Jazz Combos/Clinician: Trumpet Master Class <ul style="list-style-type: none">▪ Coached Jazz combos and taught Trumpet Master classes▪ Performed as trumpeter on nightly basis with faculty jazz groups	Farmington, Maine
September to December 1994	NEW SCHOOL FOR JAZZ AND CONTEMPORARY MUSIC Private Instructor: Jazz Trumpet Major	New York, New York
	MANHATTAN SCHOOL OF MUSIC Coach: Two intermediate-level jazz combos	New York, New York
June to August 1993	NEW YORK STATE SUMMER MUSIC CAMP AND INSTITUTE Conductor: Jazz Ensemble III/Class Instructor: Jazz Improvisation/ Instructor: Private Jazz Trumpet	Oneonta, New York
September 1990 to May 1991	PEABODY INSTITUTE OF THE JOHNS HOPKINS UNIVERSITY Facilitator: Jazz Program <ul style="list-style-type: none">▪ Conducted big band and coached Jazz combos	Baltimore, Maryland
1990 to Present	PRIVATE STUDIO INSTRUCTOR <ul style="list-style-type: none">▪ Private instruction on trumpet, jazz improvisation, music theory, arranging and composition	

TEACHING – CLINICS/MASTERCLASSES/PRESIDING:

2010	TRI- C JAZZ FESTIVAL <ul style="list-style-type: none">▪ High School and College Jazz Ensemble adjudication▪ Jazz Improvisation Master Class	Cleveland, Ohio
2009	EASTMAN SCHOOL OF MUSIC <ul style="list-style-type: none">▪ Jazz Improvisation Master Class FLORIDA COMMUNITY COLLEGE OF JACKSONVILLE UNIVERSITY OF LOUISVILLE <ul style="list-style-type: none">▪ Jazz Improvisation and Music Business Clinics, and performance with FCCJ Jazz Ensemble I	Rochester, New York Jacksonville, Florida
2008	JAMEY AEBERSOLD JAZZ STUDIES PROGRAM UNIVERSITY OF LOUISVILLE <ul style="list-style-type: none">▪ Latin Jazz Master Class with Sammy Figueroa's Latin Jazz Explosion IN DEPTH JAZZ CLINICS <ul style="list-style-type: none">▪ Odd Meter Jazz Clinic JAZZ ACADEMY SUMMER PROGRAM <ul style="list-style-type: none">▪ Brass and Jazz Improvisation Workshops LATINO ARTS, INC <ul style="list-style-type: none">▪ Latin Rhythms Workshop and Instrumental Music Clinic with Sammy Figueroa's Latin Jazz Explosion	Louisville, Kentucky Rockville, Maryland Silver Spring, Maryland Milwaukee, Wisconsin

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TEACHING – CLINICS/MASTERCLASSES/PRESIDING CONTINUED:

	GEORGIA ASSOCIATION OF JAZZ EDUCATORS MIDDLE SCHOOL JAZZ WORKSHOP <ul style="list-style-type: none">▪ Jazz Improvisation Clinic	Dahlonega, Georgia
	CHRISTIAN BROTHERS COLLEGE <ul style="list-style-type: none">▪ Jazz Improvisation Clinic	Fremantle, Western Australia
2007	VIRGINIA POLYTECHNIC AND STATE UNIVERSITY <ul style="list-style-type: none">▪ Jazz Improvisation Clinic, and performance as soloist with Virginia Tech Jazz Ensemble	Blacksburg, Virginia
	WESTERN AUSTRALIA ACADEMY OF THE PERFORMING ARTS OF EDITH COWAN UNIVERSITY <ul style="list-style-type: none">▪ Jazz Improvisation Workshop	Perth, Western Australia
	WESTERN AUSTRALIA YOUTH JAZZ ORCHESTRA <ul style="list-style-type: none">▪ Brass Workshop	
2007	BUSSELTON SENIOR HIGH SCHOOL <ul style="list-style-type: none">▪ Jazz Band Workshop	Busselton, Western Australia
	UNIVERSITY OF ALASKA AT FAIRBANKS JAZZ FESTIVAL <ul style="list-style-type: none">▪ Coach and adjudicate: High school and middle school jazz ensembles, trumpet clinics and performances with UAF Jazz Ensemble and SYOTOS	Fairbanks, Alaska
	MIAMI-DADE COUNTY, FLORIDA <ul style="list-style-type: none">▪ Conductor: All-County Honors High School Jazz Ensemble	Miami, Florida
	UNIVERSITY OF MIAMI FROST SCHOOL OF MUSIC <ul style="list-style-type: none">▪ Grove City, Ohio Jazz Band Clinic▪ Jazz Trumpet Masterclass by Jon Faddis	Coral Gables, Florida
2006	NEW WORLD SCHOOL FOR THE ARTS <ul style="list-style-type: none">▪ Four-day Jazz Combo Workshop	Miami, Florida
	GULLIVER PREPARATORY HIGH SCHOOL <ul style="list-style-type: none">▪ Jazz Clinic	Miami, Florida
	VISITING STUDENT FROM EDINBURGH, SCOTLAND <ul style="list-style-type: none">▪ Jazz Improvisation and Composition Clinic	Miami, Florida
2003	MOREHEAD UNIVERSITY <ul style="list-style-type: none">▪ Jazz Band Festival and Clinic	Lexington, Kentucky
2002	PENNWOOD HIGH SCHOOL <ul style="list-style-type: none">▪ Jazz Band Festival Adjudication, Clinic and Performance	Pennwood, Pennsylvania
1998	CINCINNATI COLLEGE/CONSERVATORY OF MUSIC <ul style="list-style-type: none">▪ Jazz Workshop	Cincinnati, Ohio
1994	MANHATTAN SCHOOL OF MUSIC <ul style="list-style-type: none">▪ Community Outreach Program	Harlem, New York
1991	HOWARD COUNTY PUBLIC SCHOOLS <ul style="list-style-type: none">▪ Jazz Band Clinic	Columbia, Maryland
	PEABODY CONSERVATORY OF MUSIC <ul style="list-style-type: none">▪ Jazz Clinic by Ralph Bowen	Baltimore, Maryland

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SELECTED RECORDINGS:

MAINSTREAM JAZZ TRUMPET

<u>Date</u>	<u>Artist</u>	<u>Title of Recording</u>	<u>Recording Label</u>
2010	Ron Carter	Ron Carter's Great Big Band	EMI
2009	Andy Farber Jazz Orchestra	This Could Be the Start of Something Big	Black Warrior
2007	South Florida Jazz Orchestra	SFJO	Summit Records
2004	David Ephross	Ellie's Delight	Artist Share
2003	Ari Ambrose	Waiting	Steeplechase
2002	Todd Londagin	Introducing Todd Londagin	LMF
2002	Arun Luthra	Tangibility	Om/Svaha
2001	Peter Herborn Orchestra	Large Two	Jazzline
1999	The Alex Norris Quintet	A New Beginning	Fresh Sounds
1999	Ingrid Lucia	I'd Rather Be in New Orleans	Fiction
1999	Jason Lindner Ensemble	Premonition	Stretch
1998	Jason Lindner Big Band	Jazz Underground Live at Small's	Impulse
1997	George Colligan	Jam Session Volume 6	Steeplechase
1997	Ann Hampton Calloway	To Ella . . . With Love	After Nine
1994	Interplay	First Time	JazzScapes
1993	The Phil Burlin Quintet	Urban Undertow	Creative Digital
1993	Makoto Kuriya	X-Based Music	King
1990	Makoto Kuriya	The Baltimore Syndicate	King

LATIN JAZZ TRUMPET

<u>Date</u>	<u>Artist</u>	<u>Title of Recording</u>	<u>Recording Label</u>
2010	Roland Vazquez	The Visitor**	RVD
2007	Grupo Yanqui	Grupo Yanqui Rides Again	Miles High Records
2007	Sammy Figueroa	The Magician**	Savant
2007	Marlon Simon & Nagual Spirits	In Case You Missed It	Jazzheads
2006	Monguito Santamaria	The Sun Rises	Independent
2004	Marlon Simon	Live in La Paz, Bolivia	Intrigue
2004	Ileana Santamaria	I Want What I Want	Independent
2003	Ralph Irizarry & Timbalaye	It's Time	BKS
2001	Rumba Club	Radio Mundo	Palmetto
2000	Manny Oquendo y Libre	Los Nuyorkinos	Milestone
1999	Rumba Club	Espiritista	Palmetto
1999	Ralph Irizarry & Timbalaye	Best Kept Secret	Shanachie
1997	Rumba Club	Mamacita	Palmetto
1993	Rumba Club	Desde La Capital	Palmetto

** Grammy Nomination

ECLECTIC JAZZ TRUMPET

<u>Date</u>	<u>Artist</u>	<u>Title of Recording</u>	<u>Recording Label</u>
2006	Lonnix Plaxico Group	West Side Stories	LuPlax
2005	Kelly Lee Evans	Fight Or Flight	Enliven
2004	Lonnix Plaxico Group	So Alive	441
2003	Lonnix Plaxico Group	Live at the Jazz Standard	441
2003	Avishai Cohen	Lyla	Sunnyside
2002	Lonnix Plaxico Group	Live at the 5:01 Jazz Bar	LuPlax
2002	John Favicchia	Dharma Live	FavMusic
2002	Marshall Keyes	Times Aligned	Binary Jazz
2001	Avi Lebovich	Constant Chase	Fresh Sounds
1997	Us3	Broadway and 52 nd Street	Blue Note
1997	Incognito	Last Night in Tokyo	Talkin' Loud
1996	Incognito	Beneath the Surface	Verve

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OTHER RECORDINGS

Date	Artist	Title of Recording	Recording Label
2009	Sin Miedo	Estoy Enamorado	Independent
2004	Ralph Irizarry y Son Café	Bailando . . . Con Azucar	BKS
2001	Sin Miedo	La Clave	Independent
1999	Set 'Em Up Joe	Set 'Em Up Joe	Daddy O/Royalty
1999	Dorothy Papadakos	Shades of Green	Pro Organa
1999	Dell's Patio	Back From Gone	Amosaya
1997	Ingrid Lucia & The Flying Neutrinos	Swing This . . . Baby	Sony/BMG
1995	Tobias Hurwitz	Painted Sky	Guitar Nine

VIDEO RECORDINGS

<u>Date</u>	<u>Artist</u>	<u>Title</u>	<u>Label</u>
2002 (released)	Andy González	Bass Day 1998	Hudson Music

PERFORMANCE EXPERIENCE AS REGULAR ENSEMBLE MEMBER:

2006 to 2009	SOUTH FLORIDA JAZZ ORCHESTRA SAMMY FIGUEROA LATIN JAZZ EXPLOSION
2002 to 2004	THE LONNIE PLAXICO GROUP
2000 to Present	MARLON SIMON & THE NAGUAL SPIRITS
1998 to Present	MANNY OQUENDO Y LIBRE
1998 to 2004	RALPH IRIZARRY & TIMBALAYE
1998 to 1999	STEVE WINWOOD
1996 to 2000	JASON LINDNER ENSEMBLE
1996 to 1997	INCOGNITO
1994 to 1998	BETTY CARTER'S JAZZ AHEAD
1991 to 1992	GLENN MILLER ORCHESTRA
1995 to 2006; 1986 to 1992	RUMBA CLUB

COLLABORATIONS WITH PROMINENT ARTISTS:

JAZZ ARTISTS

2007	DIZZY GILLESPIE ALUMNI ALL-STARS: Performance at JVC Jazz Festival, Hampton, Virginia, with jazz legends Jimmy Heath, James Moody, Slide Hampton, Claudio Roditi and jazz star Roy Hargrove.
2004	GEOFF KEEZER: Acclaimed jazz pianist and recording artist. Recorded together on Dave Ephross' recording project, <i>Ellie's Delight</i> .

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COLLABORATIONS WITH PROMINENT ARTISTS CONTINUED:

- 2003 **JOHN PATITUCCI:** Legendary jazz bassist, Down Beat Poll Winner and recording artist. Performed together with Faculty Jazz Group at City College of New York Jazz Festival.
- RAVI COLTRANE:** Internationally-acclaimed jazz saxophonist, recording artist and son of John Coltrane. Performed together in week-long engagement at Ronnie Scott's Jazz Club in London, England, with the Lonnie Plaxico Group.
- 1998 **SLIDE HAMPTON:** Legendary jazz trombonist. Performed in outdoor concert together as guest soloists with the Tel Aviv Big Band in Tel Aviv, Israel. Conducted by Avi Lebovich.
- 1995 **CHRIS POTTER:** Acclaimed jazz saxophonist and Concord Records recording artist. Performed on demo recording as well as several live performances with the Alex Norris Quartet. Performed together as sidemen with several artists since 1992.
- JOSHUA REDMAN:** Internationally-acclaimed jazz saxophonist and Warner Brothers recording artist. Performed at Augie's Jazz Bar in New York City with the Alex Norris Quartet.
- DOC CHEATHAM:** Legendary jazz trumpeter. Recorded on Ingrid Lucia recording, *I'd Rather Be In New Orleans*.
- 1993 to 1994 **MARVIN "SMITTY" SMITH:** Internationally-acclaimed jazz drummer and recording artist. Recorded and performed with Japanese pianist, Makoto Kuriya, on King Records' release, *X-Based Music*. Same ensemble toured Japan in 1994.
- 1992 to 1993 **BRAD MEHLDAU:** Internationally-acclaimed jazz pianist and Warner Brothers recording artist. Performed on demo recording as well as several performances at West End Gate in New York City.
- ALSO PERFORMED WITH:** Mulgrew Miller, Lewis Nash, Eric Alexander, Mark Turner, Gary Thomas, Stefon Harris, Brian Blade, Ira Sullivan, Antonio Hart, Mickey Roker, Vincent Herring, Ray Bryant, Sam Yahel, Carl Allen, Cyrus Chestnut, Grachan Moncur III, Steve Turre, Greg Osby, Robin Eubanks, Kevin Mahogany, Steve Wilson, Billy Drummond, Arturo Sandoval, Peter Bernstein, Eddie Daniels, George Colligan, Drew Gress, New York Voices

LATIN JAZZ AND SALSA

- 2005 **PONCHO SANCHEZ:** Grammy Award winning Latin jazz artist and percussionist. Performed with his octet in Washington, D.C.
- 2004 **PAQUITO D'RIVERA & GIOVANNI HILDAGO:** Legends of Latin jazz. Performed together at the Strings for Schools Gala Concert in Philadelphia, Pennsylvania with Marlon Simon and the Nagual Spirits.
- 2000 **HILTON RUIZ:** Latin jazz pianist and RCA recording artist. Performed at JazzMobile in Harlem, New York.
- 1998, 2001, 2003 **JERRY GONZÁLEZ:** Legendary Latin percussionist and trumpeter, band leader and Down Beat Poll winner. Performed together with Manny Oquendo y Libre in Barranquilla, Colombia, San Juan, Puerto Rico and New York City.
- 1995 **CELIA CRUZ:** Legendary Cuban vocalist and salsa star. Performed at 1995 Vida Awards.

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COLLABORATIONS WITH PROMINENT ARTISTS CONTINUED:

JAZZ ORCHESTRAS

Mingus Big Band
Village Vanguard Jazz Orchestra
Chico O'Farrill Orchestra
Maria Schneider Jazz Orchestra

Kenny Wheeler Big Band
Woody Herman Orchestra
Toshiko Akiyoshi Jazz Orchestra
Jaco Pastorius Reunion Big Band

PERFORMANCES – JAZZ FESTIVALS AND VENUES:

FESTIVALS – INTERNATIONAL

2008	Byron Bay Blues and Roots Festival	Byron Bay, Australia
2006	Detroit International Jazz Festival	Detroit, Michigan
	III Festival Internacional de Tradiciones Afro-Americanas	Caracas, Venezuela
2004	Montreal Drum Expo	Montreal, Canada
2003	Ottawa Jazz Festival	Ottawa, Canada
2002	Umbria Jazz Festival	Perugia, Italy
2000	Havana Jazz Festival	Havana, Cuba
1999, 2002	North Sea Jazz Festival	The Hague, Netherlands
1999, 2000	Heineken Jazz Festival	San Juan, Puerto Rico
1998, 1999, 2002, 2004	JVC Jazz Festival	New York, New York
1999	Barbados Jazz Festival	Barbados
1998	Barranquilla Jazz Festival	Barranquilla, Colombia
	Tel Aviv Jazz Festival	Tel Aviv, Israel
1997	Jakarta Jazz Festival	Indonesia
1996	Montreaux Jazz Festival	Montreaux, Switzerland
	Nîce Jazz Festival	Nice, France
	Free Jazz Festival	Sao Paulo, Brazil
1995	Dumaurier Jazz Festival	Toronto, Canada
1993	Berlin Jazz Festival	Berlin, Germany
1993, 1995, 1998, 2003, 2004, 2006, 2007	International Association of Jazz Education Conferences	

FESTIVALS – NATIONAL

2008	Twin Cities Jazz Festival	Minneapolis, Minnesota
2008	Rochester Jazz Festival	Rochester, New York
2006, 2007, 2008	Gold Coast Jazz Festival	Fort Lauderdale, Florida
2006, 2007	Langerado Music Festival	Fort Lauderdale, Florida
2004 to 2007	Festival Miami	Miami, Florida
2004	San Jose Jazz Festival	San Jose, California
	Mount Vernon Jazz Festival	Mount Vernon, New York
2003	Charlie Parker Jazz Festival	New York, New York
2001	Chicago Humanities Festival	Chicago, Illinois
2000	Telluride Jazz Festival	Telluride, Colorado
	Mount Vernon Jazz Festival	Denver, Colorado
1987, 1989, 1990, 2006, 2009	Artscape – Baltimore	Baltimore, Maryland

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PERFORMANCES – JAZZ FESTIVALS AND VENUES (Continued):

JAZZ VENUES – INTERNATIONAL

Ronnie Scott's – London, England
606 – London, England
Henry's – Edinburgh, Scotland
Blue Note – Fukuoka, Japan
Blue Note – Osaka, Japan

Thelonious Jazz Bar – LaPaz, Bolivia
Camelot – Tel Aviv, Israel
Jazz Now Jazz Camp – Perth, Western Australia
Llama Bar – Perth, Western Australia
Perth Jazz Society – Perth, Western Australia

JAZZ VENUES – NATIONAL

Blues Alley – Washington,, D.C.
One Step Down – Washington, D.C.
Twins Jazz Lounge – Washington, D.C.
Green Mill – Chicago, Illinois
Hot House – Chicago, Illinois
Chris' Jazz Café – Philadelphia, Pennsylvania
Ortlieb's Jazz Haus – Philadelphia, Pennsylvania
Blue Wisp – Cincinnati, Ohio
Firefly – Ann Arbor, Michigan
5:01 Jazz Bar – Columbus, Ohio
Left Bank Jazz Society – Baltimore, Maryland
Central Pennsylvania Friends of Jazz – Harrisburg, Pennsylvania
Gilley's – Dayton, Ohio

Sculler's – Boston, Massachusetts
Jazz Bakery – Los Angeles, California
Steamer's Jazz Café – Fullerton, California
Yoshi's – Oakland, California
Arturo Sandoval's Jazz Club, Miami, Florida
Van Dyke's Café – Miami, Florida
The Balcony – Pittsburgh, Pennsylvania
Ethel's Place – Baltimore, Maryland
New Haven Lounge – Baltimore, Maryland
An Die Musik – Baltimore, Maryland
Gold Coast Jazz Society – Fort Lauderdale, Florida
Gainesville Friends of Jazz – Gainesville, Florida

JAZZ VENUES – NEW YORK CITY

Village Vanguard
Blue Note
Small's
Fat Cat
Detour
Cleopatra's Needle
Smoke
Zinc Bar
55 Bar
Kavehāz
Cornelia St. Café

Swing 46
Augie's Jazz Bar
Birdland
Knitting Factory
Time Café
Visionés
Jazz Standard
Jazz Gallery
Angry Squire
Bradley's
Joe's Pub

GUEST ARTIST PERFORMANCES:

2008	David Brothers Super Big Band	Dahlonega, Georgia
2007	Glenelg Senior High School Jazz Ensemble	Glenelg, Maryland
	Western Australia Youth Jazz Orchestra	Perth, Western Australia
2005 to 2007	University of Miami Frost School of Music Salsa Orchestra	Coral Gables, Florida
2005	Howard Community College Faculty Jazz Group	Columbia, Maryland
2003	Towson University Jazz Ensemble I	Baltimore, Maryland
1990	Glenelg Senior High School Jazz Ensemble	Glenelg, Maryland

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TELEVISION APPEARANCES:

2008	Telemundo-Wisconsin Channel 63; interview with Sammy Figueroa	Milwaukee, Wisconsin
2007	Orange Bowl Half-Time Show performance, Gladys Knight and Taylor Hicks	Miami, Florida
2000	Timbalaye and Charlie Sepulveda	San Juan, Puerto Rico
1999	Performance on BET on Jazz	Washington, D.C.
1998	Advertisement for BET on Jazz	Washington, D.C.
	Steve Winwood	Sao Paulo, Brazil
1995	Annual Vida Awards Ceremony	Washington, D.C.

MEDIA INTERVIEWS:

July 2008	Live interview by Warren Kimble: "Saturday Jazz" (weekly program)	RTR-FM 92.1 Perth, Western Australia
May 2008	Live guest of Charlie Kaufman	WDNA-FM, Miami, Florida
April 2008	Live guest of Alberto De La Reguera	WDNA-FM, Miami, Florida
July 2007	Live interview by Francisco Italiano: "Giant Steps" (weekly program)	RTR-FM 92.1 Perth, Western Australia
April 2007	Live interview by Alberto De La Reguera	WDNA-FM, Miami, Florida
April 2006		
November 2005		
April 2005		
October 2004		
November 2001	Live interview by Gary Ellerbe and Greg Tardy	WWEA-FM, Baltimore, Maryland
June 2001	Telephone interview with unknown moderator	WPFW, Washington, D.C.
April 1997	Live interview by Rusty Hasaan	WDCU-FM, Washington, D.C.
October 1993	Live interview by Gwen Redding	WDCU-FM, Washington, D.C.

AS SUBJECT OF ARTICLES/INTERVIEWS:

2007	<u>The Baltimore Sun</u> – "A First Hand Look at Where A Musical Path Leads," an article by Janet Gilbert, published March 23 rd .
	<u>The Journal of the Australian Trumpet Guild: The Mouthpiece</u> , Vol. 9, Issue 2, (June 2007) pp 11-12; featured in "Pedagogy by Parkes" column as an interview.
	<u>The Howard County Times</u> – "Latin Jazz Trumpeter Brings His Sound Back To Town For Concert," an article by Lane Page, published March 23 rd .

COMPETITIONS/AWARDS:

2007	Down Beat Magazine Student Music Awards – Member, University of Miami Concert Jazz Band; College Jazz Band winner
1995	Carmine Caruso Jazz Trumpet Competition - Finalist Cecil Collins Award for Outstanding Brass Performance, Manhattan School of Music
1990	Hennessy Best of Baltimore Jazz Search – Runner-up Louis Armstrong International Jazz Trumpet Competition – Semi-finalist
1989	Musicfest, USA – Bronze Medal Award

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COMPOSITION AND ARRANGING EXPERIENCE:

- | | | |
|---------------------------|--|------------------------|
| September 2003 to Present | SELECTTRACKS, LLC
Composer for hire <ul style="list-style-type: none">▪ Compose songs and full compositions in a certain style as determined by clients, with careful attention to avoid pre-composed melodies▪ Transcribe pre-recorded songs for re-recording assignments▪ Perform in recording studio on certain instruments as per my ability▪ Arrange horn parts for songs recorded by other Selecttracks artists | Baltimore, Maryland |
| January 1991 to Present | Freelance composer and arranger <ul style="list-style-type: none">▪ Arranging assignments for various artists including the Glenn Miller Orchestra, Betty Carter, Manny Oquendo y Libre, Rumba Club, Terri Bryant (Cruise Ship Entertainer), South Florida Jazz Orchestra, Eric Byrd, Benjie Porecki, and miscellaneous single assignments▪ Composition assignments for Alex Norris Jazz Group, Rumba Club, Japanese instrumentalist Takeshi Ito, University of Miami Concert Jazz Band, University of Miami Salsa Orchestra, and miscellaneous single assignments | Various locations, USA |

CERTIFICATE OF SERVICE

On December 19, 2011, I electronically filed the foregoing DECLARATION OF ALEX NORRIS IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT using the CM/ECF system which will send notification of such filing to the following registered CM/ECF Users:

Barry I. Slotnick	bslotnick@loeb.com
Donald A. Miller	dmiller@loeb.com , vmanssourian@loeb.com
Ira P. Gould	gould@igouldlaw.com
Tal Efriam Dickstein	tdickstein@loeb.com
Linda M. Burrow	wilson@caldwell-leslie.com , burrow@caldwell-leslie.com , popescu@caldwell-leslie.com , robinson@caldwell-leslie.com
Ryan Christopher Williams	williamsr@millercanfield.com
Kara E. F. Cenar	kara.cenar@bryancave.com
Ryan L. Greely	rgreely@igouldlaw.com
Robert C. Levels	levels@millercanfield.com
Kathleen E. Koppenhoefer	koppenhoefer@millercanfield.com
Rachel Aleeza Rappaport	rrappaport@loeb.com
Jonathan S. Pink	jonathan.pink@bryancave.com , elaine.hellwig@bryancave.com
Dean A. Dickie	dickie@millercanfield.com , frye@millercanfield.com , deuel@millercanfield.com , smithkaa@millercanfield.com , seaton@millercanfield.com , williamsr@millercanfield.com
Edwin F. McPherson	emcpherson@mcphersonrane.com , astephan@mcphersonrane.com
Joseph G. Vernon	vernon@millercanfield.com
Justin Michael Righettini	justin.righettini@bryancave.com
Tracy B. Rane	trane@mcphersonrane.com

I am unaware of any attorneys of record in this action who are not registered for the CM/ECF system or who did not consent to electronic service.

I certify under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct.

Dated: December 19, 2011 /s/Colin C. Holley

George L. Hampton IV (State Bar No. 144433)
Colin C. Holley (State Bar No. 191999)
HAMPTONHOLLEY LLP
2101 East Coast Highway, Suite 260
Corona del Mar, California 92625
Telephone: 949.718.4550
Facsimile: 949.718.4580