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Ultra International Music Publishing, LLC  
10 and Ultra Records, LLC

11  
12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA

14 ULTRA INTERNATIONAL MUSIC  
PUBLISHING, LLC and ULTRA  
15 RECORDS, LLC,

16 Plaintiffs,

17 v.

18 MICHELLE PHAN,

19 Defendant.

CASE NO. \_\_\_\_\_

**COMPLAINT FOR COPYRIGHT  
INFRINGEMENT**

**Demand For Jury Trial**

20  
21 Plaintiffs Ultra International Music Publishing, LLC (“UIMP”) and Ultra  
22 Records, LLC (“Ultra”) (together, “Plaintiffs”), by their undersigned attorneys, for  
23 their Complaint against Defendant Michelle Phan (“Phan”), allege as follows:

24 **JURISDICTION AND VENUE**

25 1. This is a civil action seeking damages and injunctive relief for  
26 copyright infringement under the Copyright Act, 17 U.S.C. § 101 *et seq.* This  
27 Court has subject matter jurisdiction over Plaintiffs’ claims for copyright  
28 infringement pursuant to 28 U.S.C. §§ 1331 and 1338(a).

2. This Court has personal jurisdiction over Phan because, among other things, Phan is engaged in tortious conduct within the State of California and in this District, including by copying, altering, publicly performing, and distributing Plaintiffs' recordings and musical compositions within the United States and the State of California. Plaintiffs additionally aver that, among other things, (a) Phan or her agents are doing or have been doing business continuously in the State of California and this District, (b) a substantial part of the wrongful acts committed by Phan have occurred in interstate commerce, in the State of California, and in the Central District of California, and (c) Phan's conduct causes injury to, and is directed at, Plaintiffs and their intellectual property within the United States and the State of California.

3. Phan, through her agents, has consented to jurisdiction in this District by submitting a Counter-Notification to YouTube, LLC ("YouTube"), in response to a take-down notice sent to YouTube on Plaintiffs' behalf.

4. Venue is proper in the Central District of California pursuant to 28 U.S.C. §§ 1391 and 1400, in that Plaintiffs are subject to personal jurisdiction, and may be found, in this District.

### **THE PARTIES**

5. Plaintiff UIMP is a limited liability company organized and existing under the laws of the State of New York, having its principal place of business at 235 West 23rd Street, 6th Floor, New York, New York 10011.

6. Plaintiff Ultra is a limited liability company organized and existing under the laws of the State of Delaware, having its principal place of business at 235 West 23rd Street, 6th Floor, New York, New York 10011.

7. Plaintiffs are a record label and music publishing company, which are engaged in the business of acquiring, owning, publishing, producing, administering, licensing and otherwise exploiting copyrights in musical compositions and sound recordings, including but not limited to licensing the

1 reproduction, distribution, sale and performance of their compositions and sound  
 2 recordings in phonorecords, in audiovisual works, and for streaming (*i.e.*,  
 3 performing) and downloading over the Internet. Plaintiffs invest substantial  
 4 money, time, effort and creative talent developing and exploiting such copyrights,  
 5 on their own behalves and on behalf of the songwriters, producers and recording  
 6 artists with whom they have contractual relationships.

7       8. UIMP owns or administers (in whole or in part) copyrights and/or  
 8 exclusive rights in and to numerous compositions, including by way of example  
 9 those compositions identified on Schedule A hereto, incorporated herein by  
 10 reference (the “Musical Compositions”). UIMP has obtained or has applied for  
 11 certificates of copyright registration issued by the United States Copyright Office  
 12 in each of the Musical Compositions identified on Schedule A. As the owner or  
 13 administrator of the copyrights (in whole or in part) in these Musical  
 14 Compositions, UIMP possesses the exclusive right, among other things, to  
 15 reproduce the Musical Compositions in copies or phonorecords, to adapt the  
 16 Musical Compositions, to distribute copies or phonorecords of the Musical  
 17 Compositions to the public, and to perform the Musical Compositions publicly.

18       9. Ultra owns copyrights and/or exclusive rights in and to numerous  
 19 sound recordings, including by way of example, the recordings identified on  
 20 Schedule B hereto, incorporated herein by reference (the “Recordings”). Ultra has  
 21 obtained or has applied for certificates of copyright registration issued by the  
 22 United States Copyright Office in each of the Recordings. As the owner of the  
 23 copyrights in the Recordings, Ultra possesses the exclusive rights, among other  
 24 things, to reproduce the Recordings in copies or phonorecords, to distribute copies  
 25 or phonorecords of the Recordings to the public, to perform the Recordings  
 26 publicly by means of a digital audio transmission and to license these exclusive  
 27 rights, including over the Internet.

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

### **FACTUAL BACKGROUND**

11. Ultra is one of the leading independent music companies in the world, and is one of the dominant independent music labels currently operating in the genre of what is generally referred to in the music industry as “dance music.” UIMP is a music publishing company. Among the successful artists whose works are or have been on the Ultra label and/or published by UIMP are Kaskade, deadmau5 and Calvin Harris.

12. Phan is a makeup artist that is most well-known for a series of video tutorials that she began posting on YouTube in 2007. In these videos, Phan provides makeup advice centered around a variety of different themes.

13. Phan’s videos are extremely popular. Her YouTube channel, located at [www.youtube.com/user/MichellePhan](http://www.youtube.com/user/MichellePhan), has more than six million subscribers from all over the world. One of her YouTube videos, entitled “Barbie Transformation Tutorial,” has been viewed more than fifty million times.

14. This year, Phan has been featured in a high profile and multi-platform advertising campaign for YouTube, which features some of YouTube’s most popular personalities. Phan has also been featured in national advertising for Dr. Pepper.

15. Upon information and belief, Phan monetizes her YouTube videos by collecting substantial income from YouTube derived from the advertisements that appear in association with her videos.

16. Phan’s videos are also available through her own website located at [michellephan.com](http://michellephan.com), which website also prominently features advertising.





1           31. Phan has infringed UIMP's copyrights in the Musical Compositions,  
2 including by reproducing, distributing, adapting and digitally publicly performing  
3 the Recordings without authorization, in violation of the Copyright Act, 17 U.S.C.  
4 §§ 106 and 501.

5           32. The unauthorized use of each Musical Composition constitutes a  
6 separate and distinct act of infringement of each such Musical Composition.

7           33. Phan's acts of infringement are willful, in disregard of and with  
8 indifference to the rights of UIMP.

9           34. As a direct and proximate result of the infringement by Phan, UIMP is  
10 entitled to damages and to Phan's profits in amounts to be proven at trial, and  
11 which are not currently ascertainable. Alternatively, UIMP is entitled to maximum  
12 statutory damages of \$150,000 for each copyright infringed, or in such other  
13 amount as may be proper under 17 U.S.C. § 504(c).

14           35. UIMP is further entitled to its attorneys' fees and full costs pursuant to  
15 17 U.S.C. § 505.

16           36. As a result of Phan's acts and conduct, UIMP has sustained and will  
17 continue to sustain substantial, immediate and irreparable injury for which there is  
18 no adequate remedy at law. UIMP is informed and believes, and on that basis  
19 avers, that unless enjoined and restrained by this Court, Phan will continue to  
20 infringe UIMP's rights in the Musical Compositions. UIMP is entitled to  
21 temporary, preliminary and permanent injunctive relief to restrain and enjoin  
22 Phan's continuing infringing conduct.

23           WHEREFORE, Plaintiffs pray for judgment against Phan as follows:

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

1 later created, in which any Plaintiff (including its parents, subsidiaries, affiliates or  
2 distributed labels) owns or controls an exclusive right under Section 106 of the  
3 United States Copyright Act (17 U.S.C. § 106), including without limited by  
4 directly or indirectly reproducing, downloading, distributing, communicating to the  
5 public, uploading, linking to, transmitting, publicly performing, or otherwise  
6 exploiting in any manner any of Plaintiffs' copyrights, including but not limited to  
7 the Recording and Musical Compositions identified in Schedules A and B to the  
8 Complaint;

9       2. For Phan's profits and for damages in such amount as may be  
10 determined; alternatively, for maximum statutory damages in the amount of  
11 \$150,000 with respect to each copyrighted work infringed, or for such other  
12 amount as may be proper pursuant to 17 U.S.C. § 504(c);

13       3. For Plaintiffs' attorneys' fees and full costs;

14       4. For prejudgment interest according to law; and

15       5. For such other and further relief as the Court may deem just and  
16 proper.

17  
18 DATED: July 16, 2014

MITCHELL SILBERBERG & KNUPP LLP

19  
20 By: /s/ Bradley L. Mullins

21 Christine Lepera (*pro hac vice application forthcoming*)  
22 Bradley J. Mullins  
23 Attorneys for Plaintiffs  
24 Ultra International Music Publishing,  
25 LLC and Ultra Records, Inc.  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury as to all claims averred herein that are triable to a jury.

DATED: July 16, 2014

MITCHELL SILBERBERG & KNUPP LLP

By: /s/ Bradley L. Mullins

Christine Lepera (*pro hac vice application forthcoming*)

Bradley J. Mullins

Attorneys for Plaintiffs

Ultra International Music Publishing,  
LLC and Ultra Records, Inc.

# SCHEDULE A

# SCHEDULE A

**SCHEDULE A****Compositions**

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

**SCHEDULE A****Compositions**

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

# **SCHEDULE B**

# **SCHEDULE B**

**SCHEDULE B**

## Sound Recordings

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

**SCHEDULE B**

## Sound Recordings

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

# SCHEDULE C

# SCHEDULE C

**SCHEDULE C**

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

**SCHEDULE C**

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

**SCHEDULE C**

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

**SCHEDULE C**

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