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*Attorneys for Plaintiffs Cirque du Soleil Canada Inc. and Cirque du Soleil Images Inc.*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CIRQUE DU SOLEIL CANADA INC. and CIRQUE DU  
SOLEIL IMAGES INC.,

Case No. 16-CV-2389

Plaintiffs,

**COMPLAINT**

-against-

**JURY TRIAL DEMANDED**

JUSTIN TIMBERLAKE, TIMOTHY MOSLEY,  
professionally known as "TIMBALAND," JEROME  
HARMON, professionally known as "J-ROC," JAMES  
FAUNTLEROY, UNIVERSAL MUSIC - Z TUNES LLC,  
WB MUSIC CORP., and SONY MUSIC  
ENTERTAINMENT,

Defendants.

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Plaintiffs Cirque du Soleil Canada Inc. and Cirque du Soleil Images Inc., by their attorneys, Reitler Kailas & Rosenblatt LLC, for their Complaint against the Defendants herein, allege as follows:

**NATURE OF ACTION**

1. This is a copyright infringement action brought by Plaintiffs against all Defendants to redress Defendants' unauthorized use of the musical composition and sound recording owned and controlled by Plaintiffs in the creation, production, manufacture, distribution, and commercial exploitation of the musical composition and sound recording

entitled “Don’t Hold The Wall,” performed and recorded by recording artist Justin Timberlake, and included on his double platinum album entitled “The 20/20 Experience.”

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over this action under the copyright laws of the United States, 17 U.S.C. § 101 et seq. and 28 U.S.C. § § 1331 and 1338.

3. Upon information and belief, this Court has personal jurisdiction over the Defendants because the Defendants have fixed, reproduced, communicated, publicly distributed, sold, and trafficked in the Infringing Work, or authorized others to do so, in New York and this District, and are otherwise transacting business in this State and in this jurisdiction.

4. The venue of this action is properly laid in the Southern District of New York pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400 in that a substantial part of the events giving rise to the claims herein occurred in the Southern District of New York and at the time of the commencement of this action, Defendants are subject to personal jurisdiction in the Southern District of New York.

### **PARTIES**

5. Plaintiff Cirque du Soleil Canada Inc. (“Cirque du Soleil Canada”) is a corporation duly incorporated under the laws of the Province of Quebec, with its principal place of business located at 8400 2<sup>nd</sup> Avenue, Montréal, Québec H1Z 4M6.

6. Cirque du Soleil Canada is the successor-in-interest to Créations Méandres Inc.

7. Plaintiff Cirque du Soleil Images Inc. (“Cirque du Soleil Images”) is a corporation duly incorporated under the laws of the Province of Quebec, with its principal place of business located at 8400 2<sup>nd</sup> Avenue, Montréal, Québec H1Z 4M6. (Cirque du Soleil Canada and Cirque du Soleil Images are sometimes hereinafter collectively referred to as “Plaintiffs.”)

8. Cirque du Soleil Images is the successor-in-interest to Cirque du Soleil Musique Inc.

9. Plaintiff Cirque du Soleil Canada and its affiliates are one of the largest theatrical producers in the world, presenting legendary and incredible musical and theatrical shows all over the globe.

10. Upon information and belief, Defendant Justin Timberlake (“Timberlake”) is a citizen and resident of the State of California. Timberlake is a popular recording artist, entertainer and songwriter.

11. Upon information and belief, Defendant Timothy Mosely, professionally known as “Timbaland,” (“Mosely”) is a citizen and resident of the State of Florida. Mosely is a music producer, songwriter, and recording artist.

12. Upon information and belief, Defendant Jerome Harmon, professionally known as “J-Roc,” (“Harmon”) is a citizen and resident of the State of Texas. Harmon is a music producer.

13. Upon information and belief, Defendant James Fauntleroy (“Fauntleroy”) is a citizen and resident of the State of California. Fauntleroy is a singer, producer and songwriter.

14. Upon information and belief, Defendant Universal Music - Z Tunes LLC (“Universal”) is a New York limited liability company with its principal place of business located in the State of New York.

15. Upon information and belief, Defendant WB Music Corp. (“WB Music”) is a California corporation with a place of business in New York, and which regularly and systematically transacts business in the State of New York.

16. Upon information and belief, Defendant Sony Music Entertainment (“Sony”), a wholly-owned subsidiary of New York corporation Sony Corporation of America, has a principal place of business located at 25 Madison Avenue, New York, New York 10016, and regularly and systematically transacts business in the State of New York. (Timberlake, Mosley, Harmon, Fauntleroy, Universal, WB Music and Sony are sometimes hereinafter collectively referred to as “Defendants.”)

### **BACKGROUND**

17. Cirque du Soleil Canada is the beneficial owner of the musical composition entitled “Steel Dream” (hereinafter, the “Composition”), and is the owner of the exclusive right to publicly perform, manufacture, distribute, license and otherwise commercially exploit the Composition.

18. Cirque du Soleil Images is the beneficial owner of the sound recording embodying the Composition, also entitled “Steel Dream” (the “Sound Recording”), and is the owner of the exclusive right to manufacture, distribute, license and otherwise commercially exploit the Sound Recording.

19. Both the Composition and the Sound Recording were included in the highly successful Cirque du Soleil album entitled “QUIDAM,” which was released in January 1997, and on that basis, Plaintiffs believe that Defendants had access to both.

20. The P.A. copyright in the Composition was registered with the U.S. Copyright Office under registration number PA 1-113-991. A true and correct copy of the Certificate of Registration issued by the U.S. Copyright Office for the P.A. copyright in the Composition is annexed hereto as Exhibit 1.

21. The S.R. copyright in QUIDAM, which includes the Sound Recording, was registered with the U.S. Copyright Office under registration number SR 325-708. A true and correct copy of the Certificate of Registration issued by the U.S. Copyright Office for the S.R. copyright in the Sound Recording is annexed hereto as Exhibit 2.

22. The copyright in the Composition is currently valid and subsisting.

23. The copyright in the Sound Recording is currently valid and subsisting.

24. At all times prior to the commencement of this action, Plaintiffs and their respective predecessors-in-interest have fully complied with the statutory formalities governing copyrights with respect to the Composition and the Sound Recording.

#### **DEFENDANTS' UNLAWFUL ACTS**

25. Upon information and belief, on or about March 15, 2013, RCA Records, a Sony record label, released and distributed, and continues to distribute, phonorecords, compact discs, audio-visual works and digital audio transmissions of Timberlake's studio album "The 20/20 Experience" (the "Album").

26. Upon information and belief, a deluxe version of the Album with two additional tracks was released by RCA Records contemporaneously with the Album (the "Deluxe Album").

27. Upon further information and belief, the Album was also released as part of a compilation album entitled "The 20/20 Experience – The Complete Experience" on or about September 27, 2013 (the "Compilation Album"). (The Album, Deluxe Album, and Compilation Album are hereinafter collectively referred to as the "Infringing Album.")

28. The Infringing Album embodies unauthorized uses, copies and/or derivative works based upon the Composition and the Sound Recording, as embodied in Track 3 thereof, entitled "Don't Hold The Wall" (the "Infringing Work").

29. The Infringing Work was also released and available as a single in digital format.
30. Upon information and belief, the Infringing Work makes unauthorized use of the Composition and infringes upon Cirque du Soleil Canada's copyright in the Composition.
31. Upon information and belief, the Infringing Work incorporates an unauthorized digital sample that infringes Cirque du Soleil Images' copyright in the Sound Recording.
32. Upon information and belief, Timberlake, Mosely, Harmon and Fauntleroy are credited as the co-authors of musical composition embodied in the Infringing Work.
33. The Infringing Work and the Infringing Album were produced, manufactured, reproduced, distributed, sold and released by Defendants on the Sony record label, and sales of the Infringing Work and the Infringing Album have taken place within this judicial district.
34. Upon information and belief, the Infringing Album has been certified "Double Platinum" by the Recording Industry Association of America, signifying sales of more than two million copies of the Infringing Album.
35. Upon information and belief, each Defendant has participated in and contributed to the creation, production, manufacture and/or distribution of the Infringing Work and Infringing Album.
36. Upon further information and belief, each Defendant has financially benefited from the creation, production, manufacture and/or distribution of the Infringing Work and the Infringing Album.
37. Neither Plaintiff Cirque du Soleil Canada, nor any agent on its behalf, has licensed any rights in the Composition to any Defendant, or otherwise consented to Defendants' use of the Composition in connection with the Infringing Album or the Infringing Work.

38. Neither Plaintiff Cirque du Soleil Images, nor any agent on its behalf, has licensed any rights in the Sound Recording to any Defendant, or otherwise consented to Defendants' use of the Sound Recording in connection with the Infringing Album or the Infringing Work.

39. Defendants have infringed and continue to infringe Plaintiffs' respective copyrights in the Composition and the Sound Recording by creating, producing, manufacturing, reproducing, distributing, selling, promoting, advertising, performing by means of digital audio transmission, and otherwise commercially exploiting the Infringing Work and Infringing Album, and/or authorizing others to do the same, without Plaintiffs' authority or consent, in violation of 17 U.S.C. § 101 et seq.

40. By letter dated March 13, 2015, Plaintiffs, among other things, advised Sony of their copyright ownership in the Composition and the Sound Recording and the unauthorized uses thereof in connection with the Infringing Album and the Infringing Work, and demanded that Defendants cease and desist from any further infringing conduct. A copy of the March 13, 2015 letter is annexed hereto as Exhibit 3.

41. Defendants have failed and/or refused to comply with Plaintiffs' demands set forth in the March 13, 2015 letter, have continued to infringe Plaintiffs' copyrights in the Composition and the Sound Recording, and upon information and belief, will continue to infringe Plaintiffs' copyrights in the Composition and the Sound Recording unless enjoined by this Court.

42. Defendants' actions with respect to the release and commercial exploitation of the Infringing Work and Infringing Album are wrongful and willful.

43. Plaintiffs have no adequate remedy at law.

## COUNT I

### COPYRIGHT INFRINGEMENT

44. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 43 above as if fully set forth herein.

45. Plaintiff Cirque du Soleil Canada is the owner of valid and subsisting copyright in the Composition.

46. All of Defendants' acts and omissions set forth above were performed without the permission, license, authority or consent of Plaintiff Cirque du Soleil Canada.

47. Defendants' acts and omissions set forth above constitute acts of copyright infringement by Defendants of Plaintiff Cirque du Soleil Canada's copyright in the Composition.

48. Defendants' infringements are willful and intentional inasmuch as Defendants were or should have been aware, and had reason to believe, that their acts constituted infringements of Plaintiff Cirque du Soleil Canada's copyright.

49. As a result of the willful and intentional conduct hereinabove set forth, Plaintiff Cirque du Soleil Canada is entitled to a permanent injunction prohibiting any further manufacture, sale, distribution, electronic transmission or other commercial exploitation of the Infringing Work and Infringing Album or any other work which infringes upon the Composition.

50. By reason of the foregoing, Plaintiff Cirque du Soleil Canada has been damaged in an amount to be determined at trial, of no less than Four Hundred Thousand (\$400,000.00) dollars.

51. Plaintiff Cirque du Soleil Canada has suffered and will continue to suffer irreparable harm and injury as a result of the aforesaid infringing acts of Defendants.

52. Plaintiff Cirque du Soleil Canada has no adequate remedy of law.



## **COUNT II**

### **COPYRIGHT INFRINGEMENT**

53. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 52 above as if fully set forth herein.

54. Plaintiff Cirque du Soleil Images is the owner of valid and subsisting copyright in the Sound Recording.

55. All of Defendants' acts and omissions set forth above were performed without the permission, license, authority or consent of Plaintiff Cirque du Soleil Images.

56. Defendants' acts and omissions set forth above constitute acts of copyright infringement by Defendants of Plaintiff Cirque du Soleil Images' copyright in the Sound Recording.

57. Defendants' infringements are willful and intentional inasmuch as Defendants were or should have been aware, and had reason to believe, that their acts constituted infringements of Plaintiff Cirque du Soleil Images' copyright.

58. As a result of the willful and intentional conduct hereinabove set forth, Plaintiff Cirque du Soleil Images is entitled to a permanent injunction prohibiting any further manufacture, sale, distribution, electronic transmission or other commercial exploitation of the Infringing Work and Infringing Album or any other work which infringes upon the Sound Recording.

59. By reason of the foregoing, Plaintiff Cirque du Soleil Images has been damaged in an amount to be determined at trial, of no less than Four Hundred Thousand (\$400,000.00) dollars.

60. Plaintiff Cirque du Soleil Images has suffered and will continue to suffer irreparable harm and injury as a result of the aforesaid infringing acts of Defendants.

61. Plaintiff Cirque du Soleil Images has no adequate remedy of law.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

A. That Defendants, jointly and severally, be required to pay Plaintiffs such actual damages as Plaintiffs have sustained in consequence of Defendants' infringements of Plaintiffs' copyrights, and to account for and pay to Plaintiffs all gains, profits and advantages derived by Defendants from their infringements of Plaintiffs' copyrights pursuant to 17 U.S.C. § 504, in an amount to be proven at trial;

B. That Defendants, their officers, agents and employees, and all persons acting in concert or participation with them, be enjoined both during the pendency of this action and permanently thereafter from copying, reproducing, distributing, or publicly performing the Infringing Work and Infringing Album and/or any derivative work thereof without authorization from Plaintiffs, or otherwise infringing Plaintiffs' copyrights in any manner, and from permitting, authorizing or causing others to do so;

C. That Defendants be required to deliver up to be impounded and destroyed all copies of the Infringing Work, the Infringing Album and/or any derivative work thereof in Defendants' custody or control;

D. Awarding Plaintiffs their costs and disbursements incurred in prosecuting this action, including, but not limited to, attorneys' fees; and

E. Such other and further relief as this Court deems just and proper.

Dated: New York, New York  
March 31, 2016

REITLER KAILAS & ROSENBLATT, LLC  
Attorneys for Plaintiffs

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## General Information

<b>Court</b>	United States District Court for the Southern District of New York; United States District Court for the Southern District of New York
<b>Federal Nature of Suit</b>	Property Rights - Copyrights[820]
<b>Docket Number</b>	1:16-cv-02389