

1 ALLEN B. GRODSKY (SBN 111064)
 GRODSKY & OLECKI LLP
 2 2001 Wilshire Blvd., Ste. 210
 Santa Monica, California 90403
 3 310.315.3009 (phone)
 310.315.1557 (fax)
 4 allen@grotsky-olecki.com (e-mail)

5 Attorneys for Defendants
 WILLIAM ADAMS, et al.

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UNITED STATES DISTRICT COURT

9

CENTRAL DISTRICT OF CALIFORNIA

10

11 GEORGE CLINTON, an individual,

12 Plaintiff,

13 v.

14 WILL ADAMS, p/k/a will.i.am,
 individually and d/b/a WILL.I.AM MUSIC
 15 PUBLISHING, an individual; ALLAN
 PINEDA, p/k/a apl.de.ap, individually and
 16 d/b/a JEEPNEY MUSIC PUBLISHING,
 an individual; JAIME GÓMEZ, p/k/a
 17 Taboo, individually and d/b/a NAWASHA
 NETWORKS PUBLISHING, an
 18 individual; STACY FERGUSON, p/k/a
 Fergie, an individual; GEORGE PAJON,
 19 JR., an individual; JOHN CURTIS, an
 individual; UNIVERSAL MUSIC
 20 GROUP, INC., a Delaware corporation;
 UMG RECORDINGS, INC., a Delaware
 21 corporation; WILL I AM MUSIC, INC., a
 California corporation; CHERRY LANE
 22 MUSIC PUBLISHING COMPANY, INC.,
 a New York corporation; EL CUBANO
 23 MUSIC, INC., a California corporation;
 EMI BLACKWOOD MUSIC INC., a
 24 Connecticut corporation; TAB
 MAGNETIC, INC., a California
 25 corporation; and DOES 1 through 10,

26 Defendants.

27

28

Case No. CV 10-9476 ODW (PLAx)

Honorable Otis D. Wright II, Ctrm 11

**DEFENDANTS' SEPARATE
 STATEMENT OF
 UNCONTROVERTED FACTS IN
 SUPPORT OF MOTION FOR
 PARTIAL SUMMARY
 JUDGMENT**

Date: April 9, 2012
 Time: 1:30 p.m.
 Place: Courtroom 11

Pre-Trial Conf.: May 7, 2012
 Trial Date: June 5, 2012

1 Pursuant to Local Rule 56-1 Paragraph 6(d) of the Scheduling and Case
2 Management Order, Defendants submit the following Separate Statement of
3 Uncontroverted Facts.

4
5 **UNDISPUTED MATERIAL FACTS**

EVIDENCE

6
7 1. Plaintiff George Clinton was a member of the funk musical group known as
8 Funkadelic. Complaint, ¶ 9.

9
10
11 2. Clinton is both known by the names Ex. 13.
12 “George Clinton” and “George Clinton,
13 Jr.”

14
15 3. Clinton produced the master sound recording (*Not Just*) *Knee Deep* (“*Knee*
16 *Deep*”), which was contained on Complaint, ¶ 31.
17 Funkadelic’s 1979 album UNCLE SAM
18 WANTS YOU.

19
20
21 4. Warner Bros. Records, as Clinton’s employer for hire, registered the
22 copyright for the sound recording for the
23 album UNCLE SAM WANTS YOU on
24 or about October 5, 1979. Complaint, ¶ 32.
25
26
27
28

- 1 5. The Black Eyed Peas (“BEP”) is a music Complaint, ¶¶ 1, 10, 11, 12, 13.
2 group composed, at all relevant times, of
3 defendants William Adams, Allan
4 Pineda, Jamie Gomez, and Stacy
5 Ferguson.
6
- 7 6. In 2003, BEP released an album entitled Complaint, ¶¶ 39, 42.
8 ELEPHUNK. *Shut Up* was one of the
9 singles on ELEPHUNK.
10
- 11 7. At or about the same time as Rosoff Decl., ¶ 4; Complaint,
12 ELEPHUNK was released, BEP released ¶ 1.
13 a vinyl album containing several different
14 versions of *Shut Up*; one of those
15 versions included a sample of *Knee*
16 *Deep*.
17
- 18 8. In order to obtain a license for use of Marshall Decl., ¶¶ 3-4.
19 *Knee Deep*, BEP contacted Capitol
20 Records, which, through its wholly
21 owned subsidiary Priority Records, had
22 been releasing albums featuring Clinton’s
23 masters.
24
- 25 9. Priority had entered into a license Marshall Decl., ¶ 3; Ex. A to
26 agreement with Tercer Mundo, Inc., a RFJN (McMullan Decl.), ¶ 4;
27 company that represented that it had the Ex. 1, ¶ 5((a)(ii)(E)).
28 rights to Clinton’s masters. That license

- 1 agreement gave Priority the right to issue
2 “sampling” licenses for Clinton masters,
3 such as *Knee Deep*.
4
- 5 10. Capitol and BEP negotiated a license for Marshall Decl., ¶ 5, Ex. 2.
6 use of the *Knee Deep* sample in the 2003
7 Shut Up Remix. A check in the amount
8 of \$12,000 was then sent to Capital as
9 payment of the advance on the license.
10
- 11 11. In 2009, BEP, through Universal, Complaint, ¶¶ 51, 52.
12 released an album entitled “THE E.N.D.”
13
- 14 12. At the time “THE E.N.D.” was released, Rosoff Decl., ¶ 5.
15 BEP sought to release a special double-
16 disc edition of the “THE E.N.D.”
17 exclusively to be sold at Target stores.
18 The second disc of this Target release
19 contained a few new songs as well as
20 remixes of classic BEP hits, including
21 *Shut Up*. The planned *Shut Up* remix
22 was again to use a sample of *Knee Deep*.
23
- 24 13. On June 17, 2005, a federal court entered Complaint, ¶¶ 34, 35.
25 an order declaring Clinton to be the sole
26 owner of his master sound recordings,
27 including *Knee Deep*.
28

1 Though entered in 2005, the Order was
2 not recorded with the Copyright Office
3 until May 15, 2006.

4
5 14. Deborah Mannis-Gardner of DMG Mannis-Gardner Decl., ¶ 2;
6 Clearances, Inc., a sample clearance Rosoff Decl., ¶ 6.
7 company, was retained to obtain a license
8 from Clinton for the use of a sample of
9 *Knee Deep* in the 2009 Shut Up Remix.

10
11 15. Mannis-Gardner has been used before by Rosoff Decl., ¶ 6.
12 BEP and has an excellent reputation in
13 the music industry.

14
15 16. Initially, Mannis-Gardner had difficulty Mannis-Gardner Decl., ¶ 3.
16 getting in touch with Clinton.

17
18 17. Eventually, Mannis-Gardner was referred Mannis-Gardner Decl., ¶ 4.
19 to Eban Kelly who she understood had
20 been working with Clinton for over 20
21 years.

22
23 18. Mannis-Gardner faxed to Kelly a Ex. 3; Mannis-Gardner Decl.,
24 proposed license for use of *Knee Deep* in ¶ 5; Exs. 4-5; Ex. 12, Resp. to
25 the *Shut Up* Remix. Kelly faxed back an RFA Nos. 12, 13.
26 executed license agreement and an
27 executed W9, providing for payment to
28 Clinton to be made to C. Kunspyruhzy,

- 1 LLC, a company of which Clinton is a
2 member.
- 3
- 4 19. Both the license and the W9 form Mannis-Gardner Decl., ¶ 6; Exs.
5 appeared to have Clinton’s signature. At 4-5.
6 the time she received the documents,
7 Mannis-Gardner had no reason to believe
8 that they did not contain the actual
9 signature of Mr. Clinton.
- 10
- 11 20. Mannis-Gardner sent a \$15,000 advance Ex. 6; Mannis-Gardner Decl.,
12 check to C. Kunspyruhzy, LLC. ¶ 7.
- 13
- 14 21. Defendant will.i.am music, inc. (“WMI”) Rosoff Decl., ¶ 7.
15 is a company owned by Defendant
16 Adams.
- 17
- 18 22. Defendant Tab Magnetic, Inc. (“TMI”) is Rosoff Decl., ¶ 8.
19 a company owned by Defendant Gomez.
- 20
- 21 23. Neither WMI nor TMI owns, or ever Rosoff Decl., ¶¶ 7, 8.
22 owned, the masters for the 2003 Shut Up
23 Remix or the 2009 Shut Up Remix.
- 24
- 25 24. Neither WMI nor TMI licensed the right Rosoff Decl., ¶¶ 7, 8.
26 to exploit those masters.
- 27
- 28

- 1 25. Neither WMI nor TMI received any Rosoff Decl., ¶¶ 7, 8.
2 income from the exploitation of those
3 masters.
4
- 5 26. Clinton has never computed his damages Ex. 7, ¶ III.
6 as required by Rule 26(A)(1)(a)(iii).
7 Rather, Plaintiff’s section on damages in
8 his Rule 26 disclosures states: “Plaintiff
9 asks for damages, declaratory relief,
10 permanent injunctive relief, and equitable
11 relief pursuant to the Copyright Act, as
12 amended. . . . The amount of damages is
13 not known at this time.”
14
- 15 27. Clinton never supplemented his Rule 26 Grodsky Decl., ¶ 2.
16 disclosures.
17
- 18 28. Clinton has not made “available for Grodsky Decl., ¶ 4.
19 inspection and copying . . . the
20 documents or other evidentiary material .
21 . . on which each computation is based,
22 including materials bearing on the nature
23 and extent of injuries suffered.”
24
- 25 29. Indeed, Clinton has never produced any Grodsky Decl., ¶ 3.
26 documents in this case as part of Rule 26
27 disclosures.
28

- 1 30. Clinton's Rule 26 disclosures do describe Ex. 7, p. 7, ¶ D.3.
2 certain categories of documents, but none
3 relate to damages.
4
- 5 31. Clinton submitted no expert report on the Grodsky Decl., ¶ 5.
6 day expert reports were to be served, nor
7 did he submit a rebuttal expert report on
8 the day rebuttal reports were due.
9
- 10 32. Written responses from both Universal Ex. 9, Resp. to RFP Nos. 4, 5;
11 and members of BEP stated that Ex. 10, Resp. to RFP Nos. 4-6.
12 documents relating to sales of digital
13 singles of, or albums containing, the two
14 remixes would be produced only if
15 Clinton's counsel stipulated to a
16 protective order which was then entered
17 by the Court.
18
- 19 33. On November 14, 2011, counsel for BEP Ex. 11; Grodsky Decl., ¶ 8.
20 submitted a draft protective order to
21 counsel for Clinton. Counsel for Clinton
22 never responded with any comments to
23 the draft protective order, never proposed
24 his own order, and never filed a motion
25 to compel further responses either as to
26 Universal or the BEP parties.
27
28

