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Attorneys for Plaintiff GEORGE CLINTON

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

GEORGE CLINTON, an individual,

Plaintiff,

v.

WILL ADAMS, p/k/a will,I,am  
individually and d/b/a will.i.am music, et  
al.,

Defendants.

Case No. CV 10-09476-ODW-PLA

The Honorable Otis D. Wright II

**PLAINTIFF'S STATEMENT OF  
GENUINE DISPUTES OF  
MATERIAL FACT**

Date: April 16, 2012  
Time: 1:30 P.M. (PST)  
Place: Courtroom 11

Action Filed: December 10, 2010

1 In accordance with Pursuant to L.R. 56-2, Plaintiff submits the following  
2 Statement of Genuine Disputes of Material Fact responding to the facts claimed by  
3  
4 Defendants to be undisputed:

5 **Undisputed Material Facts**

**Response & Evidence**

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

Undisputed. In addition,  
George Clinton is a current  
member of Funkadelic.

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

Undisputed.

15  
16 3. Clinton produced the master sound  
17  
18 recording (Not Just) Knee Deep (“Knee  
19 Deep”), which was contained on  
20 Funkadelic’s 1979 album UNCLE SAM (sic)  
21 WANTS YOU.

Undisputed, except that the proper  
name of the 1979 Funkadelic album  
is UNCLE JAM WANTS YOU.

22  
23  
24 4. Warner Bros. Records, as Clinton’s  
25  
26 employer for hire, registered the  
27  
28 copyright for the sound recording for the  
album UNCLE SAM (sic) WANTS YOU on

Undisputed.

1 or about October 5, 1979.

2  
3 5. The Black Eyed Peas (“BEP”) is  
4 a music group composed, at all  
5 relevant times, of defendants  
6 William Adams, Allan Pineda,  
7 Jamie Gomez, and Stacy Ferguson.  
8  
9

Undisputed.

10  
11 6. In 2003, BEP released an album  
12 entitled ELEPHUNK. Shut Up was  
13 one of the singles on ELEPHUNK.  
14

Undisputed.

15  
16 7. At or about the same time as  
17 ELEPHUNK was released, BEP  
18 released a vinyl album containing  
19 several different versions of Shut Up;  
20 one of those versions included a  
21 sample of *Knee Deep*.  
22  
23

Disputed only as to the statement  
that “one of those versions included  
a sample of “*Knee Deep*”. Clinton  
does not dispute that at least “one of  
those versions included a sample  
Of *Knee Deep*.”

1 8. In order to obtain a license for  
2 use of *Knee Deep*, BEP contacted  
3 Capitol Records, which, through its  
4 wholly owned subsidiary Priority  
5 Records, had been releasing albums  
6 featuring Clinton's masters.  
7

Disputed, lack of foundation and  
failure to satisfy at least Fed.R.Civ.P.  
56(c); The Marshall Decl., ¶3-4  
does not support this statement.

9  
10 9. Priority had entered into a  
11 license agreement with Tercer  
12 Mundo, Inc., a company that  
13 represented that it had the rights to  
14 Clinton's masters. That license  
15 agreement gave Priority the right to  
16 issue "sampling" licenses for  
17 Clinton masters, such as *Knee Deep*.  
18  
19  
20  
21

Disputed, any such license has been  
rendered invalid as a matter of law  
and adjudged to "not be honored"  
by the June 17, 2005 Order of  
Judge Real in Case 03-CV-08955.  
Clinton further objects to the  
McMullan Declaration under  
FRE 201.

22 10. Capitol and BEP negotiated a  
23 license for use of the *Knee Deep*  
24 sample in the 2003 *Shut Up Remix*.  
25 A check in the amount of \$12,000  
26 was then sent to Capital as payment  
27  
28

Disputed, any such license has been  
rendered invalid as a matter of law  
and adjudged to "not  
be honored" by the June 17, 2005  
Order of Judge Real in Case

1 of the advance on the license.

03-CV-08955.

2  
3 11. In 2009, BEP, through

Undisputed.

4 Universal, released an album entitled

5  
6 “THE E.N.D.”

7 12. At the time “THE E.N.D.” was

Undisputed.

8  
9 released, BEP sought to release a

10 special double-disc edition of the

11 “THE E.N.D.” exclusively to be sold

12 at Target stores. The second disc of

13 this Target release contained a few

14 new songs as well as remixes of

15 classic BEP hits, including Shut Up.

16 The planned Shut Up remix was

17 again to use a sample of Knee Deep.

18  
19  
20 13. On June 17, 2005, a federal court

Undisputed.

21  
22 entered an order declaring Clinton to

23 be the sole owner of his master sound

24 recordings, including Knee Deep.

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

5  
6 14. Deborah Mannis-Gardner of  
7 DMG Clearances, Inc., a sample  
8 clearance company, was retained to  
9  
10 obtain a license from Clinton for the  
11 use of a sample of Knee Deep in the  
12  
13 2009 Shut Up Remix.

14  
15 15. Mannis-Gardner has been used  
16 before by BEP and has an excellent  
17  
18 reputation in the music industry.

Undisputed.

Disputed. Clinton objects to any  
credibility determination of any  
witness as an inherently factual  
matter which is not amenable to Rule  
56. There is also a lack of foundation  
as to which member or members of  
the BEP had used Mannis-Gardner  
before.

1 16. Initially, Mannis-Gardner had difficulty Undisputed.  
2 getting in touch with Clinton.  
3

4  
5 17. Eventually, Mannis-Gardner was Undisputed.  
6 referred to Eban Kelly who she  
7 understood had been working with  
8 Clinton for over 20 years.  
9

10  
11 18. Mannis-Gardner faxed to Kelly Disputed., Ex.3; Mannis-Gardner  
12 faxed back an executed license Decl. ¶5; Exs. 4-5; Ex. 12, Resp. to  
13 agreement and an executed W9, RFA Nos. 12, 13; Kelly Decl., ¶2-  
14 providing for payment to Clinton to 11 and Clinton Decl., ¶3-7.  
15 be made to C. Kunspyruhzy,LLC, a  
16 company of which Clinton is a  
17 member.  
18  
19  
20

21  
22 19. Both the license and the W9 Disputed, Mannis-Gardner Decl..  
23 form appeared to have Clinton's ¶6, Exs. 4-5; Kelly Decl., ¶2-7 and  
24 signature. At the time she received Clinton Decl., ¶3-7. Clinton also  
25 the documents, Mannis-Gardner had objects on the basis that what Mannis  
26 no reason to believe that they did Gardner had reason to be believe  
27  
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20. Mannis-Gardner sent a \$15,000 advance check to C. Kunspyruhzy, LLC.

is an inherently factual issue.  
  
Disputed, there is no evidence that any such check was ever received, cashed or otherwise bears an endorsement Of Clinton. Kelly Decl., ¶2-7 and Clinton, Decl. ¶3-7.

21. Defendant will.i.am music, inc. (“WMI”) is a company owned by Defendant Adams.

Disputed, will.i.am music, inc. is a suspended California corporation which lacks legal capacity under Rule 17(a); Thennisch Decl., Ex A

22. Defendant Tab Magnetic, Inc. a company owned by Defendant Gomez.

Undisputed.

23. Neither WMI nor TMI owns, or ever owned, the masters for the 2003 Shut Up Remix or the 2009 Shut Up Remix.

Undisputed.

24. Neither WMI nor TMI licensed the right to exploit those masters.

Undisputed.

1  
2 25. Neither WMI nor TMI received  
3  
4 any income from the exploitation of  
5 those masters.

Disputed, the Rosoff Decl.,  
¶7, 8 is is not competent evidence  
From TMI, it is mere attorney  
argument which is not Rule 56  
evidence.

6  
7  
8  
9  
10 26. Clinton has never computed his  
11 damages as required by Rule  
12 26(A)(1)(a)(iii). Rather, Plaintiff's  
13 section on damages in his Rule 26  
14 disclosures states: "Plaintiff asks for  
15 damages, declaratory relief,  
16 permanent injunctive relief, and  
17  
18  
19

Disputed, Clinton's December  
10, 2010 Complaint relies upon the  
Section 504 of the U.S. Copyright Act  
that Clinton has the right to elect  
his choice of damages at any time  
prior to final judgment. Clinton  
does not waive these rights.

20  
21 27. Clinton never supplemented his  
22 Rule 26 disclosures.

Undisputed.

23  
24 28. Clinton has not made "available  
25 for inspection and copying . . . the  
26 documents or other evidentiary  
27  
28

Disputed, Clinton states that any such  
documents or other evidentiary  
material is wholly within the

1 material . . . on which each  
2 computation is based, including  
3 materials bearing on the nature and  
4 extent of injuries suffered.”  
5

the possession of the Defendants  
and have never been produced to  
Clinton.

6  
7 29. Indeed, Clinton has never  
8 produced any documents in this case  
9 as part of Rule 26 disclosures.  
10

Disputed. Clinton states that any data  
relating to sales and revenues of  
the Defendants’ products are within  
the custody and control of the  
Defendants, not Clinton and have  
never been produced to Clinton.  
11  
12  
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16  
17 30. Clinton’s Rule 26 disclosures do  
18 describe certain categories of  
19 documents, but none relate to  
20 damages.  
21

Disputed. Clinton states that any  
data relating to sales and revenues  
of the Defendants’ products are  
within the custody and control of  
the Defendants, not Clinton and  
have never been produced to  
Clinton.  
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1 31. Clinton submitted no expert  
2 report on the day expert reports  
3  
4 were to be served, nor did he submit  
5 a rebuttal expert report on the day  
6 rebuttal reports were due.  
7

Undisputed, but Clinton is not  
aware that Rule 26 imposes a  
requirement to submit such an  
“expert” report.

8  
9 32. Written responses from both  
10 Universal and members of BEP  
11 stated that documents relating to  
12 sales of digital singles of, or albums  
13 containing, the two remixes would be  
14 produced only if Clinton’s counsel  
15 stipulated to a protective order which  
16 was then entered by the Court.  
17  
18  
19  
20

Undisputed, as counsel for Will  
Adams provided such sales data to  
Clinton’s counsel on October 12,  
2011, a date well prior to the  
articulated demand for the  
Protective Order.

21 33. On November 14, 2011, counsel  
22 for BEP submitted a draft protective  
23 order to counsel for Clinton.  
24 Counsel for Clinton never responded  
25 with any comments to the draft  
26 protective order, never proposed his  
27  
28

Undisputed, as counsel for Will  
Adams provided such sales data to  
Clinton’s counsel on  
October 12, 2011, a date well prior  
to the articulated demand for the  
Protective Order dated November

1 own order, and never filed a motion 14, 2011.

2 to compel further responses either as

3  
4 to Universal or the BEP parties.

5 34. In October 2011, Defendants Undisputed.

6  
7 served requests for production

8 seeking, among other things,

9  
10 documents evidencing Plaintiff's

11 damages. Defendants' counsel

12 extended Clinton's time to respond

13 to those requests to January 4, 2012.

14  
15  
16  
17 35. Clinton did not serve responses Undisputed.

18 until February 29, 2012 – the last

19 day of discovery – and those

20 responses contained only

21 boilerplate objections. No

22 responsive documents were ever

23 served.

24  
25  
26  
27 36. The 2003 Shut Up Remix and Undisputed.

28

1 the 2009 Shut Up Remix are  
2 identical except one of the remixes is  
3  
4 a few seconds longer.

5 DATED: March 19, 2012  
6

7  
8 Attorneys for Plaintiff, George Clinton

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**CERTIFICATE OF SERVICE**

I, hereby certify that on March 19, 2012, I electronically filed the foregoing:  
**PLAINTIFF’S STATEMENT OF GENUINE DISPUTES OF MATERIAL FACT**  
with the Clerk of the Court using the ECF System which will send notification of such  
filing to all counsel of record.

/s/ Jeffrey P. Thennisch  
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