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10 Attorneys for Defendants WILLIAM ADAMS; STACY FERGUSON; ALLAN  
 PINEDA; JAIME GOMEZ; all individually and collectively as the music group  
 11 THE BLACK EYED PEAS; TAB MAGNETIC PUBLISHING; HEADPHONE  
 JUNKIE PUBLISHING, LLC; will.i.am. music, llc; JEEPNEY MUSIC, INC.;  
 12 CHERRY RIVER MUSIC CO.; and EMI APRIL MUSIC, INC.

**13 UNITED STATES DISTRICT COURT****14 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

15 BRYAN PRINGLE, an individual,

16 Plaintiff,

17 v.

18 WILLIAM ADAMS, JR.; STACY  
 FERGUSON; ALLAN PINEDA; and  
 19 JAIME GOMEZ, all individually and  
 collectively as the music group the  
 20 Black Eyed Peas; DAVID GUETTA;  
 FREDERICK RIESTERER; UMG  
 21 RECORDINGS, INC.; INTERSCOPE  
 RECORDS; EMI APRIL MUSIC,  
 22 INC.; HEADPHONE JUNKIE  
 PUBLISHING, LLC; WILL.I.AM.  
 23 MUSIC, LLC; JEEPNEY MUSIC,  
 INC.; TAB MAGNETIC  
 24 PUBLISHING; CHERRY RIVER  
 MUSIC CO.; SQUARE RIVOLI  
 25 PUBLISHING; RISTER EDITIONS;  
 and SHAPIRO, BERNSTEIN & CO.,

26 Defendants.  
 27  
 28

Case No. SACV10-1656 JST(RZx)

Hon. Josephine Staton Tucker  
 Courtroom 10A

**DEFENDANT CHERRY RIVER  
 MUSIC CO.  
 ANSWER AND AFFIRMATIVE  
 DEFENSES**

Complaint Filed: October 28, 2010  
 Trial Date: Not Assigned

BRYAN CAVE LLP  
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 IRVINE, CALIFORNIA 92612-4414

1 Defendant Cherry River Music Co. (“Defendant Cherry River”) presents the  
2 following Answer and Defenses to Plaintiff’s First Amended Complaint  
3 (“Complaint”):

4 INTRODUCTION

5 1. Answering paragraph 1, Defendant Cherry River denies the allegations in this  
6 paragraph.

7 2. Answering paragraph 2, Defendant Cherry River admits that Plaintiff’s  
8 Complaint seeks certain relief, but denies that he is entitled to such relief, and denies  
9 all remaining allegations of the paragraph.

10 3. Answering paragraph 3, Defendant Cherry River lacks sufficient information  
11 to admit or deny the allegations contained in paragraph 3, and on that basis denies  
12 each and every such allegation.

13 4. Answering paragraph 4, Defendant Cherry River lacks sufficient information  
14 to admit or deny the allegations contained in paragraph 4, and on that basis denies  
15 each and every such allegation.

16 5. Answering paragraph 5, Defendant Cherry River lacks sufficient information  
17 to admit or deny the allegations contained in paragraph 5, and on that basis denies  
18 each and every such allegation.

19 6. Answering paragraph 6, Defendant Cherry River admits that legitimate  
20 copyright owners have rights defined by the law, but denies the remaining  
21 allegations of this paragraph.

22 JURISDICTION AND VENUE

23 7. Answering paragraph 7, Defendant Cherry River admits, on information and  
24 belief, that this action appears to arise out of claims under the Copyright Act, and  
25 that this Court would appear to have subject matter jurisdiction. Defendant Cherry  
26 River denies that the Complaint states a cause of action upon which relief can be  
27 granted.

28 8. Answering paragraph 8, Defendant Cherry River denies the allegations in this

1 paragraph.

2 GENERAL ALLEGATIONS

3 A. Parties

4 9. Answering paragraph 9, Defendant Cherry River lacks sufficient information  
5 to admit or deny the allegations contained in paragraph 9, and on that basis denies  
6 each and every such allegation.

7 10. Answering paragraph 10, Defendant Cherry River, on information and belief,  
8 admits the allegations of paragraph 10.

9 11. Answering paragraph 11, Defendant Cherry River, on information and belief,  
10 admits, the allegations of paragraph 11.

11 12. Answering paragraph 12, Defendant Cherry River, on information and belief,  
12 admits the allegations of paragraph 12.

13 13. Answering paragraph 13, Defendant Cherry River, on information and belief,  
14 admits the allegations of paragraph 13.

15 14. Answering paragraph 14, Defendant Cherry River admits that David Guetta  
16 (“Guetta”) is an individual song writer and music producer and, on information and  
17 belief, denies that Guetta lives in Los Angeles, California. Defendant Cherry River  
18 admits that Guetta has co-written and co-produced certain songs of the musical  
19 group known as The Black Eyed Peas. Other than these specific responses, the  
20 remaining allegations of paragraph 14 are denied.

21 15. Answering paragraph 15, Defendant Cherry River admits that Frederic  
22 Riesterer (“Riesterer”) is an individual song writer and music producer and, on  
23 information and belief, denies that Riesterer lives in Los Angeles, California.  
24 Defendant Cherry River admits that Riesterer has co-written and co-produced  
25 certain songs of the musical group known as The Black Eyed Peas. Other than these  
26 specific responses, the remaining allegations of paragraph 15 are denied.

27 16. Answering paragraph 16, Defendant Cherry River admits that UMG  
28 Recordings, Inc. is a record label. Defendant Cherry River lacks sufficient

1 information to admit or deny the remaining allegations contained in paragraph 16,  
2 and on that basis denies each and every such allegation.

3 17. Answering paragraph 17, Defendant Cherry River admits, on information and  
4 belief, that Interscope is a record label and is owned by Defendant UMG. Defendant  
5 Cherry River admits that there is a contractual relationship between the musical  
6 group known as The Black Eyed Peas and Interscope. Defendant Cherry River  
7 lacks sufficient information to admit or deny the remaining allegations contained in  
8 paragraph 17, and on that basis denies each and every such allegation.

9 18. Answering paragraph 18, Defendant Cherry River admits, on information and  
10 belief, that EMI April Music, Inc. is a music publishing company and that it has a  
11 relationship to the song "I Gotta Feeling." Defendant Cherry River lacks sufficient  
12 information to admit or deny the remaining allegations contained in paragraph 18,  
13 and on that basis denies each and every such allegation.

14 19. Answering paragraph 19, Defendant Cherry River admits, on information and  
15 belief, that Headphone Junkie Publishing, LLC is in part a music publishing  
16 designee and that it has a relationship to the song "I Gotta Feeling." Defendant  
17 Cherry River lacks sufficient information to admit or deny the remaining allegations  
18 contained in paragraph 19, and on that basis denies each and every such allegation.

19 20. Answering paragraph 20, Defendant Cherry River admits that will.i.am  
20 music, llc (incorrectly named in the Complaint as Will.I.Am Music, LLC) is, in part,  
21 a music publishing designee of Defendant William Adams and that it has a  
22 relationship to the song "I Gotta Feeling." Defendant Cherry River denies that  
23 will.i.am music, llc is a California Limited Liability Company but admit that its  
24 principle place of business is in Los Angeles, California. The remaining allegations  
25 are denied.

26 21. Answering paragraph 21, Defendant Cherry River admits, on information and  
27 belief, that Jeepney Music, Inc. was, in part, a music publishing designee, that it had  
28 a relationship to the song "I Gotta Feeling," and, on information and belief, it had a

1 place of business in Los Angeles, California. Defendant Cherry River lacks  
2 sufficient information to admit or deny the remaining allegations contained in  
3 paragraph 21, and on that basis denies each and every such allegation.

4 22. Answering paragraph 22, Defendant Cherry River admits, on information and  
5 belief, that Tab Magnetic Publishing is, in part, a music publishing designee, that it  
6 has a relationship to the song “I Gotta Feeling,” and, on information and belief, it  
7 has a place of business in Los Angeles California. Defendant Cherry River lacks  
8 sufficient information to admit or deny the remaining allegations contained in  
9 paragraph 22, and on that basis denies each and every such allegation.

10 23. Answering paragraph 23, Defendant Cherry River denies the allegations in  
11 this paragraph.

12 24. Answering paragraph 24, Defendant Cherry River admits, on information and  
13 belief, that Rivoli Publishing is a music publishing company and that it has a  
14 relationship to the song “I Gotta Feeling.” Defendant Cherry River lacks sufficient  
15 information to admit or deny the remaining allegations contained in paragraph 24,  
16 and on that basis denies each and every such allegation.

17 25. Answering paragraph 25, Defendant Cherry River admits, on information and  
18 belief, that Rister Editions is a music publishing company and that it has a  
19 relationship to the song “I Gotta Feeling.” Defendant Cherry River lacks sufficient  
20 information to admit or deny the remaining allegations contained in paragraph 25,  
21 and on that basis denies each and every such allegation.

22 26. Answering paragraph 26, Defendant Cherry River admits, on information and  
23 belief, that Shapiro, Bernstein & Co., Inc. is a music publishing company and that it  
24 has a relationship to the song “I Gotta Feeling.” Defendant Cherry River lacks  
25 sufficient information to admit or deny the remaining allegations contained in  
26 paragraph 26, and on that basis denies each and every such allegation.

27 **B. Plaintiff’s Creation and Protection of His Original Work**

28 27. Answering paragraph 27, Defendant Cherry River lacks sufficient information

1 to admit or deny the allegations contained in paragraph 27, and on that basis denies  
2 each and every such allegation.

3 28. Answering paragraph 28, Defendant Cherry River lacks sufficient information  
4 to admit or deny the allegations contained in paragraph 28, and on that basis denies  
5 each and every such allegation.

6 29. Answering paragraph 29, Defendant Cherry River lacks sufficient information  
7 to admit or deny the allegations contained in paragraph 29, and on that basis denies  
8 each and every such allegation.

9 30. Answering paragraph 30, Defendant Cherry River lacks sufficient information  
10 to admit or deny the allegations contained in paragraph 30, and on that basis denies  
11 each and every such allegation.

12 C. Defendants' Access to and Copying of Plaintiff's Copyrighted Song "Take a  
13 Dive"

14 31. Answering paragraph 31, Defendant Cherry River lacks sufficient information  
15 to admit or deny the allegations contained in paragraph 31, and on that basis denies  
16 each and every such allegation.

17 32. Answering paragraph 32, Defendant Cherry River lacks sufficient information  
18 to admit or deny the allegations contained in paragraph 32, and on that basis denies  
19 each and every such allegation.

20 33. Answering paragraph 33, Defendant Cherry River lacks sufficient information  
21 to admit or deny the allegations contained in paragraph 33, and on that basis denies  
22 each and every such allegation.

23 34. Answering paragraph 34, Defendant Cherry River lacks sufficient information  
24 to admit or deny the allegations contained in paragraph 34, and on that basis denies  
25 each and every such allegation.

26 35. Answering paragraph 35, Defendant Cherry River lacks sufficient information  
27 to admit or deny the allegations contained in paragraph 35, and on that basis denies  
28 each and every such allegation.

1 36. Answering paragraph 36, Defendant Cherry River lacks sufficient information  
2 to admit or deny the allegations contained in paragraph 36, and on that basis denies  
3 each and every such allegation.

4 37. Answering paragraph 37, Defendant Cherry River lacks sufficient information  
5 to admit or deny the allegations contained in paragraph 37, and on that basis denies  
6 each and every such allegation.

7 38. Answering paragraph 38, Defendant Cherry River lacks sufficient information  
8 to admit or deny the allegations contained in paragraph 38, and on that basis denies  
9 each and every such allegation.

10 39. Answering paragraph 39, Defendant Cherry River denies the allegations in  
11 this paragraph.

12 D. Substantial Similarity Between “Take a Dive” and “I Gotta Feeling”

13 40. Answering paragraph 40, Defendant Cherry River lacks sufficient information  
14 to admit or deny the allegations contained in paragraph 40, and on that basis denies  
15 each and every such allegation.

16 41. Answering paragraph 41, Defendant Cherry River lacks sufficient information  
17 to admit or deny the allegations contained in paragraph 41, and on that basis denies  
18 each and every such allegation.

19 42. Answering paragraph 42, Defendant Cherry River lacks sufficient information  
20 to admit or deny the allegations contained in paragraph 42, and on that basis denies  
21 each and every such allegation.

22 43. Answering paragraph 43, Defendant Cherry River lacks sufficient information  
23 to admit or deny the allegations contained in paragraph 43, and on that basis denies  
24 each and every such allegation.

25 E. The Aftermath of “I Gotta Feeling’s” Release

26 44. Answering paragraph 44, Defendant Cherry River admits that I Gotta Feeling  
27 was released in or around June 2009. Defendant Cherry River lacks sufficient  
28 information to admit or deny the remaining allegations contained in paragraph 44,

1 and on that basis denies each and every such allegation.

2 45. Answering paragraph 45, Defendant Cherry River admits that “I Gotta  
3 Feeling” has achieved tremendous success and worldwide acclaim but lacks  
4 sufficient information to admit or deny the allegations contained in paragraph 45,  
5 and on that basis denies each and every such allegation.

6 46. Answering paragraph 46, Defendant Cherry River denies the allegations in  
7 this paragraph.

8 F. Defendants’ Conspiracy to Engage in and Conduct a Pattern and Practice of  
9 Ongoing Willful Copyright Infringement as to Others

10 47. Answering paragraph 47, Defendant Cherry River lacks sufficient information  
11 to admit or deny the allegations contained in paragraph 47, and on that basis denies  
12 each and every such allegation.

13 48. Answering paragraph 48, Defendant Cherry River lacks sufficient information  
14 to admit or deny the allegations contained in paragraph 48, and on that basis denies  
15 each and every such allegation.

16 49. Answering paragraph 49, Defendant Cherry River lacks sufficient information  
17 to admit or deny the allegations contained in paragraph 49, and on that basis denies  
18 each and every such allegation.

19 50. Answering paragraph 50, Defendant Cherry River lacks sufficient information  
20 to admit or deny the allegations contained in paragraph 50, and on that basis denies  
21 each and every such allegation.

22 51. Answering paragraph 51, Defendant Cherry River lacks sufficient information  
23 to admit or deny the allegations contained in paragraph 51, and on that basis denies  
24 each and every such allegation.

25 52. Answering paragraph 52, Defendant Cherry River lacks sufficient information  
26 to admit or deny the allegations contained in paragraph 52, and on that basis denies  
27 each and every such allegation.

28 53. Answering paragraph 53, Defendant Cherry River denies the allegations in

1 this paragraph.

2 54. Answering paragraph 54, Defendant Cherry River lacks sufficient information  
3 to admit or deny the allegations contained in paragraph 54, and on that basis denies  
4 each and every such allegation, except that Defendant Cherry River admits that the  
5 song I Gotta Feeling is and has been publically performed.

6 55. Answering paragraph 55, Defendant Cherry River denies the allegations in  
7 this paragraph.

8 56. Answering paragraph 56, Defendant Cherry River lacks sufficient information  
9 to admit or deny the allegations contained in paragraph 56, and on that basis denies  
10 each and every such allegation.

11 57. Answering paragraph 57, Defendant Cherry River lacks sufficient information  
12 to admit or deny the allegations contained in paragraph 57, and on that basis denies  
13 each and every such allegation.

14 58. Answering paragraph 58, Defendant Cherry River denies the allegations to  
15 the extent they relate to Defendant Cherry River. Defendant Cherry River lacks  
16 sufficient information to admit or deny the allegations contained in paragraph 58 as  
17 they relate to other defendants, and on that basis denies each and every such  
18 allegation in this paragraph.

19 59. Answering paragraph 59, Defendant Cherry River lacks sufficient information  
20 to admit or deny the allegations contained in paragraph 59, and on that basis denies  
21 each and every such allegation.

22 60. Answering paragraph 60, Defendant Cherry River denies the allegations in  
23 this paragraph.

24 COUNT I

25 Copyright Infringement Against All Defendants

26 61. Answering paragraph 61, Defendant Cherry River incorporates its answers  
27 and responses to paragraphs 1-60 herein, as if fully restated herein.

28 62. Answering paragraph 62, Defendant Cherry River lacks sufficient information

1 to admit or deny the allegations contained in paragraph 62, and on that basis denies  
2 each and every such allegation.

3 63. Answering paragraph 63, Defendant Cherry River lacks sufficient information  
4 to admit or deny the allegations contained in paragraph 63, and on that basis denies  
5 each and every such allegation.

6 64. Answering paragraph 64, Defendant Cherry River denies the allegations in  
7 this paragraph.

8 65. Answering paragraph 65, Defendant Cherry River lacks sufficient information  
9 to admit or deny the allegations contained in paragraph 65, and on that basis denies  
10 each and every such allegation.

11 66. Answering paragraph 66, Defendant Cherry River denies the allegations in  
12 this paragraph.

13 67. Answering paragraph 67, Defendant Cherry River denies the allegations in  
14 this paragraph.

15 68. Answering paragraph 68, Defendant Cherry River denies the allegations in  
16 this paragraph.

17 69. Answering paragraph 69, Defendant Cherry River denies the allegations in  
18 this paragraph.

### 19 **GENERAL RESPONSE**

20 Answering generally to all paragraphs of the Complaint, unless specifically  
21 and expressly admitted, all allegations are denied.

22 Answering generally to the request for relief, Defendant Cherry River denies  
23 that the Complaint states a claim upon which relief should be granted, and  
24 Defendant Cherry River denies that Plaintiff is entitled to the relief requested.  
25 Defendant Cherry River respectfully requests that the Complaint be dismissed with  
26 prejudice, and that Plaintiff's request for relief be denied, and for an award of its  
27 attorneys fees and costs.

**AFFIRMATIVE DEFENSES**

**FIRST DEFENSE**

(Failure to State A Claim)

1. The Complaint and all claims for relief alleged therein fail to state a claim against Defendant upon which relief can be granted.

**SECOND DEFENSE**

(Laches)

2. The Complaint is barred in whole or in part by laches.

**THIRD DEFENSE**

(Failure to Mitigate)

3. Plaintiff has failed to mitigate and lessen damages, if any it sustained, as required by law, and is barred from recovery by reason thereof against Defendant.

**FOURTH DEFENSE**

(17 U.S.C. § 411)

4. Plaintiff has failed to register the alleged copyrighted materials and, therefore, is precluded from bringing a claim for copyright infringement pursuant to 17 U.S.C. § 411.

**FIFTH DEFENSE**

(17 U.S.C. § 412)

5. Plaintiff has failed to timely register the alleged copyrighted materials and, therefore, is precluded from bringing a claim for statutory damages and attorneys' fees pursuant to 17 U.S.C. § 412.

SIXTH DEFENSE

(Implied License)

6. Plaintiff's claim and the relief requested is barred based on implied license.

SEVENTH DEFENSE

(17 U.S.C. § 409)

7. Plaintiff's claim and the relief requested is barred based on Plaintiff's failure to comply with 17 U.S.C. § 409.

EIGHTH DEFENSE

(17 U.S.C. §301)

8. Plaintiff's allegations are barred by preemption 17 U.S.C. § 301.

NINTH DEFENSE

(Unclean Hands)

9. Plaintiff's claim and the relief requested is barred based on Plaintiff's unclean hands.

TENTH DEFENSE

(Unjust Enrichment)

10. Plaintiff's relief requested is barred as a result of unjust enrichment.

ELEVENTH DEFENSE

(Set Off)

11. Plaintiff's relief requested is barred as a result off set. Any amount sought to be recovered in this action is barred in whole or in part by the amount owing from Plaintiff to Defendant.

TWELFTH DEFENSE

(Copyright Misuse)

12. Plaintiff's copyright is unenforceable because he has committed copyright misuse in one or more of the following ways:

- Plaintiff is asserting copyright rights beyond its scope.

- 1 • Plaintiff is asserting copyright ownership in unprotectable elements.
- 2 • Plaintiff is asserting copyright ownership in portions of the work that are
- 3 unoriginal to Plaintiff.
- 4 • Plaintiff is asserting copying based upon similarities known to exist in
- 5 musical works which predate Plaintiff's works.
- 6 • Plaintiff is asserting copying based upon similarities that are not
- 7 copyrightable.
- 8 • Plaintiff is asserting copying based upon similarities that are music
- 9 commonplaces.
- 10 • Plaintiff is asserting copying based upon similarities between works that are
- 11 not original to Plaintiff.

#### 12 THIRTEENTH DEFENSE

13 (Waiver)

- 14 13. Plaintiff's claims and relief requested are barred by the doctrine of
- 15 waiver.

#### 16 FOURTEENTH DEFENSE

17 (Acquiescence)

- 18 14. Plaintiff's claims and relief requested are barred by the doctrine of
- 19 acquiescence.

#### 20 FIFTEENTH DEFENSE

21 (Estoppel)

- 22 15. Plaintiff's claims and relief requested are barred by estoppel.

#### 23 SIXTEENTH DEFENSE

24 (Speculative Damages)

- 25 16. The damages alleged in Plaintiff's Complaint are impermissibly remote
- 26 and speculative, and therefore, Plaintiff is barred from the recovery of any such
- 27 damages against Defendant.
- 28

SEVENTEENTH DEFENSE

(Fraud on the U.S. Copyright Office)

17. Plaintiff's claims and relief requested are barred because the copyrights claimed by Plaintiff were obtained fraudulently from the Copyright Office.

EIGHTEENTH DEFENSE

(Unenforceability)

18. Plaintiff's claims and relief requested are barred because the registrations referenced in the Complaint are unenforceable.

NINETEENTH DEFENSE

(Invalidity)

19. Plaintiff's claims and relief requested are barred because the registrations referenced in the Complaint are invalid.

RESERVATION OF RIGHTS

Defendant Cherry River reserves the right, upon completion of its investigation and discovery, to file such additional defenses and/or counterclaims as may be appropriate.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant Cherry River prays for judgment against Plaintiff and awarding Defendant Cherry River its costs, interest, reasonable attorneys' fees, together with such other and further relief as the Court may deem proper.

Dated: February 10, 2011

**BRYAN CAVE LLP**

Kara Cenar

Jonathan Pink

Mariangela Seale

By: /s/ Jonathan Pink

Jonathan Pink

Attorneys for Defendants

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**JURY DEMAND**

Defendant Cherry River Music Co. demands a jury trial.

Dated: February 10, 2011

**BRYAN CAVE LLP**

Kara Cenar

Jonathan Pink

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By: /s/ Jonathan Pink

Jonathan Pink

Attorneys for Defendants

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