

1 BRYAN CAVE LLP

Jonathan Pink, California Bar No. 179685
 2 3161 Michelson Drive, Suite 1500
 Irvine, California 92612-4414
 3 Telephone: (949) 223-7000
 Facsimile: (949) 223-7100
 4 E-mail: jonathan.pink@bryancave.com

5 BRYAN CAVE LLP

Kara E. F. Cenar, (Pro Hac Vice)
 6 Mariangela M. Seale, (Pro Hac Vice)
 161 North Clark Street, Suite 4300
 7 Chicago, IL 60601-3315
 Telephone: (312) 602-5000
 8 Facsimile: (312) 602-5050
 E-mail: kara.cenar@bryancave.com
 9 merili.seale@bryancave.com

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 EMI APRIL MUSIC,
 INC.
 ANSWER AND AFFIRMATIVE
 DEFENSES**

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

BRYAN CAVE LLP
 3161 MICHELSON DRIVE, SUITE 1500
 IRVINE, CALIFORNIA 92612-4414

1 Defendant EMI April Music, Inc. (“Defendant EMI April Music”) presents
2 the following Answer and Defenses to Plaintiff’s First Amended Complaint
3 (“Complaint”):

4 INTRODUCTION

5 1. Answering paragraph 1, Defendant EMI April Music denies the allegations in
6 this paragraph.

7 2. Answering paragraph 2, Defendant EMI April Music 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 EMI April Music lacks sufficient
11 information to admit or deny the allegations contained in paragraph 3, and on that
12 basis denies each and every such allegation.

13 4. Answering paragraph 4, Defendant EMI April Music denies the allegations in
14 this paragraph.

15 5. Answering paragraph 5, Defendant EMI April Music denies the allegations in
16 this paragraph.

17 6. Answering paragraph 6, Defendant EMI April Music admits that legitimate
18 copyright owners have rights defined by the law, but denies the remaining
19 allegations of this paragraph.

20 JURISDICTION AND VENUE

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

26 8. Answering paragraph 8, Defendant EMI April Music lacks sufficient
27 information to admit or deny the allegations contained in paragraph 8, and on that
28 basis denies each and every such allegation. Defendant EMI April Music does not

1 dispute venue over Defendant EMI April Music.

2 GENERAL ALLEGATIONS

3 A. Parties

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

7 10. Answering paragraph 10, Defendant EMI April Music lacks sufficient
8 information to admit or deny the allegations contained in paragraph 10, and on that
9 basis denies each and every such allegation, except that Defendant Adams is a
10 member of The Black Eyed Peas.

11 11. Answering paragraph 11, Defendant EMI April Music lacks sufficient
12 information to admit or deny the allegations contained in paragraph 11, and on that
13 basis denies each and every such allegation, except that Defendant Ferguson is a
14 member of The Black Eyed Peas.

15 12. Answering paragraph 12, Defendant EMI April Music lacks sufficient
16 information to admit or deny the allegations contained in paragraph 12, and on that
17 basis denies each and every such allegation, except that Defendant Pineda is a
18 member of The Black Eyed Peas.

19 13. Answering paragraph 13, Defendant EMI April Music lacks sufficient
20 information to admit or deny the allegations contained in paragraph 13, and on that
21 basis denies each and every such allegation, except that Defendant Gomez is a
22 member of The Black Eyed Peas.

23 14. Answering paragraph 14, Defendant EMI April Music lacks sufficient
24 information to admit or deny the allegations contained in paragraph 14, and on that
25 basis denies each and every such allegation.

26 15. Answering paragraph 15, Defendant EMI April Music lacks sufficient
27 information to admit or deny the allegations contained in paragraph 15, and on that
28 basis denies each and every such allegation.

1 16. Answering paragraph 16, Defendant EMI April Music lacks sufficient
2 information to admit or deny the allegations contained in paragraph 16, and on that
3 basis denies each and every such allegation.

4 17. Answering paragraph 17, Defendant EMI April Music lacks sufficient
5 information to admit or deny the allegations contained in paragraph 17, and on that
6 basis denies each and every such allegation.

7 18. Answering paragraph 18, Defendant EMI April Music admits that Defendant
8 EMI April Music, Inc. is a music publishing company. Defendant EMI April Music
9 admits that it is one of the publishers of the song "I Gotta Feeling." Defendant EMI
10 April Music lacks sufficient information to admit or deny the remaining allegations
11 contained in paragraph 18, and on that basis denies each and every such allegation.

12 19. Answering paragraph 19, Defendant EMI April Music lacks sufficient
13 information to admit or deny the allegations contained in paragraph 19, and on that
14 basis denies each and every such allegation.

15 20. Answering paragraph 20, Defendant EMI April Music lacks sufficient
16 information to admit or deny the allegations contained in paragraph 20, and on that
17 basis denies each and every such allegation.

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

21 22. Answering paragraph 22, Defendant EMI April Music lacks sufficient
22 information to admit or deny the allegations contained in paragraph 22, and on that
23 basis denies each and every such allegation.

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

27 24. Answering paragraph 24, Defendant EMI April Music lacks sufficient
28 information to admit or deny the allegations contained in paragraph 24, and on that

1 basis denies each and every such allegation.

2 25. Answering paragraph 25, Defendant EMI April Music lacks sufficient
3 information to admit or deny the allegations contained in paragraph 25, and on that
4 basis denies each and every such allegation.

5 26. Answering paragraph 26, Defendant EMI April Music lacks sufficient
6 information to admit or deny the allegations contained in paragraph 26, and on that
7 basis denies each and every such allegation.

8 B. Plaintiff's Creation and Protection of His Original Work

9 27. Answering paragraph 27, Defendant EMI April Music lacks sufficient
10 information to admit or deny the allegations contained in paragraph 27, and on that
11 basis denies each and every such allegation.

12 28. Answering paragraph 28, Defendant EMI April Music lacks sufficient
13 information to admit or deny the allegations contained in paragraph 28, and on that
14 basis denies each and every such allegation.

15 29. Answering paragraph 29, Defendant EMI April Music lacks sufficient
16 information to admit or deny the allegations contained in paragraph 29, and on that
17 basis denies each and every such allegation.

18 30. Answering paragraph 30, Defendant EMI April Music lacks sufficient
19 information to admit or deny the allegations contained in paragraph 30, and on that
20 basis denies each and every such allegation.

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

23 31. Answering paragraph 31, Defendant EMI April Music lacks sufficient
24 information to admit or deny the allegations contained in paragraph 31, and on that
25 basis denies each and every such allegation.

26 32. Answering paragraph 32, Defendant EMI April Music lacks sufficient
27 information to admit or deny the allegations contained in paragraph 32, and on that
28 basis denies each and every such allegation.

1 33. Answering paragraph 33, Defendant EMI April Music lacks sufficient
2 information to admit or deny the allegations contained in paragraph 33, and on that
3 basis denies each and every such allegation.

4 34. Answering paragraph 34, Defendant EMI April Music lacks sufficient
5 information to admit or deny the allegations contained in paragraph 34, and on that
6 basis denies each and every such allegation.

7 35. Answering paragraph 35, Defendant EMI April Music lacks sufficient
8 information to admit or deny the allegations contained in paragraph 35, and on that
9 basis denies each and every such allegation.

10 36. Answering paragraph 36, Defendant EMI April Music lacks sufficient
11 information to admit or deny the allegations contained in paragraph 36, and on that
12 basis denies each and every such allegation.

13 37. Answering paragraph 37, Defendant EMI April Music lacks sufficient
14 information to admit or deny the allegations contained in paragraph 37, and on that
15 basis denies each and every such allegation.

16 38. Answering paragraph 38, Defendant EMI April Music denies that any
17 “authorization” was required, and the remaining allegations are denied.

18 39. Answering paragraph 39, Defendant EMI April Music denies the allegations
19 in this paragraph.

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

21 40. Answering paragraph 40, Defendant EMI April Music lacks sufficient
22 information to admit or deny the allegations contained in paragraph 40, and on that
23 basis denies each and every such allegation.

24 41. Answering paragraph 41, Defendant EMI April Music lacks sufficient
25 information to admit or deny the allegations contained in paragraph 41, and on that
26 basis denies each and every such allegation.

27 42. Answering paragraph 42, Defendant EMI April Music lacks sufficient
28 information to admit or deny the allegations contained in paragraph 42, and on that

1 basis denies each and every such allegation.

2 43. Answering paragraph 43, Defendant EMI April Music lacks sufficient
3 information to admit or deny the allegations contained in paragraph 43, and on that
4 basis denies each and every such allegation.

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

6 44. Answering paragraph 44, Defendant EMI April Music admits, on information
7 and belief, that I Gotta Feeling was released in or around June 2009 and was the
8 second single off of the group’s album *The E.N.D.*

9 45. Answering paragraph 45, Defendant EMI April Music lacks sufficient
10 information to admit or deny the allegations contained in paragraph 45, and on that
11 basis denies each and every such allegation.

12 46. Answering paragraph 46, Defendant EMI April Music denies the allegations
13 in this paragraph.

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

16 47. Answering paragraph 47, Defendant EMI April Music denies the allegations
17 in this paragraph.

18 48. Answering paragraph 48, Defendant EMI April Music denies the allegations
19 in this paragraph.

20 49. Answering paragraph 49, Defendant EMI April Music lacks sufficient
21 information to admit or deny the allegations contained in paragraph 49, and on that
22 basis denies each and every such allegation.

23 50. Answering paragraph 50, Defendant EMI April Music denies the allegations
24 in this paragraph.

25 51. Answering paragraph 51, Defendant EMI April Music denies the allegations
26 in this paragraph.

27 52. Answering paragraph 52, Defendant EMI April Music denies the allegations
28 in this paragraph.

1 53. Answering paragraph 53, Defendant EMI April Music denies the allegations
2 in this paragraph.

3 54. Answering paragraph 54, Defendant EMI April Music denies the allegations
4 in this paragraph, except that Defendant EMI April Music admits that the song I
5 Gotta Feeling is and has been publically performed.

6 55. Answering paragraph 55, Defendant EMI April Music denies the allegations
7 in this paragraph.

8 56. Answering paragraph 56, Defendant EMI April Music denies the allegations
9 in this paragraph.

10 57. Answering paragraph 57, Defendant EMI April Music denies the allegations
11 in this paragraph.

12 58. Answering paragraph 58, Defendant EMI April Music denies the allegations
13 in this paragraph.

14 59. Answering paragraph 59, Defendant EMI April Music lacks sufficient
15 information to admit or deny the allegations contained in paragraph 59, and on that
16 basis denies each and every such allegation.

17 60. Answering paragraph 60, Defendant EMI April Music denies the allegations
18 in this paragraph.

19 COUNT I

20 Copyright Infringement Against All Defendants

21 61. Answering paragraph 61, Defendant EMI April Music incorporates its
22 answers and responses to paragraphs 1-60 herein, as if fully restated herein.

23 62. Answering paragraph 62, Defendant EMI April Music denies the allegations
24 in this paragraph that refer to Defendant EMI April Music. Defendant EMI April
25 Music lacks sufficient information to admit or deny the remaining allegations
26 contained in this paragraph, and therefore denies the remaining allegations.

27 63. Answering paragraph 63, Defendant EMI April Music denies the allegations
28 in this paragraph that refer to Defendant EMI April Music. Defendant EMI April

1 Music lacks sufficient information to admit or deny the remaining allegations
2 contained in this paragraph, and therefore denies the remaining allegations.

3 64. Answering paragraph 64, Defendant EMI April Music denies the allegations
4 in this paragraph that refer to Defendant EMI April Music. Defendant EMI April
5 Music lacks sufficient information to admit or deny the remaining allegations
6 contained in this paragraph, and therefore denies the remaining allegations.

7 65. Answering paragraph 65, Defendant EMI April Music denies the allegations
8 in this paragraph that refer to Defendant EMI April Music. Defendant EMI April
9 Music lacks sufficient information to admit or deny the remaining allegations
10 contained in this paragraph, and therefore denies the remaining allegations.

11 66. Answering paragraph 66, Defendant EMI April Music denies the allegations
12 in this paragraph that refer to Defendant EMI April Music. Defendant EMI April
13 Music lacks sufficient information to admit or deny the remaining allegations
14 contained in this paragraph, and therefore denies the remaining allegations.

15 67. Answering paragraph 67, Defendant EMI April Music denies the allegations
16 in this paragraph that refer to Defendant EMI April Music. Defendant EMI April
17 Music lacks sufficient information to admit or deny the remaining allegations
18 contained in this paragraph, and therefore denies the remaining allegations.

19 68. Answering paragraph 68, Defendant EMI April Music denies the allegations
20 in this paragraph that refer to Defendant EMI April Music. Defendant EMI April
21 Music lacks sufficient information to admit or deny the remaining allegations
22 contained in this paragraph, and therefore denies the remaining allegations.

23 69. Answering paragraph 69, Defendant EMI April Music denies the allegations
24 in this paragraph that refer to Defendant EMI April Music. Defendant EMI April
25 Music lacks sufficient information to admit or deny the remaining allegations
26 contained in this paragraph, and therefore denies the remaining allegations.

27 **GENERAL RESPONSE**

28 Answering generally to all paragraphs of the Complaint, unless specifically

1 and expressly admitted, all allegations are denied.

2 Answering generally to the request for relief, Defendant EMI April Music
3 denies that the Complaint states a claim upon which relief should be granted, and
4 Defendant EMI April Music denies that Plaintiff is entitled to the relief requested.
5 Defendant EMI April Music respectfully requests that the Complaint be dismissed
6 with prejudice, and that Plaintiff's request for relief be denied, and for an award of
7 its attorneys fees and costs.

8 **AFFIRMATIVE DEFENSES**

9 **FIRST DEFENSE**

10 (Failure to State A Claim)

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

13 **SECOND DEFENSE**

14 (Laches)

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

16 **THIRD DEFENSE**

17 (Failure to Mitigate)

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

20 **FOURTH DEFENSE**

21 (17 U.S.C. § 411)

22 4. Plaintiff has failed to register the alleged copyrighted materials and,
23 therefore, is precluded from bringing a claim for copyright infringement pursuant to
24 17 U.S.C. § 411.

25 **FIFTH DEFENSE**

26 (17 U.S.C. § 412)

27 5. Plaintiff has failed to timely register the alleged copyrighted materials
28 and, therefore, is precluded from bringing a claim for statutory damages and

1 attorneys' fees pursuant to 17 U.S.C. § 412.

2 SIXTH DEFENSE

3 (Implied License)

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

6 SEVENTH DEFENSE

7 (17 U.S.C. § 409)

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

10 EIGHTH DEFENSE

11 (17 U.S.C. §301)

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

13 NINTH DEFENSE

14 (Unclean Hands)

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

17 TENTH DEFENSE

18 (Unjust Enrichment)

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

20 ELEVENTH DEFENSE

21 (Set Off)

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

25 TWELFTH DEFENSE

26 (Copyright Misuse)

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

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

13 THIRTEENTH DEFENSE

14 (Waiver)

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

16 waiver.

17 FOURTEENTH DEFENSE

18 (Acquiescence)

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

20 acquiescence.

21 FIFTEENTH DEFENSE

22 (Estoppel)

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

24 SIXTEENTH DEFENSE

25 (Speculative Damages)

26 16. The damages alleged in Plaintiff's Complaint are impermissibly remote

27 and speculative, and therefore, Plaintiff is barred from the recovery of any such

28 damages against Defendant.

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 EMI April Music 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 EMI April Music prays for judgment against Plaintiff and awarding Defendant EMI April Music 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

WILLIAM ADAMS; STACY FERGUSON;
ALLAN PINEDA; JAIME GOMEZ; all
individually and collectively as the music

group THE BLACK EYED PEAS; TAB
MAGNETIC PUBLISHING;
HEADPHONE JUNKIE PUBLISHING,
LLC; will.i.am. music, llc; JEEPNEY
MUSIC, INC.; CHERRY RIVER MUSIC
CO.; and EMI APRIL MUSIC, INC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURY DEMAND

Defendant EMI April Music demands a jury trial.

Dated: February 10, 2011

BRYAN CAVE LLP

Kara Cenar

Jonathan Pink

Mariangela Seale

By: /s/ Jonathan Pink

Jonathan Pink

Attorneys for Defendants

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