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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.

Case No. SACV10-1656 JST(RZx)

Hon. Josephine Staton Tucker  
Courtroom 10A

**DEFENDANT STACY FERGUSON  
AND HEADPHONE JUNKIE  
PUBLISHING, LLC  
ANSWER AND AFFIRMATIVE  
DEFENSES**

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

1 Defendants Stacy Ferguson and Headphone Junkie Publishing, LLC  
2 (collectively “Defendant Ferguson”) present the following Answer and Defenses to  
3 Plaintiff’s First Amended Complaint (“Complaint”):

4 INTRODUCTION

- 5 1. Answering paragraph 1, Defendant Ferguson denies the allegations in this  
6 paragraph.
- 7 2. Answering paragraph 2, Defendant Ferguson 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 Ferguson lacks sufficient information to  
11 admit or deny the allegations contained in paragraph 3, and on that basis denies each  
12 and every such allegation.
- 13 4. Answering paragraph 4, Defendant Ferguson denies the allegations in this  
14 paragraph.
- 15 5. Answering paragraph 5, Defendant Ferguson denies the allegations in this  
16 paragraph.
- 17 6. Answering paragraph 6, Defendant Ferguson admits that legitimate copyright  
18 owners have rights defined by the law, but denies the remaining allegations of this  
19 paragraph.

20 JURISDICTION AND VENUE

- 21 7. Answering paragraph 7, Defendant Ferguson admits, on information and  
22 belief, that this action appears to arise out of claims under the Copyright Act, and  
23 that this Court would appear to have subject matter jurisdiction. Defendant  
24 Ferguson denies that the Complaint states a cause of action upon which relief can be  
25 granted.
- 26 8. Answering paragraph 8, Defendant Ferguson lacks sufficient information to  
27 admit or deny the allegations contained in paragraph 8, and on that basis denies each  
28 and every such allegation. Defendant Ferguson does not dispute venue over

1 Defendant Ferguson.

2 GENERAL ALLEGATIONS

3 A. Parties

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

7 10. Answering paragraph 10, Defendant Ferguson admits the allegations of  
8 paragraph 10.

9 11. Answering paragraph 11, Defendant Ferguson admits the allegations of  
10 paragraph 11.

11 12. Answering paragraph 12, Defendant Ferguson admits the allegations of  
12 paragraph 12.

13 13. Answering paragraph 13, Defendant Ferguson admits the allegations of  
14 paragraph 13.

15 14. Answering paragraph 14, Defendant Ferguson 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 Ferguson  
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 Ferguson admits that Frederic Riesterer  
22 (“Riesterer”) is an individual song writer and music producer and, on information  
23 and belief, denies that Riesterer lives in Los Angeles, California. Defendant  
24 Ferguson admits that Riesterer has co-written and co-produced one song of the  
25 musical group known as The Black Eyed Peas. Other than these specific responses,  
26 the remaining allegations of paragraph 15 are denied.

27 16. Answering paragraph 16, Defendant Ferguson admits that UMG Recordings,  
28 Inc. is a record label. Defendant Ferguson lacks sufficient information to admit or

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

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

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

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

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

28 21. Answering paragraph 21, Defendant Ferguson denies that “I Gotta Feeling” is

1 an infringing song. Defendant Ferguson admits, on information and belief, that  
2 Jeepney Music, Inc. was, in part, a music publishing designee, that it had a  
3 relationship to the song “I Gotta Feeling,” and, on information and belief, it had a  
4 place of business in Los Angeles, California. Defendant Ferguson lacks sufficient  
5 information to admit or deny the remaining allegations contained in paragraph 21,  
6 and on that basis denies each and every such allegation.

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

14 23. Answering paragraph 23, Defendant Ferguson denies that “I Gotta Feeling” is  
15 an infringing song. Defendant Ferguson admits, on information and belief, that  
16 Cherry River Music Co. had a relationship to the song “I Gotta Feeling.” Defendant  
17 Ferguson lacks sufficient information to admit or deny the remaining allegations  
18 contained in paragraph 23, and on that basis denies each and every such allegation.

19 24. Answering paragraph 24, Defendant Ferguson denies that “I Gotta Feeling” is  
20 an infringing song. Defendant Ferguson admits, on information and belief, that  
21 Square Rivoli was a music publishing designee and that it had a relationship to the  
22 song “I Gotta Feeling.” Defendant Ferguson lacks sufficient information to admit or  
23 deny the remaining allegations contained in paragraph 24, and on that basis denies  
24 each and every such allegation.

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1 25. Answering paragraph 25, Defendant Ferguson denies that “I Gotta Feeling” is  
2 an infringing song. Defendant Ferguson admits, on information and belief, that  
3 Rister Editions is a music publishing designee and that it has a relationship to the  
4 song “I Gotta Feeling.” Defendant Ferguson lacks sufficient information to admit or  
5 deny the remaining allegations contained in paragraph 25, and on that basis denies  
6 each and every such allegation.

7 26. Answering paragraph 26, Defendant Ferguson denies that “I Gotta Feeling” is  
8 an infringing song. Defendant Ferguson admits, on information and belief, that  
9 Shapiro, Bernstein & Co., Inc. is a music publishing company and that it has a  
10 relationship to the song “I Gotta Feeling.” Defendant Ferguson lacks sufficient  
11 information to admit or deny the remaining allegations contained in paragraph 26,  
12 and on that basis denies each and every such allegation.

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

14 27. Answering paragraph 27, Defendant Ferguson lacks sufficient information to  
15 admit or deny the allegations contained in paragraph 27, and on that basis denies  
16 each and every such allegation.

17 28. Answering paragraph 28, Defendant Ferguson lacks sufficient information to  
18 admit or deny the allegations contained in paragraph 28, and on that basis denies  
19 each and every such allegation.

20 29. Answering paragraph 29, Defendant Ferguson lacks sufficient information to  
21 admit or deny the allegations contained in paragraph 29, and on that basis denies  
22 each and every such allegation.

23 30. Answering paragraph 30, Defendant Ferguson lacks sufficient information to  
24 admit or deny the allegations contained in paragraph 30, and on that basis denies  
25 each and every such allegation.

26 C. Defendants’ Access to and Copying of Plaintiff’s Copyrighted Song “Take a  
27 Dive”

28 31. Answering paragraph 31, Defendant Ferguson lacks sufficient information to

1 admit or deny the allegations contained in paragraph 31, and on that basis denies  
2 each and every such allegation.

3 32. Answering paragraph 32, Defendant Ferguson lacks sufficient information to  
4 admit or deny the allegations contained in paragraph 32, and on that basis denies  
5 each and every such allegation.

6 33. Answering paragraph 33, Defendant Ferguson lacks sufficient information to  
7 admit or deny the allegations contained in paragraph 33, and on that basis denies  
8 each and every such allegation.

9 34. Answering paragraph 34, Defendant Ferguson lacks sufficient information to  
10 admit or deny the allegations contained in paragraph 34, and on that basis denies  
11 each and every such allegation.

12 35. Answering paragraph 35, Defendant Ferguson lacks sufficient information to  
13 admit or deny the allegations contained in paragraph 35, and on that basis denies  
14 each and every such allegation.

15 36. Answering paragraph 36, Defendant Ferguson lacks sufficient information to  
16 admit or deny the allegations contained in paragraph 36, and on that basis denies  
17 each and every such allegation.

18 37. Answering paragraph 37, Defendant Ferguson denies the allegations in this  
19 paragraph.

20 38. Answering paragraph 38, Defendant Ferguson denies that any “authorization”  
21 was required, and the remaining allegations are denied.

22 39. Answering paragraph 39, Defendant Ferguson denies the allegations in this  
23 paragraph.

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

25 40. Answering paragraph 40, Defendant Ferguson denies the allegations in this  
26 paragraph.

27 41. Answering paragraph 41, Defendant Ferguson denies the allegations in this  
28 paragraph.

1 42. Answering paragraph 42, Defendant Ferguson denies the allegations in this  
2 paragraph.

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

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

7 44. Answering paragraph 44, Defendant Ferguson admits that I Gotta Feeling was  
8 released in or around June 2009 and was the second single off of the group’s album  
9 *The E.N.D.*

10 45. Answering paragraph 45, Defendant Ferguson admits that I Gotta Feeling was  
11 a success, and that recognition has been reflected in many ways, including those  
12 identified in this paragraph. Defendant Ferguson lacks sufficient information to  
13 either admit or deny the accuracy of the characterizations of the events listed in this  
14 paragraph, and therefore they are denied as stated.

15 46. Answering paragraph 46, Defendant Ferguson denies the allegations in this  
16 paragraph.

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

19 47. Answering paragraph 47, Defendant Ferguson denies the allegations in this  
20 paragraph.

21 48. Answering paragraph 48, Defendant Ferguson denies the allegations in this  
22 paragraph.

23 49. Answering paragraph 49, Defendant Ferguson denies the allegations in this  
24 paragraph.

25 50. Answering paragraph 50, Defendant Ferguson denies the allegations in this  
26 paragraph.

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1 51. Answering paragraph 51, Defendant Ferguson denies the allegations in this  
2 paragraph.

3 52. Answering paragraph 52, Defendant Ferguson denies the allegations in this  
4 paragraph.

5 53. Answering paragraph 53, Defendant Ferguson denies the allegations in this  
6 paragraph.

7 54. Answering paragraph 54, Defendant Ferguson denies the allegations in this  
8 paragraph, except that Defendant Ferguson admits that the song I Gotta Feeling is  
9 and has been publically performed.

10 55. Answering paragraph 55, Defendant Ferguson denies the allegations in this  
11 paragraph.

12 56. Answering paragraph 56, Defendant Ferguson denies the allegations in this  
13 paragraph.

14 57. Answering paragraph 57, Defendant Ferguson denies the allegations in this  
15 paragraph.

16 58. Answering paragraph 58, Defendant Ferguson denies the allegations in this  
17 paragraph.

18 59. Answering paragraph 59, Defendant Ferguson denies the allegations in this  
19 paragraph.

20 60. Answering paragraph 60, Defendant Ferguson denies the allegations in this  
21 paragraph.

22 COUNT I

23 Copyright Infringement Against All Defendants

24 61. Answering paragraph 61, Defendant Ferguson incorporates its answers and  
25 responses to paragraphs 1-60 herein, as if fully restated herein.

26 62. Answering paragraph 62, Defendant Ferguson denies the allegations in this  
27 paragraph.

28 63. Answering paragraph 63, Defendant Ferguson denies the allegations in this

1 paragraph.

2 64. Answering paragraph 64, Defendant Ferguson denies the allegations in this  
3 paragraph.

4 65. Answering paragraph 65, Defendant Ferguson denies the allegations in this  
5 paragraph.

6 66. Answering paragraph 66, Defendant Ferguson denies the allegations in this  
7 paragraph.

8 67. Answering paragraph 67, Defendant Ferguson denies the allegations in this  
9 paragraph.

10 68. Answering paragraph 68, Defendant Ferguson denies the allegations in this  
11 paragraph.

12 69. Answering paragraph 69, Defendant Ferguson denies the allegations in this  
13 paragraph.

14 **GENERAL RESPONSE**

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

17 Answering generally to the request for relief, Defendant Ferguson denies that  
18 the Complaint states a claim upon which relief should be granted, and Defendant  
19 Ferguson denies that Plaintiff is entitled to the relief requested. Defendant Ferguson  
20 respectfully requests that the Complaint be dismissed with prejudice, and that  
21 Plaintiff's request for relief be denied, and for an award of its attorneys fees and  
22 costs.

23 **AFFIRMATIVE DEFENSES**

24 **FIRST DEFENSE**

25 (Failure to State A Claim)

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

28 **SECOND DEFENSE**

1 (Laches)

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

3 THIRD DEFENSE

4 (Failure to Mitigate)

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

7 FOURTH DEFENSE

8 (17 U.S.C. § 411)

9 4. Plaintiff has failed to register the alleged copyrighted materials and,  
10 therefore, is precluded from bringing a claim for copyright infringement pursuant to  
11 17 U.S.C. § 411.

12 FIFTH DEFENSE

13 (17 U.S.C. § 412)

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

17 SIXTH DEFENSE

18 (Implied License)

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

21 SEVENTH DEFENSE

22 (17 U.S.C. § 409)

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

25 EIGHTH DEFENSE

26 (17 U.S.C. §301)

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

28 NINTH DEFENSE

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(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.
- Plaintiff is asserting copyright ownership in unprotectable elements.
- Plaintiff is asserting copyright ownership in portions of the work that are unoriginal to Plaintiff.
- Plaintiff is asserting copying based upon similarities known to exist in musical works which predate Plaintiff's works.
- Plaintiff is asserting copying based upon similarities that are not copyrightable.
- Plaintiff is asserting copying based upon similarities that are music commonplaces.
- Plaintiff is asserting copying based upon similarities between works that are not original to Plaintiff.

THIRTEENTH DEFENSE

(Waiver)

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

FOURTEENTH DEFENSE

(Acquiescence)

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

FIFTEENTH DEFENSE

(Estoppel)

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

SIXTEENTH DEFENSE

(Speculative Damages)

16. The damages alleged in Plaintiff's Complaint are impermissibly remote and speculative, and therefore, Plaintiff is barred from the recovery of any such 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

BRYAN CAVE LLP  
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IRVINE, CALIFORNIA 92612-4414

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Defendant Ferguson 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 Ferguson prays for judgment against Plaintiff and awarding Defendant Ferguson 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;  
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**JURY DEMAND**

Defendants Stacy Ferguson and Headphone Junkie Publishing, LLC demand a jury trial.

Dated: February 10, 2011

**BRYAN CAVE LLP**

Kara Cenar  
Jonathan Pink  
Mariangela Seale

By: /s/ Jonathan Pink

Jonathan Pink

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