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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.

Case No. SACV10-1656 JST(RZx)
Hon. Josephine Staton Tucker
Courtroom 10A

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.,

**DEFENDANT JAIME GOMEZ AND
TAB MAGNETIC PUBLISHING
ANSWER AND AFFIRMATIVE
DEFENSES**

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

26 Defendants.
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28

1 Defendants Jaime Gomez and Tab Magnetic Publishing (collectively
2 “Defendant Gomez”) present the following Answer and Defenses to Plaintiff’s First
3 Amended Complaint (“Complaint”):

4 INTRODUCTION

- 5 1. Answering paragraph 1, Defendant Gomez denies the allegations in this
6 paragraph.
- 7 2. Answering paragraph 2, Defendant Gomez admits that Plaintiff’s Complaint
8 seeks certain relief, but denies that he is entitled to such relief, and denies all
9 remaining allegations of the paragraph.
- 10 3. Answering paragraph 3, Defendant Gomez 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 Gomez denies the allegations in this
14 paragraph.
- 15 5. Answering paragraph 5, Defendant Gomez denies the allegations in this
16 paragraph.
- 17 6. Answering paragraph 6, Defendant Gomez 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 Gomez admits, on information and belief,
22 that this action appears to arise out of claims under the Copyright Act, and that this
23 Court would appear to have subject matter jurisdiction. Defendant Gomez denies
24 that the Complaint states a cause of action upon which relief can be granted.
- 25 8. Answering paragraph 8, Defendant Gomez lacks sufficient information to
26 admit or deny the allegations contained in paragraph 8, and on that basis denies each
27 and every such allegation. Defendant Gomez does not dispute venue over
28 Defendant Gomez.

GENERAL ALLEGATIONS

A. Parties

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

10. Answering paragraph 10, Defendant Gomez admits the allegations of paragraph 10.

11. Answering paragraph 11, Defendant Gomez admits the allegations of paragraph 11.

12. Answering paragraph 12, Defendant Gomez admits the allegations of paragraph 12.

13. Answering paragraph 13, Defendant Gomez admits the allegations of paragraph 13.

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

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

16. Answering paragraph 16, Defendant Gomez admits that UMG Recordings, Inc. is a record label. Defendant Gomez lacks sufficient information to admit or deny the remaining allegations contained in paragraph 16, and on that basis denies

1 each and every such allegation.

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

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

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

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

27 21. Answering paragraph 21, Defendant Gomez denies that “I Gotta Feeling” is
28 an infringing song. Defendant Gomez admits, on information and belief, that

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

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

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

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

23 25. Answering paragraph 25, Defendant Gomez denies that “I Gotta Feeling” is
24 an infringing song. Defendant Gomez admits, on information and belief, that Rister
25 Editions is a music publishing designee and that it has a relationship to the song “I
26 Gotta Feeling.” Defendant Gomez lacks sufficient information to admit or deny the
27 remaining allegations contained in paragraph 25, and on that basis denies each and
28 every such allegation.

1 26. Answering paragraph 26, Defendant Gomez denies that “I Gotta Feeling” is
2 an infringing song. Defendant Gomez admits, on information and belief, that
3 Shapiro, Bernstein & Co., Inc. is a music publishing company and that it has a
4 relationship to the song “I Gotta Feeling.” Defendant Gomez lacks sufficient
5 information to admit or deny the remaining allegations contained in paragraph 26,
6 and on that basis denies each and every such allegation.

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

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

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

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

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

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

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

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

28 33. Answering paragraph 33, Defendant Gomez lacks sufficient information to

1 admit or deny the allegations contained in paragraph 33, and on that basis denies
2 each and every such allegation.

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

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

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

12 37. Answering paragraph 37, Defendant Gomez denies the allegations in this
13 paragraph.

14 38. Answering paragraph 38, Defendant Gomez denies that any “authorization”
15 was required, and the remaining allegations are denied.

16 39. Answering paragraph 39, Defendant Gomez denies the allegations in this
17 paragraph.

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

19 40. Answering paragraph 40, Defendant Gomez denies the allegations in this
20 paragraph.

21 41. Answering paragraph 41, Defendant Gomez denies the allegations in this
22 paragraph.

23 42. Answering paragraph 42, Defendant Gomez denies the allegations in this
24 paragraph.

25 43. Answering paragraph 43, Defendant Gomez lacks sufficient information to
26 admit or deny the allegations contained in paragraph 43, and on that basis denies
27 each and every such allegation.

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

1 44. Answering paragraph 44, Defendant Gomez admits that I Gotta Feeling was
2 released in or around June 2009 and was the second single off of the group's album
3 *The E.N.D.*

4 45. Answering paragraph 45, Defendant Gomez admits that I Gotta Feeling was a
5 success, and that recognition has been reflected in many ways, including those
6 identified in this paragraph. Defendant Gomez lacks sufficient information to either
7 admit or deny the accuracy of the characterizations of the events listed in this
8 paragraph, and therefore they are denied as stated.

9 46. Answering paragraph 46, Defendant Gomez denies the allegations in this
10 paragraph.

11 F. Defendants' Conspiracy to Engage in and Conduct a Pattern and Practice of
12 Ongoing Willful Copyright Infringement as to Others

13 47. Answering paragraph 47, Defendant Gomez denies the allegations in this
14 paragraph.

15 48. Answering paragraph 48, Defendant Gomez denies the allegations in this
16 paragraph.

17 49. Answering paragraph 49, Defendant Gomez denies the allegations in this
18 paragraph.

19 50. Answering paragraph 50, Defendant Gomez denies the allegations in this
20 paragraph.

21 51. Answering paragraph 51, Defendant Gomez denies the allegations in this
22 paragraph.

23 52. Answering paragraph 52, Defendant Gomez denies the allegations in this
24 paragraph.

25 53. Answering paragraph 53, Defendant Gomez denies the allegations in this
26 paragraph.

27 54. Answering paragraph 54, Defendant Gomez denies the allegations in this
28 paragraph, except that Defendant Gomez admits that the song I Gotta Feeling is and

1 has been publically performed.

2 55. Answering paragraph 55, Defendant Gomez denies the allegations in this
3 paragraph.

4 56. Answering paragraph 56, Defendant Gomez denies the allegations in this
5 paragraph.

6 57. Answering paragraph 57, Defendant Gomez denies the allegations in this
7 paragraph.

8 58. Answering paragraph 58, Defendant Gomez denies the allegations in this
9 paragraph.

10 59. Answering paragraph 59, Defendant Gomez denies the allegations in this
11 paragraph.

12 60. Answering paragraph 60, Defendant Gomez denies the allegations in this
13 paragraph.

14 COUNT I

15 Copyright Infringement Against All Defendants

16 61. Answering paragraph 61, Defendant Gomez incorporates its answers and
17 responses to paragraphs 1-60 herein, as if fully restated herein.

18 62. Answering paragraph 62, Defendant Gomez denies the allegations in this
19 paragraph.

20 63. Answering paragraph 63, Defendant Gomez denies the allegations in this
21 paragraph.

22 64. Answering paragraph 64, Defendant Gomez denies the allegations in this
23 paragraph.

24 65. Answering paragraph 65, Defendant Gomez denies the allegations in this
25 paragraph.

26 66. Answering paragraph 66, Defendant Gomez denies the allegations in this
27 paragraph.

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1 67. Answering paragraph 67, Defendant Gomez denies the allegations in this
2 paragraph.

3 68. Answering paragraph 68, Defendant Gomez denies the allegations in this
4 paragraph.

5 69. Answering paragraph 69, Defendant Gomez denies the allegations in this
6 paragraph.

7 **GENERAL RESPONSE**

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

10 Answering generally to the request for relief, Defendant Gomez denies that
11 the Complaint states a claim upon which relief should be granted, and Defendant
12 Gomez denies that Plaintiff is entitled to the relief requested. Defendant Gomez
13 respectfully requests that the Complaint be dismissed with prejudice, and that
14 Plaintiff's request for relief be denied, and for an award of its attorneys fees and
15 costs.

16 **AFFIRMATIVE DEFENSES**

17 **FIRST DEFENSE**

18 (Failure to State A Claim)

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

21 **SECOND DEFENSE**

22 (Laches)

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

24 **THIRD DEFENSE**

25 (Failure to Mitigate)

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

28 **FOURTH DEFENSE**

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(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

1 (Set Off)

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

5 TWELFTH DEFENSE

6 (Copyright Misuse)

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

- 9 • Plaintiff is asserting copyright rights beyond its scope.
- 10 • Plaintiff is asserting copyright ownership in unprotectable elements.
- 11 • Plaintiff is asserting copyright ownership in portions of the work that are
12 unoriginal to Plaintiff.
- 13 • Plaintiff is asserting copying based upon similarities known to exist in
14 musical works which predate Plaintiff's works.
- 15 • Plaintiff is asserting copying based upon similarities that are not
16 copyrightable.
- 17 • Plaintiff is asserting copying based upon similarities that are music
18 commonplaces.
- 19 • Plaintiff is asserting copying based upon similarities between works that are
20 not original to Plaintiff.

21 THIRTEENTH DEFENSE

22 (Waiver)

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

25 FOURTEENTH DEFENSE

26 (Acquiescence)

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

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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

Defendant Gomez 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 Gomez prays for judgment against Plaintiff and awarding Defendant Gomez its costs, interest, reasonable attorneys’ fees, together with such other and further relief as the Court may deem proper.

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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

Defendants Jaime Gomez and Tab Magnetic Publishing demand a jury trial.

Dated: February 10, 2011

BRYAN CAVE LLP

Kara Cenar
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Mariangela Seale

By: /s/ Jonathan Pink

Jonathan Pink

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