

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

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 ALLAN PINEDA AND
JEEPNEY MUSIC, INC
ANSWER AND AFFIRMATIVE
DEFENSES**

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

1 Defendants Allan Pineda and Jeepney Music, Inc. (collectively “Defendant
2 Pineda”) present the following Answer and Defenses to Plaintiff’s First Amended
3 Complaint (“Complaint”):

4 INTRODUCTION

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

7 2. Answering paragraph 2, Defendant Pineda 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 Pineda 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 Pineda denies the allegations in this
14 paragraph.

15 5. Answering paragraph 5, Defendant Pineda denies the allegations in this
16 paragraph.

17 6. Answering paragraph 6, Defendant Pineda 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 Pineda 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 Pineda denies
24 that the Complaint states a cause of action upon which relief can be granted.

25 8. Answering paragraph 8, Defendant Pineda 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 Pineda does not dispute venue over
28 Defendant Pineda.

GENERAL ALLEGATIONS

1
2 A. Parties

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

6 10. Answering paragraph 10, Defendant Pineda admits the allegations of
7 paragraph 10.

8 11. Answering paragraph 11, Defendant Pineda admits the allegations of
9 paragraph 11.

10 12. Answering paragraph 12, Defendant Pineda admits the allegations of
11 paragraph 12.

12 13. Answering paragraph 13, Defendant Pineda admits the allegations of
13 paragraph 13.

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

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

26 16. Answering paragraph 16, Defendant Pineda admits that UMG Recordings,
27 Inc. is a record label. Defendant Pineda lacks sufficient information to admit or
28 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 Pineda admits, on information and
3 belief, that Interscope is a record label and is owned by Defendant UMG. Defendant
4 Pineda admits that there is a contractual relationship between the musical group
5 known as The Black Eyed Peas and Interscope. Defendant Pineda 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 Pineda denies that “I Gotta Feeling” is
9 an infringing song. Defendant Pineda 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 Pineda 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 Pineda denies that “I Gotta Feeling” is
15 an infringing song. Defendant Pineda 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 Pineda 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 Pineda denies that “I Gotta Feeling” is
21 an infringing song. Defendant Pineda 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 Pineda 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 Pineda denies that “I Gotta Feeling” is
28 an infringing song. Defendant Pineda admits, that Jeepney Music, Inc. was, in part,

1 a music publishing designee, that it had a relationship to the song “I Gotta Feeling,”
2 and, it had a place of business in Los Angeles, California.

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

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

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

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

27 26. Answering paragraph 26, Defendant Pineda denies that “I Gotta Feeling” is
28 an infringing song. Defendant Pineda admits, on information and belief, that

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

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

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

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

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

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

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

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

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

26 33. Answering paragraph 33, Defendant Pineda lacks sufficient information to
27 admit or deny the allegations contained in paragraph 33, and on that basis denies
28 each and every such allegation.

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

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

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

10 37. Answering paragraph 37, Defendant Pineda denies the allegations in this
11 paragraph.

12 38. Answering paragraph 38, Defendant Pineda denies that any “authorization”
13 was required, and the remaining allegations are denied.

14 39. Answering paragraph 39, Defendant Pineda denies the allegations in this
15 paragraph.

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

17 40. Answering paragraph 40, Defendant Pineda denies the allegations in this
18 paragraph.

19 41. Answering paragraph 41, Defendant Pineda denies the allegations in this
20 paragraph.

21 42. Answering paragraph 42, Defendant Pineda denies the allegations in this
22 paragraph.

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

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

27 44. Answering paragraph 44, Defendant Pineda admits that I Gotta Feeling was
28 released in or around June 2009 and was the second single off of the group’s album

1 *The E.N.D.*

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

7 46. Answering paragraph 46, Defendant Pineda denies the allegations in this
8 paragraph.

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

11 47. Answering paragraph 47, Defendant Pineda denies the allegations in this
12 paragraph.

13 48. Answering paragraph 48, Defendant Pineda denies the allegations in this
14 paragraph.

15 49. Answering paragraph 49, Defendant Pineda denies the allegations in this
16 paragraph.

17 50. Answering paragraph 50, Defendant Pineda denies the allegations in this
18 paragraph.

19 51. Answering paragraph 51, Defendant Pineda denies the allegations in this
20 paragraph.

21 52. Answering paragraph 52, Defendant Pineda denies the allegations in this
22 paragraph.

23 53. Answering paragraph 53, Defendant Pineda denies the allegations in this
24 paragraph.

25 54. Answering paragraph 54, Defendant Pineda denies the allegations in this
26 paragraph, except that Defendant Pineda admits that the song I Gotta Feeling is and
27 has been publically performed.

28

1 55. Answering paragraph 55, Defendant Pineda denies the allegations in this
2 paragraph.

3 56. Answering paragraph 56, Defendant Pineda denies the allegations in this
4 paragraph.

5 57. Answering paragraph 57, Defendant Pineda denies the allegations in this
6 paragraph.

7 58. Answering paragraph 58, Defendant Pineda denies the allegations in this
8 paragraph.

9 59. Answering paragraph 59, Defendant Pineda denies the allegations in this
10 paragraph.

11 60. Answering paragraph 60, Defendant Pineda denies the allegations in this
12 paragraph.

13 COUNT I

14 Copyright Infringement Against All Defendants

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

17 62. Answering paragraph 62, Defendant Pineda denies the allegations in this
18 paragraph.

19 63. Answering paragraph 63, Defendant Pineda denies the allegations in this
20 paragraph.

21 64. Answering paragraph 64, Defendant Pineda denies the allegations in this
22 paragraph.

23 65. Answering paragraph 65, Defendant Pineda denies the allegations in this
24 paragraph.

25 66. Answering paragraph 66, Defendant Pineda denies the allegations in this
26 paragraph.

27 67. Answering paragraph 67, Defendant Pineda denies the allegations in this
28 paragraph.

1 68. Answering paragraph 68, Defendant Pineda denies the allegations in this
2 paragraph.

3 69. Answering paragraph 69, Defendant Pineda denies the allegations in this
4 paragraph.

5

6

GENERAL RESPONSE

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

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

15

AFFIRMATIVE DEFENSES

16

FIRST DEFENSE

17

(Failure to State A Claim)

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

20

SECOND DEFENSE

21

(Laches)

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

23

THIRD DEFENSE

24

(Failure to Mitigate)

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

27

FOURTH DEFENSE

28

(17 U.S.C. § 411)

1 4. Plaintiff has failed to register the alleged copyrighted materials and,
2 therefore, is precluded from bringing a claim for copyright infringement pursuant to
3 17 U.S.C. § 411.

4 FIFTH DEFENSE

5 (17 U.S.C. § 412)

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

9 SIXTH DEFENSE

10 (Implied License)

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

13 SEVENTH DEFENSE

14 (17 U.S.C. § 409)

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

17 EIGHTH DEFENSE

18 (17 U.S.C. §301)

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

20 NINTH DEFENSE

21 (Unclean Hands)

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

24 TENTH DEFENSE

25 (Unjust Enrichment)

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

27 ELEVENTH DEFENSE

28 (Set Off)

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

4 TWELFTH DEFENSE

5 (Copyright Misuse)

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

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

20 THIRTEENTH DEFENSE

21 (Waiver)

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

24 FOURTEENTH DEFENSE

25 (Acquiescence)

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

28 FIFTEENTH DEFENSE

1 (Estoppel)

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

3 SIXTEENTH DEFENSE

4 (Speculative Damages)

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

8 SEVENTEENTH DEFENSE

9 (Fraud on the U.S. Copyright Office)

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

12 EIGHTEENTH DEFENSE

13 (Unenforceability)

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

16 NINETEENTH DEFENSE

17 (Invalidity)

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

20 RESERVATION OF RIGHTS

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

24 WHEREFORE, having fully answered Plaintiff's Complaint, Defendant
25 Pineda prays for judgment against Plaintiff and awarding Defendant Pineda its costs,
26 interest, reasonable attorneys' fees, together with such other and further relief as the
27 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 Allan Pineda and Jeepney Music, Inc 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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