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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**SOUTHERN DIVISION**

Case No. SACV10-1656 JST (RZx)

BRYAN PRINGLE, an Individual,

Plaintiff,

v.

WILLIAM ADAMS, JR.; STACY  
FERGUSON; ALLAN PINEDA; and  
JAIME GOMEZ, all individually and  
collectively as the music group The Black  
Eyed Peas; DAVID GUETTA;  
FREDERICK RIESTERER; UMG  
RECORDINGS, INC.; INTERSCOPE  
RECORDS; EMI APRIL MUSIC, INC.;  
HEADPHONE JUNKIE PUBLISHING,

**DECLARATION OF  
IRA GOULD IN  
OBJECTION TO BARRY I.  
SLOTNICK'S DECLARATION  
IN SUPPORT OF  
DEFENDANT'S  
APPLICATION FOR FEES**

1 LLC; WILL.I.AM. MUSIC, LLC;  
2 JEEPNEY MUSIC, INC.; TAB  
3 MAGNETIC PUBLISHING; CHERRY  
4 RIVER MUSIC COL.; SQUARE  
5 RIVOLI PUBLISHING; RISTER  
6 EDITIONS; and SHAPIRO,  
7 BERNSTEIN & CO.,

8  
9 Defendants.

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**DECLARATION OF IRA GOULD**

I, Ira Gould, having personal knowledge of the facts contained within this declaration, and if called as a witness, could testify regarding the following:

1. I am the named partner at the law firm of Gould Law Group, and am counsel for Plaintiff, Bryan Pringle (“Plaintiff” or “Pringle”) in the above-captioned action. I am a member in good standing of the State Bar of Illinois.

2. I submit this declaration in objection to the to the reasonableness of the \$36,091.50 in fees alleged to have been incurred by Rister Editions’ counsel Loeb & Loeb, as set forth in the Declaration of Barry I. Slotnick filed on April 22, 2011. [Dkt. No. 128]

3. Mr. Slotnick’s Declaration was submitted pursuant to Judge Tucker’s April 12, 2011 Order directing Defendant Rister Editions (“Rister”) to file a declaration as to the expenses, costs and attorneys’ fees incurred in filing its motion to dismiss for improper service of Plaintiff’s Second Amended Complaint. (the “Order”) [Dkt. No.126]. The Order states that “Plaintiff’s counsel shall pay to Rister sanctions in the amount of the reasonable expenses, costs, and attorneys’ fees Rister *incurred in filing this motion.*” (emphasis added).

4. I am an experienced litigator and trial attorney, having practiced law in Illinois state court and federal court since 1974 years. I graduated *with Honors*

1 from The John Marshall Law School in Chicago, in 1973, where I was Editor-in-  
2 Chief of the *John Marshall Law Review*. After graduation, I was a law clerk for  
3 one year for Judge Thomas R. McMillen in the Northern District of Illinois, after  
4 which I practiced with a 10-person lawfirm as a litigator and was made a partner in  
5 1979. From 1980 through 1996, I was a litigation partner at the former law firm  
6 of Holleb & Coff, a 150 lawyer firm when I left (disbanded in 2000), where I was  
7 the head of the litigation department for about seven years in the 1980s. From 2003  
8 to 2007 I was a litigation attorney at the firm of Greenberg Traurig, in the Chicago  
9 Office. I left Greenberg in 2007 to start my own firm, where I continue to practice  
10 complex commercial litigation, which I have done during my career.

11           5. I have reviewed Mr. Slotnick's Declaration, and the "Time Sheet"  
12 attached as Exhibit B to Mr. Slotnick's Declaration, which purportedly sets forth  
13 the number of billable hours spent related to the "filing of the Motion" and hourly  
14 rates for those involved. Based on my many years as an experienced litigator and  
15 trial lawyer, and my knowledge of the nature and facts of this case, the 71.3 billable  
16 hours set forth by Rister are grossly excessive and unreasonable considering,  
17 among other things, the short length of the briefs involved (totaling thirteen and a  
18 half pages), the non-complex nature of the Motion, which was a simple motion to  
19 dismiss pursuant to the Fed. Rules of Civ. Procedure., and the fact that the majority  
20 of the research and content contained in the Motion to Dismiss were recycled from  
21 a previous Motion to Dismiss filed by the same Defendant. The hours billed by  
22 Rister should thus be substantially reduced.

23  
24 **I. Background Facts**

25           5. On December 13, 2010, Rister filed its first motion to dismiss based on  
26 improper service. [Doc. #53]  
27  
28

1           6.     On January 27, 2011, the Court denied Rister’s motion, and ordered  
2 Plaintiff to serve Rister. [Doc. #95]

3           7.     Plaintiff’s counsel then made a subsequent, good faith attempt to serve  
4 Rister in a manner which it believed to be the most time and cost efficient method  
5 of service.

6           8.     Rister then filed a second motion to dismiss on March 28, 2011, which  
7 contained substantially the same law and content of its first motion to dismiss. [Dkt.  
8 No. 122]

9           9.     The Court granted Rister’s Motion for attorney’s fees pursuant to 28  
10 U.S.C. § 1927. Specifically, the Court ordered Plaintiff’s counsel to “pay to Rister  
11 sanctions in the amount of the reasonable expenses, costs, and attorneys’ fees Rister  
12 incurred in filing this motion.”

13           10.    Rister’s counsel subsequently filed a fee petition, at the request of the  
14 Court, seeking to recover \$36,091.50 for the work surrounding the filing of its six  
15 and a half-page Motion to Dismiss and a seven-page Reply Brief. [Dkt. No. 128].

16           **II.    Legal Standard in Determining Attorney’s Fees**

17           11.    Reasonableness is the benchmark for sanctions based on attorneys’  
18 fees. *See Brown v. Baden (In re Yagman)*, 796 F.2d 1165, 1184-85 (9th Cir. 1986);  
19 28 U.S.C. § 1927 (authorizing fees “reasonably incurred”).

20           12.    Reasonable attorneys’ fees are determined by following a two-part  
21 “lodestar” approach. *Intel Corp. v. Terabyte Int’l*, 6 F.3d 614, 622 (9th Cir. 1993),  
22 citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The court calculates the  
23 presumptively-reasonable lodestar figure by multiplying the hours reasonably spent  
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1 on the litigation by a reasonable hourly rate. *Hensley*, 461 U.S. at 433-34; *Jordan v.*  
2 *Multnomah County*, 815 F.2d 1258, 1262-63 (9th Cir. 1987).

3  
4 13. In determining a reasonable hourly rate, courts generally consider  
5 several factors, including: (1) the experience, skill, and reputation of the applicant;  
6 (2) the prevailing rate in the community for comparable attorneys; and (3) the  
7 novelty or difficulty of the issues presented. *See Welch v. Metro. Life Ins. Co.*, 480  
8 F.3d 942, 946 (9th Cir. 2007); *Chalmers v. City of L.A.*, 796 F.2d 1205, 1210-1 (9th  
9 Cir. 1986).

### 10 **III. Rister's Hours Billed Are Grossly Excessive**

11  
12 14. Given the length of the briefs, and the lack of complexity of the legal  
13 issue involved and skill needed to draft the Motion, Rister's billable hours incurred  
14 in connection with its filing of the Motion to Dismiss should have been no more  
15 than fifteen hours. However, Rister boldly contends that the work surrounding the  
16 research and writing of the thirteen and a half pages that consisted of its Motion and  
17 Reply took over seventy-one billable hours. Plaintiff's counsel objects to these  
18 hours as grossly excessive and unreasonable.

19  
20 15. As evidence of its excessive hours, the Court need only examine the  
21 Time Sheet attached to Mr. Slotnick's Declaration as Exhibit B. Not only does  
22 Rister's counsel bill for hours that are duplicative, excessive and unnecessary, but  
23 also hours for a separate Defendant in the case, Frederick Riesterer, that has been  
24 properly served and was in no way involved with Rister's Motion to Dismiss.

25  
26 16. After review of the Rister's counsel's Time Sheet, I object to the hours  
27 billed as follows:

- 28 • 3/16/11 through 3/28/11 – All hours related to the research, drafting,  
reviewing and revising of Rister's Motion to Dismiss – 29.5 hours total. This

1 fee is grossly excessive given the length of the Motion to Dismiss, and the  
2 lack of complexity for the work involved. Rister's Motion was a simple, six  
3 and a half page motion to dismiss, pursuant to the Fed. Rules of Civ. Pro., for  
4 failure to serve a party. There were no complex legal issues involved in the  
5 research or drafting of this Motion. Moreover, a substantial portion of the  
6 research and content of this Motion is duplicative of Rister's first Motion to  
7 Dismiss.

- 8
- 9 • 3/25/11 – Review and respond to Emails regarding service of process on  
10 [Frederick] Riesterer – 0.20 hours. Individual Defendant, Frederick  
11 Riesterer, is a separate Defendant from Rister Editions, was properly served  
12 and thus not a party to the Motion to Dismiss, and Rister's counsel's  
13 reviewing his process of service is otherwise *completely unrelated to the*  
14 *filing of its Motion to Dismiss*. These hours should thus be disregarded in  
15 their entirety.
  - 16 • 4/4/11 through 4/11/11 – All hours related to the research, drafting,  
17 reviewing and revising of Rister's Reply Brief – 26.7 hours total. This fee is  
18 grossly excessive given the length of the Reply Brief, the amount of research  
19 having already been conducted when filing the initial Motion to Dismiss, and  
20 the lack of complexity of the issue. Rister's Reply was a simple, seven page  
21 brief dealing with the Fed. Rules of Civ. Pro. There were no complex legal  
22 issues involved in (despite the fact that Rister's Time Sheet states that  
23 research was conducted on the Hague Convention, there is no analysis of it in  
24 Rister's Reply Brief), and most of relevant research was no doubt already  
25 completed prior to the filing of the two previous Motions to Dismiss.
  - 26 • 4/12/11 – Draft Answer for Frederick Riesterer for Plaintiff's Complaint;  
27 Draft Timeline and Summary of Key Case Events – 4.1 hours. Again,  
28

1 Individual Defendant, Frederick Riesterer, is a separate Defendant from  
2 Rister Editions, was properly served and thus not a party to the Motion to  
3 Dismiss and counsel's drafting of Riesterer's Answer to the Complaint is  
4 otherwise *completely unrelated to the filing of Rister's Motion to Dismiss*.  
5 These hours should thus be disregarded in their entirety.

- 6 • 4/14/11 through 4/21/11 – All hours related to determining attorney's fees  
7 pursuant to the Order – 10.7 hours total. These fees, which make up fifteen  
8 percent of Rister's total hours billed, are unreasonable and excessive.  
9

#### 10 **IV. The Hourly Rates Charged By Rister's Counsel Are Excessive**

11 17. I similarly object to certain hourly rates charged by Rister's counsel as  
12 being excessive and unreasonable given the customary fees charged by comparable-  
13 sized firms in the same area as Loeb & Loeb, and based on the non-complex nature  
14 of the work involved.

15 18. Plaintiff's counsel's objections are based on the Exhibit C of Mr.  
16 Slotnick's own Declaration, which is a recent, up-to-date article from the National  
17 Law Journal that purports to demonstrate the average, or "customary," hourly rates  
18 of attorneys at top law firms ("Exhibit C"). Contrary to what is stated in Mr.  
19 Slotnick's Declaration, the hourly rates charged by many of Rister's attorneys are  
20 not less than comparable-sized firms in California and New York – actually, they  
21 are on the extreme high-end. Given the non-complex nature of the case and of the  
22 Motion and Reply at issue, Rister's proposed hourly rates are unreasonable and  
23 excessive, and Plaintiff's counsel request that they be reduced accordingly.  
24

25 19. First, pursuant to Mr. Slotnick's Declaration, Thomas Nolan, a six-  
26 year associate attorney,<sup>1</sup> billed out at \$500 an hour. Page ten of Exhibit C breaks  
27

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28 <sup>1</sup> Pursuant to Mr. Slotnick's Declaration, Mr. Nolan has been practicing law since 2005.

1 down the average hourly rate for associate attorneys by year. Of the 42 law firms  
2 listed, only three charge a rate of \$500 an hour for six-year associates, and those  
3 three list a range in between a number below \$500 and a figure slightly higher than  
4 \$500. Of the six other firms listed in New York or California, the average hourly  
5 rate for a six-year associate is \$471.5 per hour.

6  
7 20. Second, pursuant to Mr. Slotnick's Declaration, Tal Dickenson, a  
8 seven-year associate, billed out at a rate of \$550 per hour. Again, an examination  
9 of the 42 law firms on the page 10 of Exhibit C, demonstrates that only three of the  
10 42 firms charge on the upper range of \$550 an hour for seven-year associates, and  
11 of the six firms listed in New York or California, the average hourly rate for a  
12 seven-year associate is \$501.75.

13 21. Lastly, pursuant to Mr. Slotnick's Declaration, Tiffany Cummings and  
14 Antoinette Pepper, two paralegals, billed out at a rate of \$320 and \$355 an hour  
15 respectively. Plaintiff's counsel objects to these rates as excessive and  
16 unreasonable. Rister provides no documentary evidence to establish that hourly  
17 fees of \$320 and \$355 for paralegals are reasonable rates. Plaintiff's counsel  
18 believes these fees to be particularly excessive for paralegals given that Rister  
19 billed Eric Schwartz, a second-year attorney, at a similar hourly rate of \$350.

20 **V. Conclusion**

21  
22 22. Based on the above, the hours billed by Rister's counsel for are grossly  
23 excessive and unreasonable based on legal issues and amount of work involved, and  
24 certain of the hourly rates charged are similarly unreasonable. Plaintiff thus  
25 requests that the Court apply the lodestar method to determine a more reasonable  
26 number of hours expended on filing the second motion to dismiss, multiplied by a  
27 reasonable hourly fee for attorneys and paralegals at a comparable sized firm in this  
28 jurisdiction.



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I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge.

Executed this 27<sup>th</sup> day of April, 2011, in Chicago, Illinois.

/s/ Ira Gould  
Ira Gould

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