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

16 **UNITED STATES DISTRICT COURT**

17 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

18 BRYAN PRINGLE, an individual,) Case No. SACV 10-1656 JST (RZx)
19 Plaintiff,) **DISCOVERY MATTER**
20 v.) **EX PARTE APPLICATION FOR**
21) **PROTECTIVE ORDER**
22 WILLIAM ADAMS, JR.; STACY) **POSTPONING DEPOSITIONS;**
23 FERGUSON; ALLAN PINEDA; and) **MEMORANDUM OF POINTS**
collectively as the music group The Black) **AND AUTHORITIES IN**
24 Eyed Peas, *et al.*,) **SUPPORT; DECLARATION OF**
25 Defendants.) **JONATHAN S. PINK IN SUPPORT**
26) Date:
27) Time:
28) Courtroom:
Complaint Filed: October 28, 2010
Disc. Cutoff: September 15, 2011
Pretrial Conf.: January 6, 2012
Trial Date: January 24, 2012

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE
2 TAKE NOTICE THAT:

3 Defendants William Adams, Stacy Ferguson, Allan Pineda, and Jaime Gomez,
4 individually and collectively professionally known as the music group “The Black
5 Eyed Peas,” apply to this Court *ex parte* for a protective order postponing their
6 respective depositions in this matter pursuant to Local Rules 7-19, 7-19.1, and Rule
7 26 (c)(1) of the Federal Rules of Civil Procedure. The Black Eyed Peas also request
8 an award of their expenses for having to bring this application under Rule 26 (c)(3)
9 and Rule 37(a)(5) of the Federal Rules of Civil Procedure.

10 Through this application, The Black Eyed Peas seek an order of protection
11 postponing by approximately 4 weeks their depositions currently set during the week
12 of July 22, 2011.

13 Good cause exists for the instant *ex parte* application. Bryan Pringle’s
14 (“Plaintiff”) counsel in this matter is also counsel for the plaintiffs in another matter
15 against The Black Eyed Peas. That counsel is unreasonably demanding depositions
16 of the individual band members in this case on dates that necessarily create a known
17 conflict in the other case, *Batts v. Adams et al.*, (C.D. Cal. Case No. CV10-8123
18 JFW(RZx)).

19 Specifically, Plaintiff’s counsel:

- 20 • Set depositions in both cases during the same week, in two different
21 locations, 50 miles apart, causing conflicts for witnesses and their
22 counsel;
- 23 • Stated their intention to use the witnesses’ availability in July *only* for
24 depositions in the *Pringle* case;
- 25 • Moved to compel additional dates in the *Batts* matter;¹ and

26
27 ¹ To make matters worse, Plaintiff’s counsel set the hearing date on the *Batts* motion
28 to compel on the very same date as they are demanding lead counsel to appear and
defend the deposition of William Adams in this Pringle case in an effort to prevent
(Continued...)

- Rejected offers to depose witnesses in both cases during the time available in July, or on later dates in this case (the *Pringle* matter), seemingly for no reason other than to create an irreconcilable conflict for witnesses and counsel;

Moreover, while The Black Eyed Peas provided Plaintiff’s counsel with deposition dates on July 22-28, 2011 and August 29 through September 1, 2011 so that the July dates could be used for depositions in *Batts* (which has an earlier discovery cutoff, and requires the plaintiffs in that case to oppose The Black Eyed Peas Motion for Summary Judgment by September 2, 2011), Plaintiff’s counsel refused to take the *Pringle* depositions in August (or the *Batts* depositions in July).²

To compound matters, attempts to resolve these manufactured conflicts between the two cases have been met with threats from Plaintiff’s counsel of additional motions to compel in this (*Pringle*) case. For example, when The Black Eyed Peas’ counsel tried to avoid the motion practice in the *Batts* case by offering to have the witnesses deposed in *both* cases or have the witnesses reschedule depositions in this matter in order to appear in the *Batts* case, Plaintiff’s counsel threatened to file motions to compel in this action.

The whipsaw approach to scheduling has created irreconcilable conflicts with witnesses and their counsel in both cases, making compliance impossible in either. But the conflict Plaintiff’s counsel has created has an easy resolution, albeit one that unfortunately requires a Court Order: e.g. an order that the depositions in the *Pringle* case be moved from July to August, or that they be taken at the same

(...Continued)

lead counsel from defending his deposition. Requests to change the intentionally set conflicting hearing date have been steadfastly refused.

² Defendants’ counsel provided these additional dates – and Plaintiff’s counsel rejected them – on Friday, July 1, 2011. Defendants’ counsel suggested that Plaintiff’s counsel take the 4th of July weekend to reconsider that position. Plaintiff’s counsel has not changed their minds, thus leading to this *Ex Parte* Application.

1 time the witnesses appear in July for deposition in the *Batts* case.³ To this end, a
2 protective order is required to stop the abuse and harassment and to eliminate
3 further unnecessary motion practice on Plaintiff's self-inflicted discovery dilemmas.

4 Plaintiff was given notice of this *ex parte* application, its date, and its
5 substance, through his counsel of record pursuant to local rule 7-19.1. Plaintiff is
6 represented by Dean A. Dickie of MILLER, CANFIELD, PADDOCK AND
7 STONE, P.L.C., 225 West Washington Street, Suite 2600, Chicago IL, 60606, (312)
8 460-4217, dickie@millercanfield.com; Ira Gould of GOULD LAW GROUP, 120
9 North LaSalle Street, Suite 2750, Chicago IL 60602, (312) 781-0680,
10 gould@igouldlaw.com; and George L. Hampton IV and Colin C. Holley of
11 HAMPTONHOLLEY LLP, 2101 East Coast Highway, Suite 260, Corona del Mar,
12 California 92625, (949) 718-4550, ghampton@hamptonholley.com,
13 cholley@hamptonholley.com.

14 Plaintiff intends to oppose this application.

15 **Plaintiff is hereby notified that any Opposition to this Ex Parte**
16 **Application must be filed no later than 24 hours, or one court day, following**
17 **service of the Ex Parte Application pursuant to this Court's Initial Standing**
18 **Order dated October 29, 2010.**

19

20 Dated: July 5, 2011

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26

BRYAN CAVE LLP
Kara E.F. Cenar
Jonathan Pink
Mariangela M. Seale

27

28

By: /s/Jonathan Pink
Jonathan Pink
Attorneys for Defendants

³ As The Black Eyed Peas have agreed to depositions in *Batts* in July, Plaintiff's counsel case can use the dates available in August to take the *Pringle* depositions.

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WILLIAM ADAMS; ALLAN PINEDA;
and JAIME GOMEZ, all individually and
collectively as the music group THE
BLACK EYED PEAS; JAIME MUNSON
a/k/a Poet Name Life; will.i.am music, llc;
TAB MAGNETIC PUBLISHING;
CHERRY RIVER MUSIC CO.; JEEPNEY
MUSIC, INC.

MCPHERSON RANE, LLP

/s/Tracy Rane

Ed McPherson

Tracy Rane

Attorneys for Defendant

STACY FERGUSON

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendants William Adams, Stacy Ferguson, Allan Pineda, and Jaime Gomez,
3 individually and collectively professionally known as the music group “The Black
4 Eyed Peas,” move this Court *ex parte* for a protective order governing their
5 respective depositions in this matter.

6 As a gating matter, it is important for this Court to know that the issues
7 involved in this *ex parte* application also relate to noticed depositions in another
8 case, *Batts v. Adams et al.*, (C.D. Cal. Case No. CV10-8123 JFW(RZx)). The
9 plaintiffs in the *Batts* case are represented by the same counsel as is plaintiff in this
10 action; the defendants are represented by the same counsel in both matters; and the
11 Magistrate Judge is likewise the same in both. Indeed, the plaintiffs in *Batts* have
12 recently filed a related Motion to Compel (that is currently pending), which will be
13 rendered moot if this Court grants the relief sought herein.⁴

14 **I. THE BLACK EYED PEAS WILL BE IRREPARABLY PREJUDICED**
15 **IF THIS MOTION IS HEARD ACCORDING TO THE REGULAR**
16 **NOTICE PROCEDURES**

17 Due to the scheduled dates of the subject depositions (beginning July 22,
18 2011), the pending and related Motion to Compel in *Batts* (set for hearing on July 25,
19 2011), and the required briefing and notice schedule under Local Rules 37-2 and 37-
20 3, The Black Eyed Peas will be irreparably prejudiced if this request for a protective
21

22
23
24 ⁴ That motion should never have been filed as plaintiffs failed to comply with LR 37-
25 1. In any event, it should have been rendered moot once The Black Eyed Peas
26 provided additional deposition dates on July 1, 2011. However, for whatever reason,
27 Plaintiff’s counsel decided to perpetuate the problem by refusing to use the August
28 dates to take deposition in this case, and the July dates to take depositions in *Batts*.
Instead, Plaintiff’s counsel has insisted on taking the *Pringle* depositions in July, and
has maintained that the August dates are unacceptable for *Batts*. That conflict – and
a need for a resolution prior to the upcoming July deposition dates – justifies this *Ex*
Parte application.

1 order is heard according to the regular notice procedures. *Mission Power Eng'g Co.*
2 *v. Cont'l Casualty Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995).⁵

3 This prejudice is not caused by any lack of diligence by the Black Eyed Peas.
4 Plaintiff's counsel first informed counsel for The Black Eyed Peas on July 1, 2011
5 that they would not use the dates available in August for the deposition in this
6 matter.⁶ The proffered August dates should have resolved any dispute as to
7 deposition dates (which has its genesis in Plaintiff's issuance of knowingly
8 conflicting deposition notices in both cases, followed by a specious motion compel in
9 *Batts*). Indeed, The Black Eyed Peas have repeatedly attempted, without success, to
10 meet and confer in this matter and in *Batts*. Prior to filing this *ex parte* application,
11 counsel for the Black Eyed Peas met and conferred with Plaintiff pursuant to Local
12 Rules 7-3 and 37-1 with respect to the conflicting dates on June 14, 2011, June 15,
13 2011, June 22, 2011; they met and conferred with respect to Plaintiffs' refusal to use
14 the August dates for depositions in *Pringle* and the July dates for depositions in *Batts*
15 on July 1, 2011.

16 The immediacy of this Motion, and the threat of irreparable harm, is a sole
17 product of Plaintiff Bryan Pringle's ("Plaintiff") re-issuance of conflicting deposition
18 notices in this matter (setting conflicting depositions on July 22, 2011 through July
19 29, 2011), Plaintiff's counsel's refusal to withdraw a set of conflicting deposition
20 notices in either matter, the fast-approaching July deposition dates, and the pending
21
22

23 ⁵ As set forth in Footnote 3, Plaintiff's counsel has inexplicably insisted on taking the
24 *Pringle* depositions in July rather than August. In light of the upcoming July
25 deposition dates, there simply is insufficient time to bring this issue before the Court
26 as a regularly noticed motion.

27 ⁶ In a telephone discussion with Plaintiff's counsel and Defendants counsel,
28 Plaintiff's counsel represented that a need for protective order would be unnecessary
if additional dates for the witnesses were provided. Additional dates were provided,
yet Plaintiff's counsel continued to make demands for witness and counsel
appearances that manufacture an irreconcilable conflict.

1 Motion to Compel (filed without any prior meet and confer), set for hearing on July
2 25, 2011 (the same day as a key deposition in this matter).

3 **II. INTRODUCTION**

4 Plaintiff’s counsel represents parties in two separate cases against The Black
5 Eyed Peas and other defendants (collectively, the “Defendants”). Although they
6 involve different musical works, both this case and *Batts v. Adams* are near carbon
7 copies of one another. Both assert a single count of copyright infringement, and
8 generally reference a claimed “conspiracy” against unknown artists.⁷ (Pink Decl. ¶
9 2.) In this case, the work allegedly copied consists of a single guitar chord
10 progression featured in The Black Eyed Peas’ musical work “I Got A Feeling.” (Pink
11 Decl. ¶ 2.)

12 The Black Eyed Peas are presently in the middle of a world tour. (Pink Decl. ¶
13 4.) They return from this tour to the United States for at the end of July and provided
14 their first available dates for deposition within days of their return. To this end, they
15 provided Plaintiff in this case, and the plaintiffs in the *Batts* case, the opportunity to
16 take their respective depositions for both cases on specific days during the week of
17 July 22, 2011. (Pink Decl. ¶ 4.) Counsel for The Black Eyed Peas proposed that the
18 plaintiffs in both matters use the single day that each member of the band had
19 available in July to ask questions in *both* cases. (Pink Decl. ¶ 4.) Counsel for The
20 Black Eyed Peas committed to provide plaintiffs (in both cases) with additional time
21 (up to an additional 7 hours per deponent) if needed when the witnesses’
22 professional/tour schedule permitted (at end of August). (Pink Decl. ¶ 5.)

23 In line with this arrangement, each member of The Black Eyed Peas set aside
24 and designated one full day for their deposition for the specific dates provided in
25 _____

26 ⁷ The lack of merit to the sole copyright infringement counts in both of these cases is
27 already part of the record. *See* Dkt. 109 in *Batts* (order denying Batts/Mohr motion
28 for preliminary injunction); *see also* Dkt. 30, 99 in *Pringle* (orders denying the
motions of Plaintiff for a temporary restraining order and preliminary injunction.)

1 July. (Pink Decl. ¶ 6, Ex. 1.) Thereafter, Plaintiff’s counsel was given the
2 witnesses’ next available dates, August 29, 2011 through September 1, 2011 for
3 additional deposition questioning (which are the band members’ first available dates
4 given the witnesses professional/tour schedule). (Pink Decl. ¶ 9, Ex. 4.) Those dates
5 are almost two and a half months before the close of discovery in the *Pringle* case.

6 After defense counsel thought dates for The Black Eyed Peas’ individual
7 depositions were set, Plaintiff’s counsel unilaterally reissued deposition notices in the
8 two cases for the *same* deponents, on different days and in two different cities.⁸
9 (Pink Decl. ¶ 6, Ex. 1; Pink Decl. ¶ 7, Ex. 2.) These dates conflict with witnesses’
10 and counsels’ availability. By engaging in such tactics, Plaintiff’s counsel
11 manufactured an “unavailability” which insured that The Black Eyed Peas – and
12 their counsel – would be unavailable for depositions in the *Batts* case.⁹

13 To make matters worse, plaintiffs’ counsel then filed a Motion to Compel
14 depositions in the *Batts* case, erroneously arguing that The Black Eyed Peas were not
15 willing to appear for deposition in that case. (Pink Decl. ¶ 8, Ex. 3.) Adding to the
16 confusion, that motion was unilaterally scheduled by Plaintiff’s counsel for hearing
17 on July 25, 2011: the same day Plaintiff’s counsel had noticed for the deposition of
18 William Adams, whom Plaintiff’s counsel claims is a material witness in both cases
19 (thus insuring a conflict for Mr. Adams’ counsel). Plaintiff’s counsel would not
20 agree to alter any dates, thus requiring the filing of a motion for protective order.¹⁰

21 _____
22 ⁸ While the *Batts* depositions were noticed for Beverly Hills, the depositions in this
23 case were noticed for Newport Beach. Plaintiffs have offered no explanation for this.

24 ⁹ A chart reflecting the conflicting deposition scheduling of all witnesses in the two
25 cases is attached as Exhibit 5 to the accompanying Declaration of Jonathan S. Pink.

26 ¹⁰ As part of the pending Motion to Compel in the *Batts* case, The Black Eyed Peas
27 have crossed moved for protective order relating to the conflicting depositions
28 scheduling in the *Batts* case. See DKT 134. In those papers it was indicated that a
protective order would be sought from the *Pringle* Court. Efforts to meet and confer
to obviate the need to file a protective order in the *Pringle* matter reached an impasse
on July 1, 2011.

1 Neither the Motion to Compel/request for protective order in *Batts* – nor this
2 Motion for a Protective Order – would be necessary but for the gamesmanship of
3 Plaintiff’s counsel who knowingly and intentionally scheduled conflicting deposition
4 dates, refused to withdraw the notices of deposition in *either* case,¹¹ and then
5 scheduled a hearing date that conflicts with a noticed deposition. As such, The Black
6 Eyed Peas seek this Court’s protection postponing The Black Eyed Peas’ depositions
7 in *this* matter by approximately *4 weeks* so that they may appear for deposition in the
8 *Batts* matter in July. That simple step will eliminate the scheduling conflict in this
9 case and in the *Batts* matter.

10 This relief is reasonable because: (1) The Black Eyed Peas have limited
11 availability – a single available day each in July; (2) Plaintiff’s counsel is free to
12 question The Black Eyed Peas in this matter (if they choose) during the depositions
13 scheduled in the *Batts* matter; and (3) The Black Eyed Peas have agreed to provide
14 plaintiff with additional time to depose the witnesses in the *Pringle* matter on August
15 29, 2011 through September 1, 2011, if they are unable to complete the questioning
16 in July.

17 It is also reasonable given that, while there is no pressing deadline in this
18 *Pringle* case, there is a pressing deadline in the *Batts* case. The plaintiffs in *Batts*
19 requested a postponement from Judge Walter of the hearing for summary judgment
20 in that case under the guise that they needed to depose The Black Eyed Peas. Their
21 deadline to oppose summary judgment is September 2, 2011. Incredibly, however,
22

23 ¹¹ Withdrawing the notice in either case would go a long way towards resolving this
24 convoluted situation. It highly unlikely – indeed nearly absurd to believe – that
25 Plaintiff needs a full 7 hours of deposition time with each of the band members.
26 Their respective depositions in this case should not last more than *two hours* at the
27 very most, even in the hands of the most unskilled attorney. To this end, it is simply
28 unreasonable for Plaintiff’s counsel to refuse – as he has done – to take the
depositions in July in the *Batts* matter, and use that same 7 hours to question the
deponents about this case, knowing that Plaintiff can finish the depositions in this
case August 29, 2011 through September 1, 2011, if necessary. Further, discovery
does not close for more than 4 months in this case.

1 Plaintiff's counsel has insisted on using The Black Eyed Peas' first available dates
2 for depositions in this, the *Pringle* matter, notwithstanding their representations to
3 Judge Walter that the depositions in *Batts* were mission-critical.

4 Counsel for The Black Eyed Peas have tried to reason with Plaintiff's counsel
5 in numerous meet and confer discussions. Both sets of plaintiffs (represented by the
6 same counsel) have everything they purportedly needed, as represented in every meet
7 and confer discussion between counsel: two confirmed dates per witness, regardless
8 of need or likelihood of the witnesses having relevant knowledge. Notwithstanding
9 this, counsel in *Batts* are moving to compel deposition dates that they already have,
10 and have threatened to seek sanctions against these *same* witnesses if they do not
11 appear in the *Pringle* matter, all the while ignoring the conflicts *they* created for both
12 witnesses and counsel in both actions. To this end, The Black Eyed Peas' have no
13 choice but to seek protection from this Court from Plaintiff's self-inflicted discovery
14 dispute.

15 **III. BACKGROUND**

16 Each individual member of The Black Eyed Peas set in their respective
17 professional calendars a *full* day for deposition¹² in July for which they firmly
18 believe that questioning in both cases can be conducted and concluded. They have
19 provided alternative dates in late August for any remaining questioning.¹³ (Pink
20

21 ¹² Their availability is as follows: Allan Pineda, July 22, 2011; William Adams, July
22 25, 2011; Jaime Gomez, July 26, 2011; and Stacey Ferguson, July 27, 2011.

23 ¹³ While securing dates is, in theory, a straightforward task, the circumstances of this
24 case rendered it complex. Securing available dates for four witnesses, while their
25 personal and professional schedule is impacted by a world tour being scheduled in
26 foreign countries, with new shows and professional appearances being regularly
27 added to the calendar, is a challenging task. In a word, it is a moving target.
28 Scheduling tours also involves significant financial expenditure which, when and if
changes are made, risk causing hundreds of thousands of dollars of unnecessary
expenses. The scheduling of actual tour dates also does not factor in time necessary

(Continued...)

1 Decl. ¶ 4.) Plaintiff’s counsel unilaterally reissued deposition notices in *this* matter,
2 designating the agreed upon dates as being solely “in the *Pringle* action” and then
3 issued conflicting Notices in the *Batts* case. (Pink Decl. ¶ 7, Ex. 2; Pink Decl. ¶ 8,
4 Ex. 3 at page 5.) In doing so, Plaintiff’s counsel has served intentionally conflicting
5 and harassing Notices of Deposition in this case (and the *Batts* case) for depositions
6 of the *same* witnesses, on different days, in different cities (50 miles apart). As a
7 consequence, The Black Eyed Peas and their counsel now face two conflicting sets
8 of deposition notices, and a Motion to Compel their appearance in the *Batts* matter.¹⁴
9 The depositions noticed in *this* case are thus unreasonably burdensome, expensive
10 and oppressive.

11 Based on the foregoing, The Black Eyed Peas seek an order *postponing* – not
12 cancelling – their respective depositions in this case by 4 weeks (e.g. until August 29
13 – September 1, 2011). Postponing the depositions in this case will allow the parties
14 to proceed with the depositions in July in the *Batts* matter, which in turn will
15 eliminate the need for the pending Motion to Compel (and request for protective
16 order) in that action. It likewise will not prejudice Plaintiff in this case as it is very
17 likely Plaintiff will have ample opportunity to ask all necessary questions of the
18 deponents with respect to this case when his counsel deposes them in *Batts* in July.
19 Further, no prejudice will occur to the Plaintiff as the individual members of The
20

21 _____
22 (...Continued)

23 for pre-tour professional and charitable preset obligations, practicing for the tour, and
24 other pre-tour promotional and personal appearance activities.

25 ¹⁴ During the meet and confer process, Plaintiff’s counsel indicated that while they
26 had no intention of going forward with the depositions as noticed in *Batts*, they
27 would not withdraw the deposition notices in that case because doing so would
28 negatively impact their pending Motion to Compel. (Pink Decl. ¶ 11.) If the Plaintiff
in either this case or in *Batts*, would withdraw the noticed depositions, neither that
Motion to Compel nor this Motion would be necessary. Plaintiff’s refusal to do so is
absurd and should not be tolerated by this Court.

1 Black Eyed Peas have agreed to make themselves available again in this case (if
2 necessary) on August 29, 2011 through September 1, 2011.

3 **IV. THE COURT SHOULD ISSUE A PROTECTIVE ORDER EXCUSING**
4 **THE BLACK EYED PEAS FROM APPEARING FOR DEPOSITIONS**
5 **IN THIS CASE**

6 **A. Standards For Issuing A Protective Order.**

7 Parties “may obtain discovery regarding any nonprivileged matter that is
8 relevant to any party’s claim or defense.” Fed. R. Civ. P. 26 (b)(1). However, Rule
9 30 – which governs depositions – is subject to the requirements of Rule 26, which
10 prohibits the use of discovery to unfairly and improperly burden and oppress
11 witnesses, parties to the action, and their counsel. *See* Fed. R. Civ. P. 26(b)(2)(A).

12 The court retains power to control discovery and may limit the frequency and
13 extent of *any* discovery method. Fed. R. Civ. P. 26(b)(1). Protective orders are one
14 of the means a court may use. A district court may issue any protective order “which
15 justice requires” including “any order prohibiting the requested discovery altogether,
16 limiting the scope of the discovery, or fixing the terms of disclosure.” *Rivera v.*
17 *NIBCO, Inc.*, 364 F. 3d 1057, 1064 (9th Cir. 2004). When ruling on a motion for a
18 protective order, a court may also proscribe “a discovery method other than the one
19 selected by the party seeking discovery.” Fed. R. Civ. P. 26 (c)(1)(C).

20 The burden is on the party moving for a protective order to show good cause
21 by demonstrating the harm or prejudice that will result from the discovery. *Rivera*,
22 364 F. 3d at 1063.

23 **B. The Court Should Issue A Protective Order Excusing The Black Eyed**
24 **Peas From Appearing For Depositions In This Matter So They May**
25 **Appear In *Batts*.**

26 This Court should issue a protective order excusing The Black Eyed Peas from
27 appearing for the depositions set in this matter (and resetting those depositions for
28 August 29-September 1, 2011), so that The Black Eyed Peas may appear for

1 depositions in the *Batts* matter in July. If the Court does not issue a protective order,
2 The Black Eyed Peas will be subject to conflicting deposition notices, and a Motion
3 to Compel their appearance in the *Batts* matter. None of that is necessary if the
4 deposition dates in this case are merely postponed by 1 month.

5 Further, the Court's issuance of a protective order is pragmatic. Given that the
6 discovery cut-off in *Batts* occurs two months prior to the cut-off here, and given the
7 September briefing schedule for summary judgment in the *Batts* case, logic dictates
8 that the plaintiffs in *Batts* depose The Black Eyed Peas concerning *Batts* during the
9 available dates in July. If any of the 7 hours allotted to each deponent remains
10 (which in all likelihood it will), The Black Eyed Peas have agreed to answer
11 questions in this matter and, to the extent it is needed, have agreed to appear for a
12 second day of deposition before the discovery cut-off in this case on their next
13 available dates, e.g. August 29, 2011-September 1, 2011. (Pink Decl. ¶ 9, Ex. 4.)

14 Nonetheless, Plaintiff has insisted on issuing deposition notices in this case,
15 making The Black Eyed Peas and their counsel unavailable for depositions in *Batts*.
16 If the depositions go forward as scheduled, The Black Eyed Peas will be harmed in
17 the following manner:

18 **1. Stacy Ferguson**

19 Stacy Ferguson was served with two separate deposition notices commanding
20 her appearance at deposition in two separate cities that are 50 miles apart, on the
21 same day (July 27, 2011), at the same time (10:00 a.m.) for two cases. (Pink Decl.
22 ¶¶ 6-7, Ex. 1-2; *see also* Pink Decl. ¶ 10, Ex. 5.) The demands of Plaintiff's counsel
23 are physically impossible to meet.

24 Ms. Ferguson provided July 27, 2011 as the specific date and 1:00 p.m. as the
25 specific time that she could appear for deposition. This is the date which the *Batts*
26 plaintiffs and this Plaintiff have noticed for her deposition. She respectfully asks that
27 the Notice of Deposition served by Plaintiff in this action be stricken, and that if her
28

1 deposition is to proceed at all, that it take place at the date, time, and location she has
2 provided in the *Batts* matter.

3 Ms. Ferguson seeks a protective order excusing her appearance from
4 deposition in this matter so she may appear for her deposition in the *Batts* matter.
5 Ms. Ferguson also requests that the deposition begin on July 27, 2011 at 1:00 p.m.,
6 her first available date and time.

7 **2. William Adams**

8 William Adams was served with two separate deposition notices commanding
9 his appearance at deposition in two separate cities that are 50 miles apart, on two
10 consecutive days (July 25, 2011 and July 26, 2011), for two cases. (Pink Decl. ¶¶ 6-
11 7, Ex. 1-2; *see also* Pink Decl. ¶ 10, Ex. 5.) The demands of Plaintiff's counsel are
12 unnecessarily prejudicial to Mr. Adams's and his counsel's ability to appear and
13 defend depositions in each case, and are improper.

14 Only one of the days (July 25, 2011) falls on the date provided by Mr. Adams
15 for his availability, and the second day is a date that Mr. Adams's counsel is required
16 to defend another deposition of another band member.

17 The July 25, 2011 date was provided before the Motion to Compel was filed in
18 *Batts*. Now Mr. Adam's counsel must appear before this Court on the Motion to
19 Compel in the *Batts* case, making July 25, 2011 an unavailable date.

20 Mr. Adams seeks a protective order excusing his appearance for the deposition
21 in this matter.

22 **3. Allan Pineda**

23 Allan Pineda was served with two separate notices of deposition commanding
24 his appearance at deposition in two separate cities that are 50 miles apart, for two
25 non-consecutive days (July 26, 2011 and July 29, 2011), for two cases. (Pink Decl.
26 ¶¶ 6-7, Ex. 1-2; *see also* Pink Decl. ¶ 10, Ex. 5.)

27 Only one of the days falls on the date provided as available by Mr. Pineda
28 (July 26, 2011), and the second day is a date that Mr. Pineda's counsel is required to

1 defend another deposition of another band member. If the second day of deposition
2 goes forward at the changed location, Mr. Pineda's counsel will also miss a flight
3 and incur additional expenses. The demands of Plaintiff's counsel are unnecessarily
4 prejudicial to Mr. Pineda's counsel's ability to appear and defend depositions in each
5 case, and are improper.

6 Mr. Pineda seeks a protective order excusing his appearance for the deposition
7 in this matter so he and his counsel may appear for his deposition in the *Batts* matter.

8 **4. Jaime Gomez**

9 In addition to the above, Jaime Gomez was served with two separate notices of
10 deposition commanding his appearance at deposition in two separate cities that are
11 50 miles apart, on two non-consecutive days (July 22, 2011 and July 28, 2011), for
12 two cases. (Pink Decl. ¶¶ 6-7, Ex. 1-2; *see also* Pink Decl. ¶ 10, Ex. 5.)

13 Only one of the days falls on the date provided as available by Mr. Gomez
14 (July 22, 2011), and the second day is a date that Mr. Gomez's counsel is required to
15 defend another deposition of another band member. The demands of Plaintiff's
16 counsel are unnecessarily prejudicial to Mr. Gomez's counsel's ability to appear and
17 defend depositions in each case, and are improper.

18 Mr. Gomez seeks a protective order excusing his appearance for the deposition
19 in the this matter so he and his counsel may appear for his deposition in the *Batts*
20 matter.

21 **V. THE BLACK EYED PEAS SHOULD BE AWARDED THEIR** 22 **EXPENSES.**

23 The Black Eyed Peas also request an award of their expenses for having to
24 bring this application under Rule 26 (c)(3) and Rule 37(a)(5) of the Federal Rules of
25 Civil Procedure. To date, The Black Eyed Peas have conservatively spent \$5,000.00
26 to bring this *ex parte* application to prevent irreparable injury caused by Plaintiff's
27 gamesmanship in this action and the *Batts* matter. (Decl. Pink ¶ 12.)

28 **VI. CONCLUSION.**

1 For the reasons set forth above, The Black Eyed Peas respectfully request a
2 protective order from this Court postponing their depositions.

3

4 Dated: July 5, 2011

BRYAN CAVE LLP

Kara E.F. Cenar

Jonathan Pink

Mariangela M. Seale

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By: /s/Jonathan Pink

8

Jonathan Pink

Attorneys for Defendants

9

WILLIAM ADAMS; ALLAN PINEDA;
10 and JAIME GOMEZ, all individually and
collectively as the music group THE
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