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15 Attorneys for Plaintiff  
BRYAN PRINGLE

17 UNITED STATES DISTRICT COURT  
18 CENTRAL DISTRICT OF CALIFORNIA  
19 SOUTHERN DIVISION

20 BRYAN PRINGLE, an individual,  
21 Plaintiff,  
22 v.  
23 WILLIAM ADAMS, JR.; STACY  
24 FERGUSON; ALLAN PINEDA; and  
25 JAIME GOMEZ, all individually and  
collectively as the music group the Black  
26 Eyed Peas; DAVID GUETTA;  
27 FREDERICK RIESTERER; UMG  
RECORDINGS, INC.; INTERSCOPE  
28 RECORDS; EMI APRIL MUSIC, INC.;  
HEADPHONE JUNKIE PUBLISHING,  
LLC; WILLIAM MUSIC, LLC;  
JEEPNEY MUSIC, INC.; TAB

Case No. SACV 10-1656 JST(RZx)  
**FIRST AMENDED COMPLAINT  
FOR COPYRIGHT  
INFRINGEMENT**  
[DEMAND FOR JURY TRIAL]

FILED  
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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
SANTA ANA

1 MAGNETIC PUBLISHING; CHERRY  
2 RIVER MUSIC CO.; SQUARE RIVOLI  
3 PUBLISHING; RISTER EDITIONS; and  
4 SHAPIRO, BERNSTEIN & CO.,

5 Defendants.

6 Plaintiff, Bryan Pringle, by his undersigned attorneys, as his Complaint against  
7 Defendants William Adams, Jr., Stacy Ferguson, Allan Pineda, and Jaime Gomez,  
8 individually and collectively as the music group the Black Eyed Peas, David Guetta,  
9 Frederick Riesterer, UMG Recordings, Inc., Interscope Records, EMI April Music,  
10 Inc., Headphone Junkie Publishing, LLC, Will.I.Am Music, LLC, Jeepney Music,  
11 Inc., Tab Magnetic Publishing, Cherry River Music Co., Square Rivoli Publishing,  
12 Rister Editions, and Shapiro, Bernstein & Co., hereby alleges as follows:

13 **INTRODUCTION**

14 1. This is a case of willful copyright infringement against a number of  
15 Defendants, among who are the members of the internationally famous music group  
16 known as the Black Eyed Peas, their record label and publishers. The Defendant  
17 members of the Black Eyed Peas, David Guetta, Frederick Riesterer, and, upon  
18 information and belief, UMG Recordings, Inc. and Interscope Records, are direct  
19 copyright infringers, as certain or all of them willfully copied, or encouraged and/or  
20 instructed the copying of, Plaintiff's song "Take a Dive," when they wrote their  
21 world-wide hit, Grammy-winning song, "I Gotta Feeling." The other Defendants are  
22 either contributory or vicarious infringers.

23 2. The suit seeks actual damages incurred by the Plaintiff, plus  
24 disgorgement of each of the Defendants' profits that were and will be received from  
25 their hit song "I Gotta Feeling," as a result of the infringement. Plaintiff also requests  
26 that both a preliminary and permanent injunction be entered to enjoin the public  
27 performance and distribution of "I Gotta Feeling," along with the imposition of a  
28 constructive trust over the wrongfully made profits earned worldwide from the

1 infringement and an accounting as to those profits. The Black Eyed Peas are  
2 currently on their world tour, unlawfully and unfairly reaping profits from the  
3 singing of the song "I Gotta Feeling," and each day there are substantial sales of this  
4 song worldwide.

5 3. "Take a Dive" and numerous derivative versions of "Take a Dive," as  
6 more fully described herein, were submitted by Plaintiff multiple times to  
7 Defendants Interscope, EMI and UMG Recordings over a ten-year period. The  
8 submissions were made in trust and confidence whereby Plaintiff had a good faith  
9 expectation that the song would only be listened to for legitimate business purposes  
10 and that his ownership and financial rights in the song would be protected. Since no  
11 advice was given by Interscope, EMI or UMG Recordings, or by any of the other  
12 Defendants to the contrary, there was the implicit assurance given to Plaintiff that his  
13 song would not be given to third parties to use in connection with the creation of  
14 music, would not be wrongfully copied after it was received, and that it would not be  
15 plagiarized and then released to the public as a song by another artist like the Black  
16 Eyed Peas, or another artist signed to Interscope or UMG Recordings.

17 4. The song "I Gotta Feeling" is substantially similar to Plaintiff's song  
18 "Take a Dive." Actually it is strikingly similar, and the main instrumental "hook  
19 line" sequences in both songs -- the distinct, memorable parts of both songs to the ear  
20 -- are identical. In fact, on information and belief, the main instrumental "hook" line  
21 was directly sampled from Plaintiff's sound recording by the Defendants and inserted  
22 into "I Gotta Feeling." Simply put, the principal melody portions of "Take a Dive"  
23 were reused or incorporated into "I Gotta Feeling," secretly and with knowledge and  
24 willfulness by certain of the Defendants, without Plaintiff's authorization, with the  
25 result being the iconic, hit song that "I Gotta Feeling" became. There can be no  
26 reasonable, alternative explanation for these similarities other than the fact that the  
27 Black Eyed Peas, David Guetta and/or Frederick Riesterer directly copied Plaintiff's  
28 song.

1 GENERAL ALLEGATIONS

2 A. Parties

3 9. Plaintiff Bryan Pringle, a/k/a DJ Spanky, a/k/a Altared State, a/k/a Dead  
4 Beat Club ("Pringle"), is an individual residing in San Antonio, Texas. Pringle is a  
5 songwriter that has been submitting music to Interscope Records, EMI, UMG  
6 Recordings and other major record labels on a regular basis, under various aliases  
7 since around the mid-1990s.

8 10. Defendant William Adams Jr., a/k/a Will.I.Am ("Will.I.Am"), is an  
9 individual and well-known songwriter, music producer and recording artist who,  
10 upon information and belief, resides in Los Angeles, California. Will.I.Am is one of  
11 the four members of the Black Eyed Peas.

12 11. Defendant Stacy Ferguson, a/k/a Fergie ("Fergie"), is an individual and  
13 internationally famous recording artist and songwriter who, upon information and  
14 belief, resides in Los Angeles, California. Fergie is one of the four members of the  
15 Black Eyed Peas.

16 12. Defendant Allan Pineda, a/k/a apl.de.ap ("apl.de.ap"), is an individual  
17 recording artist and songwriter who, upon information and belief, resides in Los  
18 Angeles, California. apl.de.ap is one of the four members of the Black Eyed Peas.

19 13. Defendant Jaime Gomez, a/k/a Taboo ("Taboo"), is an individual  
20 recording artist and songwriter who, upon information and belief, resides in Los  
21 Angeles, California. Taboo is one of the four members of the Black Eyed Peas.

22 14. Defendant David Guetta ("Guetta") is an individual songwriter and  
23 music producer who, upon information and belief, resides in Los Angeles, California.  
24 Guetta has co-written and co-produced several of the Black Eyed Peas' songs.

25 15. Defendant Frederick Riesterer ("Riesterer") is an individual songwriter  
26 and music producer who, upon information and belief, resides in Los Angeles,  
27 California. Riesterer has co-written and co-produced several of the Black Eyed Peas'  
28 songs.

1 for the CD, *Dead Beat Club:1998*, which included the original version of “Take a  
2 Dive,” is attached hereto as Exhibit B.

3         29. In or around 1999, Pringle made a slightly different derivative work of  
4 the original copyrighted version of “Take a Dive.” The derivative version consisted  
5 of Pringle having removed the vocals that were contained in the original version, and  
6 adding what can best be described as a repeating eight-bar melody, using a “guitar  
7 twang” instrument, utilizing a total of four notes (D4, C4, B3 and G3), in the  
8 following progression: D4-C4-B3-C4-B3-C4 (in the key of G3) (hereinafter referred  
9 to as the “guitar twang sequence”). This guitar twang sequence of notes was  
10 modeled after “Take a Dive’s” progression of notes in the chorus vocals, sung by  
11 Pringle in the original version of the song. A copy of the derivative version of “Take  
12 a Dive,” as set forth above, is contained as Track 2 on the CD attached hereto as  
13 Exhibit A. Pringle has registered the derivative version of “Take a Dive” above with  
14 the U.S. Copyright Office, on an expedited basis, and is awaiting the certificate of  
15 registration. The U.S. Copyright Office has received Pringle’s complete application  
16 for registration of the derivative version of “Take a Dive.” Pringle has thus satisfied  
17 the registration requirement of 17 U.S.C. § 411(a). *See Cosmetic Ideas, Inc. v.*  
18 *IAC/InteractiveCorp*, 606 F.3d 612, 621 (9th Cir. 2010).

19         30. Since 1999, Pringle has been, and still is, the proprietor of the statutory  
20 copyright in the original musical composition and sound recording for “Take a  
21 Dive,” and all derivative works based upon “Take a Dive,” and duly possessed all  
22 rights, title and interests therein. At all relevant times, Pringle has complied with all  
23 of the laws pertinent to his music composition and sound recording as a copyrighted  
24 work. (Any and all further references to the song “Take a Dive” shall hereafter refer  
25 to the derivative version, as set forth in paragraph 29 above.)  
26  
27  
28

1 C. Defendants' Access to and Copying of Plaintiff's Copyrighted Song "Take  
2 a Dive"

3 31. Over the time period from around 1999 to 2008, Pringle had regularly  
4 submitted demo CDs, all of which contained "Take a Dive" and various other songs,  
5 to Defendants UMG, Interscope and EMI. He also submitted them to other major  
6 record labels, internet music websites, TAXI (and independent A&R company),  
7 talent scouts, artist managers, production studios (including film, television and  
8 music), famous songwriters, radio stations, booking agents, national and international  
9 music contests, nightclubs and publishing companies. These submissions were done  
10 in the hopes of promoting his music, becoming signed as an artist to a major label, or  
11 selling his songs to publishing companies and/or other already established artists.

12 32. In addition to the submission of his demo CDs, Pringle continually  
13 advertised his music, including "Take a Dive," on the internet via multiple music  
14 websites, and had his music played internationally via radio and internet.

15 33. Over the period from around 1999 to 2008, Pringle received numerous  
16 letters in response to his music submissions, as alleged above. These included  
17 responses from multiple A&R representatives at Interscope, UMG and EMI, saying  
18 that while his music was of good quality, the labels were not currently interested in  
19 signing him as an artist or purchasing any of his music. These letters demonstrate  
20 that Interscope, UMG and EMI received Pringle's music, and implicitly  
21 acknowledges that his demo CDs, all of which contained "Take a Dive," were  
22 listened to by these individuals.

23 34. Further, upon information and belief, at all relevant times, Will.I.Am  
24 was an Artist and Repertoire ("A&R") at Interscope, and in this capacity acted as a  
25 form of talent scout for the Interscope label. If Will.I.Am was not a formal A&R,  
26 then he acted in this capacity, with the full knowledge of Interscope and the other  
27 members of the Black Eyed Peas.

28

1 and the Black Eyed Peas' album, *The E.N.D.*, which contains the song "I Gotta  
2 Feeling," and all obtained direct financial benefit from doing so.

3 **D. Substantial Similarity Between "Take a Dive" and "I Gotta Feeling"**

4 40. As a result of the Black Eyed Peas, Guetta and/or Riesterer having  
5 copied "Take a Dive," "I Gotta Feeling," as a whole, is substantially similar to "Take  
6 a Dive" and the guitar twang sequence is identical. A copy of "I Gotta Feeling" is  
7 contained as Track 3 on the CD attached hereto as Exhibit A.

8 41. On information and belief, the sound recording of the guitar twang  
9 sequence contained in the derivative version of "Take a Dive" was directly sampled  
10 (sampling is the taking of an audio segment from an original sound recording and  
11 inserting it directly into a new sound recording) by one or more of Black Eyed Peas,  
12 Guetta and/or Riesterer and placed into "I Gotta Feeling." The guitar twang sequence  
13 in both songs is identical in instrumentation, melody, harmony and rhythm.

14 42. The fact that the guitar twang sequence of "I Gotta Feeling" is identical  
15 to the one in "Take a Dive" establishes that the Black Eyed Peas, Guetta and/or  
16 Riesterer had access to "Take a Dive," that they copied "Take a Dive," and that their  
17 copying of "Take a Dive" was intentional, willful and wanton.

18 43. In addition to the guitar twang sequence, and among other similarities,  
19 the following is a list of similarities between the two songs:

- 20 (a) Both songs are substantially similar in total concept and feel;  
21 (b) Both songs incorporate a contemporary dance style of music;  
22 (c) Both songs have an almost identical tempo — "Take a Dive" is  
23 130 beats per minute ("bpm"), while "I Gotta Feeling" is 128  
24 bpm;  
25 (d) Both songs use a half step (or goose step) bass line. This type of  
26 bass line is achieved by alternating the same bass note from a  
27 high and low corresponding octave with the low octave bass note  
28 on the 4 down beats, while the high octave corresponding eighth

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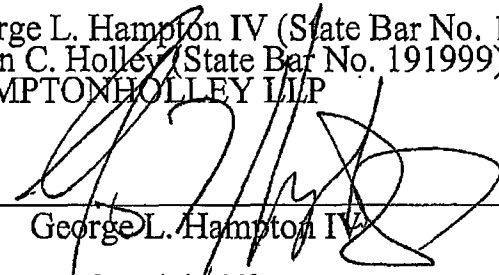
(g) All such other relief as the Court shall determine is fair and equitable.

Dated: November 13, 2010

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1 DEMAND FOR JURY TRIAL

2 Plaintiff Bryan Pringle hereby demands a jury trial of all claims alleged in his  
3 complaint, as provided by Rule 38 of the Federal Rules of Civil Procedure.

4  
5 Dated: November 18, 2010

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