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8 E-mail: kara.cengar@bryancave.com

9 Attorneys for Defendants
WILLIAM ADAMS, JR.; STACY FERGUSON;
10 ALLAN PINEDA; and JAIME GOMEZ, all individually
and collectively as the music group the Black Eyed Peas;
11 WILL.I.AM MUSIC, LLC; TAB MAGNETIC PUBLISHING;
CHERRY RIVER MUSIC CO.

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

15 BRYAN PRINGLE, an individual,
16
17 Plaintiff,
18
19 v.
20 WILLIAM ADAMS, JR.; STACY
FERGUSON; ALLAN PINEDA; and
21 JAIME GOMEZ, all individually and
collectively as the music group the
22 Black Eyed Peas; DAVID GUETTA;
FREDERICK RIESTERER; UMG
RECORDINGS, INC.; INTERSCOPE
23 RECORDS; EMI APRIL MUSIC,
INC.; HEADPHONE JUNKIE
PUBLISHING, LLC; WILL.I.AM.
24 MUSIC, LLC; JEEPNEY MUSIC,
INC.; TAB MAGNETIC
PUBLISHING; CHERRY RIVER
25 MUSIC CO.; SQUARE RIVOLI
PUBLISHING; RISTER EDITIONS;
26 and SHAPIRO, BERNSTEIN & CO.,
27
28 Defendants.

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

**DECLARATION OF KARA CENAR
IN SUPPORT OF DEFENDANTS'
OPPOSITION TO EX PARTE
APPLICATION OF PLAINTIFFS
FOR A TEMPORARY
RESTRAINING ORDER AND
ORDER TO SHOW CAUSE RE
PRELIMINARY INJUNCTION**

Date:
Time:
Dept.:

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

BRYAN CAVE LLP
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1
2 **I. DECLARATION OF KARA E. F. CENAR**

3 I, Kara E. F. Cenar, submit this declaration in connection with the Opposition
4 to the Ex parte Application to the Motion for TRO, and have personal knowledge of
5 the facts stated herein.

6 1. I received a letter dated May 21, 2010 from Ira Gould, with the caption
7 “Confidential Communication Pursuant to Settlement Discussions” in which Mr.
8 Gould made various claims and representations regarding the claim of Bryan Pringle
9 concerning “Take a Dive”, and The Black Eyed Peas song “I Gotta Feeling.”

10 2. In September 2010 I sent a letter to Mr. Gould informing him that Mr.
11 Pringle’s settlement demand was rejected.

12 3. In between these discussions I have requested, but have never received,
13 a copy of a disc with the “song” from the audio CD that Mr. Pringle indicates he
14 sent out as a demo in the relevant time frame, or definitive proof of Mr. Pringle
15 actually sending this specific song to someone and the timeframe.

16 4. After the filing of the Original Complaint on October 28, 2010 I sent a
17 meet and confer letter requesting that actual copies of the works and the
18 registrations be provided. A copy of that letter is attached as Exhibit 1.

19 5. After the filing of the First Amended Complaint I sent a meet and
20 confer email communication that made requests for the actual versions of the songs
21 at issue. A copy of that communication is attached as Exhibit 2. Plaintiff’s counsel
22 responded that my requests would have to await discovery.

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6. The audio tracks referenced in the expert reports filed with the Application for Temporary Restraining Order were not in the electronic service or the Fed Ex service of the Temporary Restraining Order papers.

I declare under the penalties of perjury under the laws of the United States of America that the forgoing is true and correct.

Executed this 23rd day of November 2010, at Chicago, Illinois.


KARA CENAR

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IRVINE, CALIFORNIA 92612-4414

EXHIBIT 1



Kara E. F. Cenar
Direct: 312-602-5019
kara.cenar@bryancave.com

November 9, 2010

VIA E-MAIL AND US MAIL

George Hampton
Hampton & Holly
2101 East Coast Highway, Suite 260
Corona del Mar, CA 92625

Dean Dickie
Miller Canfield
225 W. Washington Street, Ste 2600
Chicago, IL 60606

Ira Gould
Law Offices of Ira Gould
120 N. LaSalle Street, Suite 2750
Chicago, Illinois 60602-2422

Re: Civil Action No. SACV10-1656 JST (RZx) Bryan Pringle

Dear George,

I write to you, with a copy to your co-counsel, in connection with the above referenced complaint you signed and filed on behalf of Mr. Bryan Pringle (“Pringle”) against 17 different individuals and entities (the “Complaint”). The federal Complaint alleges a single count of copyright infringement. You and your firm have been undertaking serving the Complaint on various Defendants, and I thank you for your professionalism and communications regarding the status of service.

Given your representations regarding status of service of the Complaint, responsive pleadings for some, but not all of the Defendants, are due the day after the Thanksgiving holiday. We anticipate, based upon a preliminary review of the Complaint, and the representations made thereafter by your co-counsel in press releases and in email correspondence, that a combined Motion to Dismiss under Fed. R. Civ. P. 12(b)(6), Motion to Strike under Fed. R. Civ. P. 12(f) and Motion for More Definite Statement under Fed. R. Civ. P. 12(e) will likely be filed.

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I am writing in an initial meet and confer under Local Rule 7-3 to obtain, as soon as possible, initial information regarding the Complaint¹ in hopes that we can avoid the unnecessary expenditure of attorney fees and costs by 17 different named Defendants. As part of this meet and confer, we ask you as counsel of record to please provide the following information by Friday November 12, 2010:

A. Paragraphs 27-28 of the Complaint allege that Pringle wrote and recorded a 1998 song "Take a Dive." The Complaint at paragraph 28 alleges that the registration for "Take a Dive" is attached as Exhibit A. The registration attached as Exhibit A is not a registration for a song "Take a Dive," nor does it mention a song entitled "Take a Dive." As you know by the express provisions of the Copyright Act, registration *of the copyrighted work at issue* is a required precondition before a copyright infringement claim can be pursued in the Federal Courts. 17 U.S.C. § 411. Would you be kind enough to send me that actual Copyright Registration and a disc with a copy of the actual deposit copy of the song "Take a Dive" referenced in paragraphs 27-28 of the Complaint. Since the song was not published it is difficult to understand the nature of the basis of the claim for copyright infringement of the alleged song referenced in paragraphs 27-28 of the Complaint without this specific information.

B. Paragraph 29 of the Complaint alleges that a "derivative work" of "Take a Dive" is also part of the Complaint. Paragraph 29 of the Complaint provides the alleged differences Plaintiff contends exists between the "Take a Dive" in paragraphs 27-28, and the alleged "derivative work." As you know by the express provisions of the Copyright Act, registration *of the copyrighted work at issue* is a required precondition before a copyright infringement claim can be pursued in the Federal Courts for the "derivative work" referenced in Paragraph 29. 17 U.S.C. § 411. Would you be kind enough to send me that actual Copyright Registration and a disc with a copy of the actual deposit copy of the "derivative work" referenced in paragraph 29 of the Complaint. Since the song was not published it is difficult to understand the nature of the basis of the claim for copyright infringement of the alleged song referenced in paragraph 29 of the Complaint without this specific information.

¹ While some of the information requested herein has been previously requested in confidential pre-filing discussions between the parties, not all of the requested information was previously provided, and as Mr. Gould has communicated, in his view, it would be inappropriate for us to refer to any information exchanged previously. Moreover, recent representations in your co counsel's press release and email communications appear to be inconsistent with the prior representations of Mr. Gould and his associate Mr. Greely, creating significant and further ambiguity as to the allegations of the Complaint. We believe it best to obtain the requested information from you as the attorney that has signed the Complaint and filed it with the Federal District Court.

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C. Our reading of paragraph 29 indicates that both “Take a Dive” (referenced in paragraphs 27-28 of the Complaint), and the “derivative work” (referenced in paragraph 29 of the Complaint) songs contain vocals. Your provision of the deposit copy of the alleged songs referenced in these paragraphs of the Complaint will be helpful with this issue, but in the meantime, would you kindly let us know if our reading and understanding of the allegations of the Complaint is accurate – that “Take a Dive” (para 27-28), and the “derivative work” (para 29) are works that contain vocals.

If this is not an accurate reading of the Complaint, and there are works being asserted in the Complaint that do not contain vocals, please identify the paragraphs of the Complaint that identify any such songs or derivative works. As you know by the express provisions of the Copyright Act, registration *of the copyrighted work at issue* is a required precondition before a copyright infringement claim can be pursued in the Federal Courts for such other works. 17 U.S.C. § 411. If such other works are being asserted in this case, would you be kind enough to send me the actual Copyright Registration(s) for such work(s), and a disc with a copy of the actual deposit copy of the “work” or “works” referenced. Since these songs, if they actually exist, were not published, it is difficult to understand the nature of the basis of the claim for copyright infringement in the Complaint, or whether the statutory requirements for commencing litigation for such derivatives has been met, without this specific information.

D. On November 2, 2010, your client Pringle uploaded a song entitled “Take A Dive” on YouTube (the “YouTube version”). The song Pringle uploaded does not contain vocals, and thus we understand that the YouTube version is not the “Take a Dive” song referred to in paragraphs 27-28 of the Complaint filed on October 28, 2010 nor is it the “derivative work” referenced in paragraph 29 of the Complaint. Nor is it a song that is at issue in the copyright infringement claim being asserted by Pringle. It is our reading of the Complaint that this YouTube version was not the “Take a Dive” song allegedly distributed as a demo, as alleged in paragraphs 31-33 of the Complaint and thus there was no alleged “access” to the YouTube version. Please confirm that we have an accurate reading of the Complaint.

If this is not an accurate reading of the Complaint, and the YouTube version is being asserted in the Complaint as a song that is at issue and allegedly distributed in accordance with the allegations in paragraphs 31-33 of the Complaint, then please identify the paragraphs of the Complaint that identify the YouTube version as a song or derivative work of Take a Dive that is at issue in the Complaint. As we address in the aforementioned paragraphs, the express provisions of the Copyright Act require registration *of the copyrighted work at issue* as a precondition before a Copyright infringement claim can be pursued in the Federal Courts for the YouTube version. 17 U.S.C. § 411. If the YouTube version is being asserted in this case, would you be kind enough to send me the Copyright Registration for such work(s), and a disc with a copy of the actual deposit of the YouTube version that allegedly existed in 1999, and not a recreated version made by Pringle

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after the alleged publication and performance of the song "I Gotta Feeling" commenced. Since the YouTube song, if it actually existed, was not published, it is difficult to understand the nature of the basis of the claim for copyright infringement in the Complaint, or whether the statutory requirements for commencing litigation for such a derivative has been met, without this specific information.

E. On November 2, 2010 your co-counsels (who have not yet been admitted pro hac vice) issued a press release, attached hereto for ease of reference, representing that the song "Take a Dive" posted by Pringle on YouTube on November 2, 2010 at DRDR313, is the subject of the recently filed copyright infringement lawsuit. Quoting your co-counsel's press release:

Los Angeles, CA – (2 November 2010) – The song "Take a Dive," which is the subject of Texas songwriter, Bryan Pringle's, recently filed copyright infringement lawsuit against the Black Eyed Peas over their hit single, "I Gotta Feeling," was released today on YouTube. A link to Pringle's song, "Take a Dive," is contained below:

<http://www.youtube.com/watch?v=Z7drHJ71rlw>

We do not believe that the Complaint contains allegations specifying this "Take a Dive" song. If your co-counsel's press release representations are true, then the information requested in paragraph D above should be provided, and the Complaint should be amended to make specific allegations required to state a claim of copyright infringement for the YouTube version. If the press release representation is not accurate, then we again request that the press release be retracted and immediately removed from the Miller Canfield website.

F. On November 8, 2010 your co-counsel Dean Dickie of Miller Canfield represented the following in an email sent to me:

Our belief is based not only the fact that the two musical pieces sound identical, but also from the fact that Mr. Pringle sent multiple versions of his work to Interscope, some with and some without lyrics, long before the Black Eyed Peas first performed or published "I Gotta Feeling."

Mr. Dickie's assertion is not alleged in the Complaint as such, and thus the Complaint does not provide fair notice of the alleged claim(s) being asserted. If Mr. Dickie's email representations are true, and Pringle intends to assert and allege "access" to and copyright infringement of "multiple versions" allegedly "some with and some without lyrics," then, as we address in the aforementioned paragraphs, the express provisions of the Copyright Act require registration *of the copyrighted work at issue* as a precondition before a copyright infringement claim can be pursued in the Federal Courts for the "multiple versions" allegedly "some with and some without lyrics." 17 U.S.C. § 411. If said "multiple version" allegedly "with and without lyrics" are actually being asserted in this case, would you be kind enough to send me that actual Copyright Registration for

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such work(s), and a disc with a copy of the actual deposit copy of each of the "multiple versions" of his work, "some with and some without vocals."

G. Paragraphs 31-33 do not allege that any of these aforementioned alleged songs ("Take a Dive" (para 27-28), derivative work (para 29), or the YouTube version (Pringle YouTube posting and your co-counsel's press release) or the "multiple versions" "with and without lyrics" (Mr. Dickie's November 8, 2010 email)) were ever contained on any Demo CD allegedly submitted by Pringle to anyone. As you know "access" to each one of the specific alleged works is a required element to plead a copyright infringement claim. The Complaint is deficient in this regard, and does not provide any notice or allegation that any of the "Take a Dive" songs were part of the unsolicited submissions allegedly made by Pringle. We intend to ask the Court, in connection with the anticipated Motion to be filed on the responsive pleading date for specificity as to the alleged content of the "Demo CDs" purportedly containing each one of the aforementioned songs ("Take a Dive" song (para 27-28), derivative work (para 29), or the YouTube version (Pringle YouTube posting and your co-counsel's press release) or the "multiple versions" "with and without lyrics" (Mr. Dickie's November 8, 2010 email)) and specificity as to the alleged dates and recipients of each of these purported unsolicited submissions. Otherwise the Complaint does not provide fair notice of the alleged "access" to each of these now newly claimed variations. Access is a required element of a Copyright infringement claim.

H. Given your allegations directed to David Guetta, and the publically available information regarding the various contributions to the song "I Gotta Feeling," the Complaint does not provide the required specificity for the allegations of "willful" infringement by The Black Eyed Peas and members of this musical group that you have named individually in the Complaint. As part of the meet and confer, please provide the basis for the claim of willfulness for these individual Defendants.

I. Finally, we also note that the Complaint contains a significant amount of paragraphs that fail to comply with Rule 8 Fed.R.Civ.P. and contain redundant, immaterial and impertinent material, and thus are appropriate for a Motion to Strike under Rule 12(f) Fed.R.Civ.P, and/or a Motion to strike or dismiss for failure to state a claim upon which relief can be granted. The language in the Complaint related to this request includes, but is not limited to paragraphs 3, 5, 6, 31-33, 36, 39, 47-60, 65,67, and 69 f. We ask that Mr. Pringle voluntarily strike these paragraphs from the Complaint to eliminate the unnecessary attorneys fees and costs incurred by 17 Defendants having to Move to Strike the paragraphs from the Complaint. If Mr. Pringle is not willing to voluntarily strike these paragraphs, please provide us with the basis for their inclusion in a one Count Copyright infringement Complaint for which, by statute, neither statutory damages or attorneys fees are recoverable. See e.g. 17 USC §412.

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We are hopeful that you will promptly provide the above requested information and clarification by November 12, 2010 so that we may have a fair opportunity to evaluate all of the bases for preparing and filing the anticipated Motion to Dismiss on the responsive pleading date of November 26, 2010.

As you can imagine, the attorneys fees and costs that will be incurred by each of the 17 Defendants when preparing and filing responsive pleadings and Motions directed to the deficiencies of the Complaint will accumulate quickly. The Copyright Act permits Defendants to recover their fees and costs upon prevailing, and we are concerned that Pringle will not have the resources to fund that Judgment at the conclusion of this matter. It is thus my hope that you will work with us in a very conscientious and efficient manner to eliminate unnecessary fees and expenses being incurred by each Defendant by providing the above requested information by the date requested and, if necessary, by voluntarily striking and dismissing deficient pleadings, or portions thereof, that we are able to resolve without Court involvement.

I thank you in advance for your diligence in this regard as it best serves each of our respective clients.

Finally, in Mr. Dickie's November 8, 2010 email he has insisted that I identify the counsel who will be "lead" within our Bryan Cave firm. The Bryan Cave firm is one firm, and although I am the main contact for you and your co-counsel at this time, my partners Jonathan Pink (on the defense of and affirmative assertion of issues of Copyright infringement) and Lin Wood (particularly on the defamation issues) and my colleague Merili Seale will be significantly involved if and when the case progresses to these issues. As you may or may not know, Bryan Cave does not represent every Defendant you have made a party to this action.

Very truly yours,

/s/ Kara E. F. Cenar

Kara E. F. Cenar

KEC

EXHIBIT 2

Cenar, Kara

From: George Hampton [ghampton@hamptonholley.com]
Sent: Friday, November 19, 2010 4:53 PM
To: Cenar, Kara
Cc: Pink, Jonathan Stuart; 'Ira Gould'; 'Dickie, Dean A.'; 'Ryan Greely'; Colin Holley
Subject: RE: Black Eyed Peas Litigation

Kara,

Discovery is premature at this point. Again, will you agree to accept service of the First Amended Complaint on behalf of your clients?

George

From: Cenar, Kara [mailto:Kara.Cenar@bryancave.com]
Sent: Friday, November 19, 2010 2:41 PM
To: George Hampton
Cc: Pink, Jonathan Stuart; 'Ira Gould'; 'Dickie, Dean A.'; 'Ryan Greely'; Colin Holley
Subject: RE: Black Eyed Peas Litigation
Importance: High

George,

Thank you for this email with the tracks that you filed with the Court. The tracks you attach are dated in the properties section as November 18, 2010.

1. Would you be kind enough to send me the **actual** 1999 version that was submitted as the bonafide deposit copy to the Copyright office? That did not come with the copy of the registration you sent me, and you indicated that you would provide the submission to the Copyright office. As you know, under the law, registration is not complete without the deposit copy. 17 USC 408 (b).
2. Paragraph 3 still refers to numerous variations as more particularly described in the complaint, and there are no registrations for the numerous versions, and there are no descriptions of the numerous variations. what is this referring to? are there other variations? if so what are they?

Also as part of a meet and confer on the amended complaint, we are concerned that the version attached to the Complaint was something created in 2010, and we want to evaluate the allegations of the complaint based on the actual version(s), and not a version(s) recreated in 2010 for this lawsuit. In that light, and as part of the meet and confer,

a. would you please send me the **actual version** that was sent (directly or indirectly) to Mr. Guetta and the specific date that the alleged derivative work you attach to the Complaint was sent to Mr. Guetta. Please also confirm that nothing was sent directly to Mr. Guetta by Plaintiff..

b. would you please send me the **actual version** that was sent (directly or indirectly) to any member of the Black Eyed Peas, and the specific date(s) that the alleged derivative work you attach to the Complaint was allegedly sent to these Defendants. Please also confirm that nothing was sent directly to any member of The Black Eyed Peas.

c. would you please send me the **actual version** that was sent to UMG, Interscope, and EMI, and the specific date(s) that the alleged derivative work you attach to the Complaint was allegedly sent to these Defendants.

d. would you please send me the **actual version** that forms the basis of your new allegations of

sampling.

We cannot evaluate the allegations without the above requested information.

3. Would you please confirm for me, for clarity of the record, that the musical track attached as track 2 on the disc you sent to the Court was not something created by Plaintiff or Plaintiff's counsel in 2010, as this is the date the properties show on that track. For example, if the properties on the track 2 you emailed me changed to a 2010 date, in the process of your sending it to me today, and are not intended to be a representation of the actual creation date, then please send me the actual real track that does not have the changed properties. If the track was something that was created in 2010, please let me know that fact for clarity.

a. Would you be kind enough to let me know what the actual true date of creation is for the track you attach to the Complaint, and how it was created. (in the exact form you have presented it to the Court).

Thank you for your prompt attention to this matter.

Kara

Kara E. F. Cenar | BRYAN CAVE LLP

Partner - Chicago

161 North Clark Street, Suite 4300 | Chicago, IL 60601-3315

312.602.5019 direct | 312.698.7419 direct fax

773.818.5272 cell

kara.cenar@bryancave.com

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From: George Hampton [mailto:ghampton@hamptonholley.com]

Sent: Friday, November 19, 2010 3:23 PM

To: Cenar, Kara

Cc: Pink, Jonathan Stuart; 'Ira Gould'; 'Dickie, Dean A.'; 'Ryan Greely'; Colin Holley

Subject: Black Eyed Peas Litigation

Per your request, copies of Mr. Pringle's copyright application and the audio tracks from the CD attached as an exhibit to the First Amended Complaint are attached.

George L. Hampton IV
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