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BRYAN PRINGLE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

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, LLC; WILL.I.AM. MUSIC, LLC; JEEPNEY MUSIC, INC.; TAB	Case No. SACV 10-1656 JST(RZx) **FIRST AMENDED COMPLAINT FOR COPYRIGHT INFRINGEMENT** [DEMAND FOR JURY TRIAL]

4826-4649-6264 - v. 1

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

Defendants.

Plaintiff, Bryan Pringle, by his undersigned attorneys, as his Complaint against Defendants William Adams, Jr., Stacy Ferguson, Allan Pineda, and Jaime Gomez, 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, LLC, Will.I.Am Music, LLC, Jeepney Music, Inc., Tab Magnetic Publishing, Cherry River Music Co., Square Rivoli Publishing, Rister Editions, and Shapiro, Bernstein & Co., hereby alleges as follows:

INTRODUCTION

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

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

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

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

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

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5. On information and belief, Defendants' infringement of Plaintiff's song "Take a Dive" is what appears to be a general pattern and practice by UMG, Interscope and members of the Black Eyed Peas, of deliberate and intentional copyright infringement as to songs written by other artists/songwriters and submitted in good faith to one or more of these Defendants. There also is a disturbing pattern and practice of taking bits and pieces of other artist's songs and copying them as part of songs performed by the Black Eyed Peas, even if the copied portions do not rise to the level of copyright infringement.

6. There is an important need and public benefit for the legal rights and music of copyright owners to be protected. This can be especially true for unknown artists and songwriters, such as the Plaintiff, who are financially vulnerable to instances where there is a callous disregard of their rights by famous and wealthy artists and major record labels. Granting the relief and remedies sought herein, in response to the facts and circumstances alleged, will serve to help maintain and further the integrity of the music industry and the interests of music consumers at large.

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JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over the claims and causes of action asserted herein under 28 U.S.C. § 1338(a) as it is an action arising under Acts of Congress relating to copyrights, named by the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.*

8. Venue is proper in the U.S. District Court for the Central District of California, pursuant to 28 U.S.C. §§ 1391(b)(3), as UMG Recordings, Inc., Interscope Records, Headphone Junkie Publishing, LLC, Will.I.Am Music, LLC, Jeepney Music, Inc., and Tab Magnetic Publishing all have their principal places of business in this District and, upon information and belief, the individual Defendants William Adams, Jr., Stacy Ferguson, Allan Pineda, and Jaime Gomez reside in this District.

GENERAL ALLEGATIONS

A. Parties

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

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

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

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

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

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

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

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16. Defendant UMG Recordings, Inc. ("UMG") is a Delaware corporation with its principal place of business in Los Angeles, California. UMG is a major record label conglomerate.

17. Defendant Interscope Records ("Interscope") is a California general partnership with its principal place of business in Los Angeles, California. Interscope is the record label that the Black Eyed Peas are signed to, and is one of the record labels owned by UMG.

18. Defendant EMI April Music, Inc. ("EMI") is a Connecticut corporation with its principal place of business in New York, New York. EMI is a music publishing company that is one of the publishers of the infringing song "I Gotta Feeling."

19. Defendant Headphone Junkie Publishing, LLC ("Headphone Junkie") is a California limited liability company with its principal place of business in Los Angeles, California. Headphone Junkie is a music publishing company that is one of the publishers of the infringing song "I Gotta Feeling."

20. Defendant Will.I.Am Music, LLC ("Will.I.Am Music") is a California limited liability company with its principal place of business in Los Angeles, California. Will.I.Am Music is a music publishing company that is one of the publishers of the infringing song "I Gotta Feeling."

21. Defendant Jeepney Music, Inc. ("Jeepney Music") is a California corporation with its principal place of business in Los Angeles, California. Jeepney Music is a music publishing company that is one of the publishers of the infringing song "I Gotta Feeling."

22. Defendant Tab Magnetic Publishing ("Tab Magnetic") is a California corporation with its principal place of business in Los Angeles, California. Tab Magnetic is a music publishing company that is one of the publishers of the infringing song "I Gotta Feeling."

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23. Defendant Cherry River Music Co. ("Cherry River Music") is a Delaware corporation with its principal place of business in New York, New York. Cherry River Music is a music publishing company that is one of the publishers of the infringing song "I Gotta Feeling."

24. Defendant Square Rivoli Publishing ("Square Rivoli") is a foreign corporation that is administered in the United States by Shapiro, Bernstein & Co. Square Rivoli is a music publishing company that is one of the publishers of the infringing song, "I Gotta Feeling."

25. Defendant Rister Editions ("Rister") is a foreign corporation that is administered in the United States by Shapiro, Bernstein & Co. Rister is a music publishing company that is one of the publishers of the infringing song, "I Gotta Feeling."

26. Defendant Shapiro, Bernstein & Co., Inc. ("SB&Co.") is a New York corporation with its principal place of business in New York, New York. SB&Co. is a music publishing company that is one of the publishers of the infringing song, "I Gotta Feeling."

B. <u>Plaintiff's Creation and Protection of His Original Work</u>

27. In or around 1998, Pringle wrote and recorded a song entitled "Take a Dive." A copy of the original version of "Take a Dive" is contained as Track 1 on the CD, prepared by counsel, attached hereto as Exhibit A. "Take a Dive" was and is comprised of material that is wholly original, and thus entitled to protection as copyrightable material pursuant to the Copyright Act of 1976, 17 U.S.C. § 101 et seq.

28. Pringle duly registered a claim for a CD he entitled *Dead Beat Club: 1998,* which included the original version of "Take a Dive" along with seventeen other original songs, with the United States Copyright Office, evidenced by a Certificate of Registration issued by the Register of Copyrights, dated and identified as follows: April 29, 1998, SRu 387 – 433. A copy of the Certificate of Registration

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

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

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

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

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

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

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

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

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35. On information and belief, as a result of Will.I.Am's position as an A&R, or some similar position, he had direct access to all the music that was being submitted to Interscope by unsigned artists/songwriters during this time period. This included Plaintiff's song "Take a Dive," as well as to other songs that he and the Defendant Black Eyed Peas unlawfully plagiarized, as alleged below, as part of a repeated pattern and practice of intentional copyright infringement.

36. Will.I.Am's A&R role with Interscope, while at the same time being a major artist signed to the label, posed a conflict of interest and incentivized and encouraged the doing of the kind of wrongful acts alleged herein.

37. On information and belief, one of the Black Eyed Peas, Guetta, and/or Riesterer accessed one or more of Pringle's demo CDs that included "Take a Dive," and listened to the song. On information and belief, one or more of the Black Eyed Peas, Guetta and/or Riesterer then decided to willfully and directly copy significant portions of the song when they wrote and recorded "I Gotta Feeling."

38. Plaintiff did not authorize any of the Defendants to record, release, perform or license "I Gotta Feeling," as the case may be, to the extent such actions were based on the unlawful copying of "Take a Dive." Furthermore, the Defendants knew, or should have known, that Plaintiff was expecting them to act fairly and to honor Plaintiff's good faith and reasonable belief that "Take a Dive" would not be plagiarized.

39. In addition to the individual members of the Black Eyed Peas, Guetta and Riesterer, Defendants UMG and Interscope are, upon information and belief, also direct infringers due their conspiracy with the members of the Black Eyed Peas to conduct an ongoing pattern and practice of intentional copyright infringement, as alleged below. EMI, Headphone Junkie, Will.I.Am Music, Jeepney Music, Tab Magnetic, Cherry River Music, Square Rivoli, Rister and SB&Co., are all contributory or vicarious infringers as all had some degree of supervisory control over the release, performance, sale and distribution of the single "I Gotta Feeling,"

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

D. <u>Substantial Similarity Between "Take a Dive" and "I Gotta Feeling"</u>

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

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

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

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

(a) Both songs are substantially similar in total concept and feel;

(b) Both songs incorporate a contemporary dance style of music;

(c) Both songs have an almost identical tempo — "Take a Dive" is 130 beats per minute ("bpm"), while "I Gotta Feeling" is 128 bpm;

(d) Both songs use a half step (or goose step) bass line. This type of bass line is achieved by alternating the same bass note from a high and low corresponding octave with the low octave bass note on the 4 down beats, while the high octave corresponding eighth

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note is on the upbeat or half step;

(e) Both songs use almost identical "dance" style bass drums; the bass drum as a traditional 4/4 dance beat with the bass drum hitting on the 4 quarter note down beats and a electronic dance style snare, with both an eighth and a sixteenth note hi hat cymbal, and half step open hi hat;

(f) Both songs have substantially similar sweeping low bass synthesizers, playing in almost the exact same position (utilizing "sharp type" ascending notes and "flat type" descending notes, or quarter note type steps, between major changes in the bass chords). This technique is also utilized in "Take a Dive's" chorus synthesizer sequence and re-mixes of "I Gotta Feeling";

(g) In "I Gotta Feeling," the Black Eyed Peas use a violin instrument starting in the middle of their song (where the bass drum drops out) in a sequence of eighth notes. This is identical in rhythm, syncopation and substantially similar in melody to the rising and falling (cascading) high delay synthesizer sequence of eighth notes (which are actually sixteenth notes, because of the delay effects), which is the first sequence of notes that comes into "Take a Dive" after the intro and which plays throughout "Take a Dive";

(h) Both songs utilize a "rising space-like blasting" sound effect. It slowly rises and then crashes. This particular sound effect is utilized in several of the official "I Gotta Feeling" re-mixed versions, including a version constructed by Dave Guetta (Dave Guetta FMIF Remix, at 4:07, into his song);

(i) Both songs utilize the reverse effect to change a break in the music. This can be heard in "I Gotta Feeling" right at the end of

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the break in the middle where the bass drum drops out and then comes back in (this reverse effect is also utilized in several of the official "I Gotta Feeling" re-mixed versions, including the Dave Guetta FMIF Remix, at 0:58 seconds, into his song). "Take a Dive" utilizes this technique on breaks, at the end of the chorus and at the rise into the chorus;

(j) Both songs utilize a rotary (spinning) effect. "I Gotta Feeling" uses this rotary effect on the half step (or goose step) alternating octave eighth note bass line, while "Take a Dive" utilizes this effect on a percussive sequence of what sounds like to be, tiny percussive metal bells;

(k) Both songs have a substantially similar chorus synthesizer sequence. The chorus synthesizer sequence in "Take a Dive" is substantially similar to the chorus synthesizer sequence in "I Gotta Feeling" not only in the actual sequence of notes played, but also in the actual sound of the "organ-esque" type instrumentation; and

(l) Both songs have a substantially similar structure, as shown by at least 26 unique correlations between key events triggered in the exact same locations in the "I Gotta Feeling" vocal track and the music for "Take a Dive."

E. <u>The Aftermath of "I Gotta Feeling's" Release</u>

44. The Black Eyed Peas released "I Gotta Feeling" on or around June 16, 2009, as the second single off of their hit album *The E.N.D.*

45. Since its release, "I Gotta Feeling" has achieved tremendous success and worldwide acclaim. Among other things, "I Gotta Feeling" has:

(a) Become the best selling song for the Black Eyed Peas to date, with over 6 million digital downloads sold in the U.S. alone,

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helping make it the highest selling digital download of all time, and playing a substantial role in helping *The E.N.D.* album sell over 3 million copies in the U.S. (over 7 million copies worldwide);

(b) Spent fourteen weeks at the number one spot on the *Billboard* Hot 100 Chart, and was named fifth on the *Billboard* Hot 100 Songs of the Decade;

(c) Been certified "Platinum" or "Multi-Platinum" in at least twelve countries around the world, including the U.S., according to each respective country's recording industry association;

(d) Been nominated for "Record of the Year" at the 52nd Grammy Awards and won the Grammy for "Best Pop Performance by a Duo or Group with Vocals"; and

(e) Been licensed in several nationwide commercials, television episodes, and was also licensed to the 2009 movie *Alvin and the Chipmunks: The Squeakquel.*

46. All Defendants have reaped substantial profits, coming from multiple worldwide sources and revenue streams, as a result of the willful copyright infringement of "I Gotta Feeling," and they have therefore been unjustly enriched.

F. <u>Defendants' Conspiracy to Engage in and Conduct a Pattern and Practice of Ongoing Willful Copyright Infringement as to Others</u>

47. The actions alleged herein are not a single isolated incident. Rather, they are part of a general pattern and practice and in fact, on information and belief, a civil conspiracy by and among Defendants UMG, Interscope and the Black Eyed Peas. The conspiracy consists of a bad-faith pattern and practice among certain of these Defendants of cavalierly and intentionally disregarding statutory copyright laws by either copying songs, or portions thereof, from other artists and/or songwriters, and changing them slightly in order to make them appear as original

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works, or sampling other songs. This is routinely done without gaining the proper authorization from the respective copyright owners of the songs that are used by the Black Eyed Peas, who otherwise are looking to collaborate on their songs with the Defendants when they send them their music, and who rightfully expect to be given appropriate compensation, credits and legal protections.

48. The foregoing pattern and practice of intentional copyright infringement demonstrates the element of willfulness relative to the infringing acts perpetrated against the Plaintiff, as well as demonstrating the bad faith motives of Defendants UMG, Interscope and the Black Eyed Peas.

49. At a minimum, on information and belief, Defendants UMG and Interscope were active enablers of this wrongful conduct by the Black Eyed Peas. They knew, or should have known, that having Will.I.Am as an A&R for Interscope presented the distinct probability, if not the inevitability, that the actions engaged in herein would take place.

50. On information and belief, based on the facts and circumstances alleged herein, these parties had an understanding or agreement between themselves that the conduct complained of herein would and could take place. Consequently, Interscope did not put into place any practices or procedures geared to protect against such conduct, or if they did, they were not followed and this was known by Interscope.

51. UMG, Interscope and the Black Eyed Peas know that, from a business standpoint, the intentional copyright infringement of songs from an independent or unknown artist and/or songwriter can create a major financial windfall to them, while at the same time injure or damage the financial and professional interests of the artist and/or songwriter. This is because they know or expect that when they engage in intentional copyright infringement either of the following will happen:

(a) The independent/unknown artist and/or songwriter either does not have the financial means of pursuing a lengthy and costly copyright infringement case against a major recording group and

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record label, or simply will never find out about the infringement and come forward and claim ownership of his/her song, and thus the infringing parties will have successfully gotten away with copyright infringement, and reaped the profits off of someone else's copyrighted material; or

(b) The independent/unknown artist and/or songwriter does in fact come forward and claim ownership of his/her song, in which case the infringing parties can simply pay off the artist/songwriter in a settlement with what amounts to a nominal sum to them, but which may be a large amount of money for the struggling artist and/or songwriter, or just wear him/her down in expensive litigation, to the point where they can no longer afford to pursue fair and equitable compensation, and are thus forced into settling for a nominal sum.

52. In either of the scenarios above, the infringing parties reap substantial profits off of the intentional infringement of copyrighted material, making it a good financial investment from their standpoint.

53. The Defendants' actions alleged herein, are essentially the engaging in unfair business practices under California law. The Defendants have artists and songwriters voluntarily submitting their music to UMG and Interscope, which they willingly accept, and they simply pick and choose the best music to copy, knowing that the artists/songwriters who submitted the music have no practical or adequate way to protect their intellectual property. This course of conduct ensures that UMG's and Interscope's artists always have access to the "best" music in the marketplace. This practice, along with UMG's and Interscope's superior financial capabilities, also ensures that the submitting artists/songwriters, who may otherwise be talented enough to have their music heard, will never get the proper credit for their music or get a chance to properly promote themselves as musicians.

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54. The Black Eyed Peas are in the midst of a world tour, during which they publicly perform the song "I Gotta Feeling." People are attending these concerts in record numbers because, in part, of the enormous success and acclaim of this song. No one knows that "I Gotta Feeling" was copied from Plaintiff, and that Plaintiff is a talented songwriter in his own right. He could have been enjoying the fruits of his talent had the Black Eyed Peas and/or Intersope and/or certain of the other Defendants come to him originally and honestly, in a proper business-like manner, and worked out a royalty agreement with him that gave him credit for having written, or co-written, the song. This would clearly have led to major notoriety for Plaintiff and been the trigger for many financially lucrative business opportunities for him in the music world. Instead, this never happened because of the unfair business practices undertaken by the Black Eyed Peas and certain of the other Defendants.

55. The conspiracy, pattern and practice among these particular Defendants of knowingly and intentionally engaging in, or allowing there to be, repeated instances of willful copyright infringement is demonstrated by the following examples, among others, in addition to the allegations contained herein:

(a) Grounded Music Inc. filed a lawsuit in United States District Court for the Central District of California in 2009, Case No. 09-cv-06776, alleging Will.I.Am and Fergie willfully and intentionally copied the group Groundation's song "Waterfall" in writing Fergie's song "Voodoo Doll," which was featured on her debut solo album, *The Dutchess*. A comparison of these two songs demonstrates that they are substantially similar, and that certain portions of the two songs are identical. On April 1, 2010, the Court entered an Order granting the parties' Stipulation to Dismiss Case pursuant to a conditional settlement (the "Stipulation"). The case has not been refiled by Groundation within the 60 days allotted in the terms of the Stipulation and in

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the event a settlement could not be reached, and therefore, upon information and belief, the Black Eyed Peas have settled this claim.

(b) In or around the fall of 2009, musician Adam Freeland ("Freeland") accused Will.I.Am and the other individual members of the Black Eyed Peas of intentionally sampling his song "Mancry," without authorization, which ended up as the background music on the Black Eyed Peas' hit song "Party All the Time." A comparison of these two songs demonstrates that the Black Eyed Peas did in fact sample Freeland's song "Mancry," and simply added a drum pattern and lyrics on top of the sample. This dispute was reported in the media to have been recently settled out of court before a case was filed by Freeland.

(c) On information and belief, there have been other potential copyright infringement claims brought to the attention of UMG, Interscope and/or the Black Eyed Peas by other songwriters, which were disposed of out of court, before cases were filed, and kept confidential, so as not to expose the wrongful actions of the Defendants.

56. In addition to the allegations contained herein, and the acts of copyright infringement listed in Paragraph 55 above, there are other instances where the Black Eyed Peas copied portions of Pringle's songs from the demo CDs that he submitted to UMG, EMI and Interscope, from around 1999 to 2006, when writing songs on *The E.N.D.* album, as well as several songs from Will.I.Am's *Songs About Girls* album. On information and belief, Guetta also copied the guitar twang sequence when he wrote his hit song "Love is Gone." While the above instances of copying may not rise to the level of copyright infringement of Pringle's musical compositions, they further establish a pattern and practice of copying music from other songwriters, in

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turn establishing the willfulness of Defendants' infringement with respect to "Take a Dive."

57. The foregoing actions in Paragraphs 55 and 56 above occurred in the same relative time period as did the acts alleged herein as to "Take a Dive" and "I Gotta Feeling." The actions also have a remarkable similarity in methodology as between the circumstances alleged herein as to Plaintiff's song, "Take a Dive," and in regards to how these other songs and their songwriters/artists were wronged.

58. These actions also demonstrate the bad faith intentions of these Defendants as to their actions and illustrate their practice and pattern of willful copyright infringement of songs from unknown artists and/or songwriters, and their complete disregard for compliance with statutory copyright laws.

59. The Black Eyed Peas have, in effect, launched their careers to new heights off of copying copyrighted material of other artists. "I Gotta Feeling" is the group's highest selling song of all time, and is primarily responsible for the success of *The E.N.D.* album and for resurrecting the Black Eyed Peas as an international music phenomenon, garnering worldwide publicity and profitable concert appearances that would not have occurred had it not been for the release and enormous success of this plagiarized song.

60. The Defendants' infringement of "Take a Dive" was undertaken in a willful and wanton manner, with the specific intention of taking copyrighted music from Plaintiff and using it for the Defendants' own gain, in knowing violation of U.S. copyright laws. The fact that the actions herein as to the Plaintiff are not an isolated occurrence, but part of a general pattern and practice, as alleged herein, where there were similar occurrences of willful copyright infringement, makes the actions of the Defendants reprehensible, and taken with a callous disregard of the rights of artists and songwriters who, like the Plaintiff, are highly vulnerable to such actions by famous and wealthy artists and major record labels. If these actions go unchecked and are not punished, they will have a damaging effect on the integrity of

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the music industry and encourage other famous artists and major record labels to engage in similar wrongful and bad faith behavior.

COUNT I

Copyright Infringement Against All Defendants

61. Plaintiff hereby incorporates Paragraphs 1 through 60 into this Paragraph 61.

62. Defendants Will.I.Am, Fergie, apl.de.ap, Taboo, Guetta and Riesterer gained access to Plaintiff's copyrighted song "Take a Dive," and then subsequently sampled and copied additional, substantial original elements of "Take a Dive," without Plaintiff's permission, when they wrote, recorded, performed and made derivative works of their song "I Gotta Feeling."

63. "I Gotta Feeling" is substantially similar to "Take a Dive" and the guitar twang sequence is identical.

64. All Defendants named herein infringed the statutory copyright in Plaintiff's musical composition and sound recording by substantial copying, publicly performing, making and distributing, or authorizing the making and distributing of, phonorecords of "I Gotta Feeling," and by participating in and furthering such infringing acts. The respective infringing acts of Defendants have damaged Plaintiff in an amount yet to be determined, and have unjustly enriched the Defendants in an amount yet to be determined.

65. The individual Defendants, and their group the Black Eyed Peas, as well as UMG and Interscope by way of their alleged conspiracy with the individual Defendants and the Black Eyed Peas, have directly and willfully infringed on Plaintiff's copyrighted song "Take a Dive."

66. In addition, Will.I.Am Music, Tab Magnetic, Jeepney Music, Headphone Junkie, Square Rivoli and Rister are all contributory infringers, as they are publishing companies either owned or directly associated with the members of the Black Eyed Peas, Guetta or Riesterer, and thus knew that infringement was

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taking place, financially benefited from the infringement, and actively participated in the infringement through their publishing of "I Gotta Feeling." Cherry River Music, EMI, and SB&Co. are vicarious infringers, as, upon information and belief, they had no knowledge of the actual infringement, but actively participated in, and financially benefitted from, the infringement through their publishing of "I Gotta Feeling" and *The E.N.D.* album.

67. Each of the Defendants has received ill-gotten financial gain from their infringement of "Take a Dive," and all are jointly and severally liable for all damages.

68. One or more of the Defendants had actual knowledge of the infringement, knew the Plaintiff would not approve of their copying of "Take a Dive," and thus were deliberate and willful infringers.

69. Defendants are continuing to infringe Plaintiff's copyright, and will do so unless restrained by this Court.

WHEREFORE, Plaintiff respectfully requests the following relief:

(a) That Defendants and their respective agents, servants, representatives and employees be immediately preliminarily and permanently enjoined from infringing Plaintiff's statutory copyright in any manner, including distributing copies of, and making and distributing phonorecords of, the musical composition "I Gotta Feeling" and from licensing and contributing to or participating in and furthering any infringing acts, including but not limited to any public performances of the song "I Gotta Feeling";

(b) That Defendants be required to pay actual damages owed to Plaintiff, which include (1) the lost profits sustained by Plaintiff due to the infringement and by virtue of having been deprived of the benefits of what a songwriter credit for "I Gotta Feeling"

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would have done to his career, and (2) the disgorgement of all net gains, profits and advantages derived by Defendants from their infringement of Plaintiff's statutory copyright, which amount is yet to be determined over and above the amount of actual damages;

(c) That a constructive trust be imposed over the wrongfully made profits, and that an accounting be made as to profits earned by each of the Defendants from the infringement;

(d) That Defendants be required to deliver upon oath, to be impounded during the pendency of this action and for destruction, all infringing copies, recordings and phonorecords, and all plates, molds, matrices and other means of any kind, for making infringing copies, recordings or phonorecords;

(e) That Plaintiff is given his proper songwriter and publishing credits to the song "I Gotta Feeling," thus entitling him to a portion of all future revenue generated from "I Gotta Feeling";

(f) Due to the Defendants' willful nature of the Defendants' infringement, coupled with the practice of their willful copyright infringement as to the works of other artists, that Defendants pay Plaintiff's costs and reasonable attorney's fees for his prosecution of this claim; and

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

Dated: November 18, 2010

Dean A. Dickie (*Pro Hac Vice application pending*)
MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

Ira Gould (*Pro Hac Vice to be filed*)
Ryan L. Greely (*Pro Hac Vice to be filed*)
GOULD LAW GROUP

George L. Hampton IV (State Bar No. 144433)
Colin C. Holley (State Bar No. 191999)
HAMPTONHOLLEY LLP

By: _____
George L. Hampton IV

Attorneys for Plaintiff
BRYAN PRINGLE

HAMPTONHOLLEY LLP
2101 East Coast Highway, Suite 260
Corona del Mar, California 92625

DEMAND FOR JURY TRIAL

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

Dated: November 18, 2010

Dean A. Dickie (*Pro Hac Vice application pending*)
MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

Ira Gould (*Pro Hac Vice to be filed*)
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HAMPTONHOLLEY LLP

By: _____
George L. Hampton IV

Attorneys for Plaintiff
BRYAN PRINGLE

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Corona del Mar, California 92625

EXHIBIT A

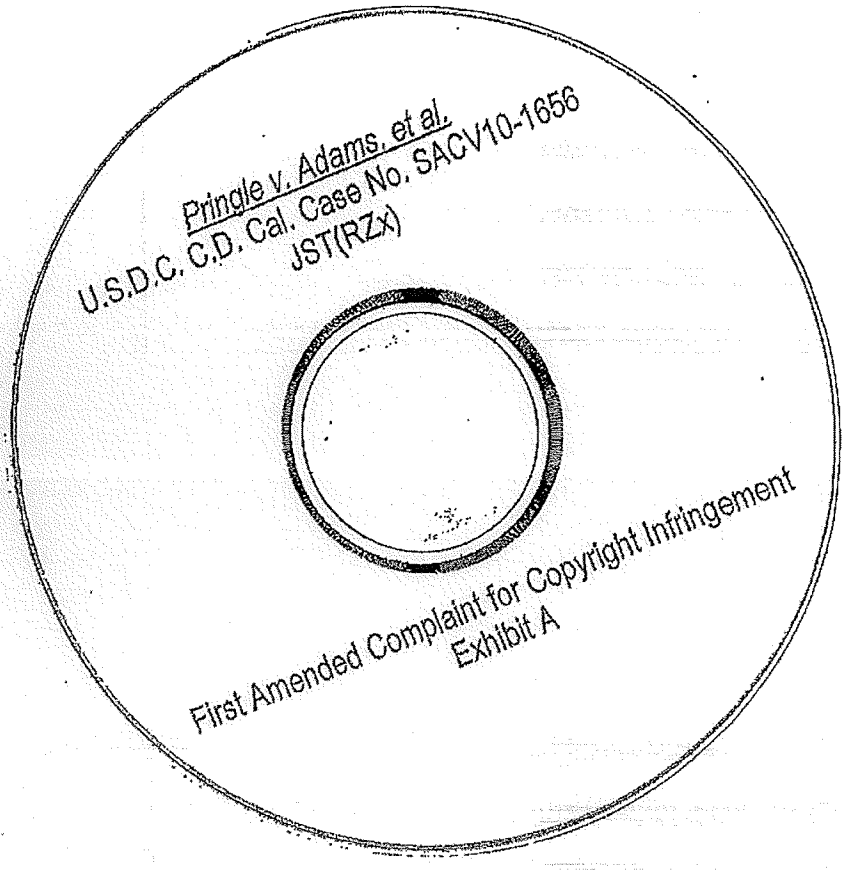
Pringle v. Adams, et al.
U.S.D.C. C.D. Cal. Case No. SACV10-1656
JST(RZx)
First Amended Complaint for Copyright Infringement
Exhibit A

EXHIBIT A

EXHIBIT B

CERTIFICATE OF REGISTRATION

OFFICIAL SEAL

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

REGISTER OF COPYRIGHTS
United States of America

FORM SR
For a Sound Recording
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

SRu 387-433

EFFECTIVE DATE OF REGISTRATION

7 (Month) 29 (Day) 98 (Year)

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK ▼
DEAD BEAT CLUB : 1998

PREVIOUS OR ALTERNATIVE TITLES ▼
DEAD BEAT CLUB, TECHNIQUE, COUNTER CULTURE, TECHNIK

NATURE OF THIS WORK ▼ See instructions
18 SONGS WITH MUSIC + WORDS

NOTE

NAME OF AUTHOR ▼
BRYAN DANIEL PRINGLE

DATES OF BIRTH AND DEATH
Year Born ▼ 1973 Year Died ▼

Was this contribution to the work a "work made for hire"?
Yes
X No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▶ UNITED STATES
Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? [ ] Yes [X] No
Pseudonymous? [ ] Yes [X] No
If the answer to either of these questions is "Yes," see detailed instructions

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼
18 SONGS WRITTEN + RECORDED BY BRYAN D. PRINGLE

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
Yes
No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▶
Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? [ ] Yes [ ] No
Pseudonymous? [ ] Yes [ ] No
If the answer to either of these questions is "Yes," see detailed instructions

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
Yes
No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of ▶
Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? [ ] Yes [ ] No
Pseudonymous? [ ] Yes [ ] No
If the answer to either of these questions is "Yes," see detailed instructions

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED
1998 ◀ Year
This information must be given in all cases.

b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK
Complete this information ONLY if this work has been published.
Month ▶ Day ▶ Year ▶
◀ Nation

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼
BRYAN D PRINGLE
1300 BARRINGTON DRIVE
AUSTIN, TX 78753

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

DO NOT WRITE HERE OFFICE USE ONLY

APPLICATION RECEIVED
JUL. 29 1998
ONE DEPOSIT RECEIVED
JUL. 29 1998
TWO DEPOSITS RECEIVED
REMITTANCE NUMBER AND DATE

MORE ON BACK ▶ • Complete all applicable spaces (numbers 5-9) on the reverse side of this page. • See detailed instructions • Sign the form at line 8

DO NOT WRITE HERE
Page 1 of 2 pages

EXHIBIT B
PAGE 000026
EXHIBIT A
PAGE 000036

EXAMINED BY

CHECKED BY

FORM PA

☐ CORRESPONDENCE Yes

FOR COPYRIGHT OFFICE USE ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office? **5**

X Yes No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼

a This is the first published edition of a work previously registered in unpublished form.

b This is the first application submitted by this author as copyright claimant.

c This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼ PENDING Year of Registration ▼ 1998

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation. **6**

a Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

See instructions before completing this space

b Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

TOO YOUNG TO DROWN, HOLLYWOOD BABYLON, RAGDOLL, PLEASURE OF PAIN, REGRET, BREATHE, BROKEN WING, FAITH, TIME, ABSENTIA, CRUELEST JOKE, SWEET 16, KING FOR A DAY, NEVER SAY GOODBYE, DIVE, 1952, A TEAR RUNS DOWN, 7 SECONDS TO HEARTBREAK

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account. **7**

Name ▼ Account Number ▼

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

BRYAN D. PRINGLE
1300 BARRINGTON DRIVE
AUSTIN, TX 78753

Area Code and Telephone Number ▶ 512 491 7146

Be sure to give your daytime phone number

CERTIFICATION* I, the undersigned, hereby certify that I am the **8**

Check only one ▼

X author

other copyright claimant

owner of exclusive right(s)

authorized agent of

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

BRYAN DANIEL PRINGLE date ▶ 7/23/98

Handwritten signature (X) ▼

MAIL CERTIFICATE TO **9**

Name ▼ BRYAN D. PRINGLE

Number/Street/Apartment Number ▼ 1300 BARRINGTON DRIVE

City/State/ZIP ▼ AUSTIN, TX 78753

Certificate will be mailed in window envelope

YOU MUST
- Complete all necessary spaces
- Sign your application in space 8

SEND ALL ELEMENTS IN THE SAME PACKAGE
1. Application form
2. Nonrefundable $20 filing fee in check or money order payable to *Register of Copyrights*
3. Deposit material

MAIL TO
Register of Copyrights
Library of Congress
Washington, D.C. 20559

The Copyright Office has the authority to adjust fees at 5-year intervals, based on changes in the Consumer Price Index. The next adjustment is due in 1996. Please contact the Copyright Office after July 1995 to determine the active fee schedule.

*17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than $2,500.

February 1993—100,000

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EXHIBIT B