

BRYAN CAVE LLP  
 3161 MICHELSON DRIVE, SUITE 1500  
 IRVINE, CALIFORNIA 92612-4414

1 **BRYAN CAVE LLP**  
 Jonathan Pink, California Bar No. 179685  
 2 Justin M. Righettini, California Bar No. 245305  
 3161 Michelson Drive, Suite 1500  
 3 Irvine, California 92612-4414  
 Telephone: (949) 223-7000  
 4 Facsimile: (949) 223-7100  
 E-mail: [jonathan.pink@bryancave.com](mailto:jonathan.pink@bryancave.com)  
 5 [justin.righettini@bryancave.com](mailto:justin.righettini@bryancave.com)

6 **BRYAN CAVE LLP**  
 Kara E. F. Cenar, (*Pro Hac Vice*)  
 7 Mariangela M. Seale, (*Pro Hac Vice*)  
 161 North Clark Street, Suite 4300  
 8 Chicago, IL 60601-3315  
 Telephone: (312) 602-5000  
 9 Facsimile: (312) 602-5050  
 E-mail: [kara.cenar@bryancave.com](mailto:kara.cenar@bryancave.com)  
 10 [merili.seale@bryancave.com](mailto:merili.seale@bryancave.com)

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

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

16 BRYAN PRINGLE, an individual,  
 17 Plaintiff,  
 18 v.

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

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

**NOTICE OF JOINDER OF ADAMS  
 DEFENDANTS TO MOTION FOR  
 SANCTIONS AGAINST PLAINTIFF  
 AND HIS COUNSEL PURSUANT  
 TO FED. R. CIV. P. 11 BY  
 DEFENDANTS SHAPIRO,  
 BERNSTEIN & CO, INC.,  
 FREDERIC RIESTERER AND  
 DAVID GUETTA**

Date: April 16, 2012  
 Time: 10:00 A.M.  
 Dept.: 10A

Complaint Filed: October 28, 2010  
 Trial date: May 8, 2012

1                   **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF**  
2 **RECORD:**

3                   **PLEASE TAKE NOTICE THAT** Defendants WILLIAM ADAMS;  
4 STACY FERGUSON; ALLAN PINEDA; and JAIME GOMEZ, all individually and  
5 collectively as the music group THE BLACK EYED PEAS; will.i.am music, llc;  
6 TAB MAGNETIC PUBLISHING; CHERRY RIVER MUSIC CO.; HEADPHONE  
7 JUNKIE PUBLISHING, LLC; JEEPNEY MUSIC, INC.; and EMI APRIL MUSIC,  
8 INC. (“Adams Defendants”) hereby join the Motion for Sanctions against Plaintiff  
9 and his Counsel Pursuant to Fed. R. Civ. P. 11 by Defendants Shapiro, Bernstein &  
10 Co, Inc., Frederic Riesterer and David Guetta (“Guetta Defendants”), to be filed  
11 within twenty-one days of service hereof should Plaintiff and his counsel fail to  
12 withdraw the offending pleadings.

13                   The same relevant circumstances underlying the subject motion apply to the  
14 Adams Defendants, and the arguments made therein apply with equal force to the  
15 Adams Defendants. The Adams Defendants therefore adopt such arguments as their  
16 own, and join Shapiro, Bernstein & Co, Inc., Frederic Riesterer and David Guetta in  
17 their request that the Court levy sanctions against Plaintiff Bryan Pringle (“Pringle”)  
18 and his counsel, Dean A. Dickie and Kathleen E. Koppenhoefer, individually as  
19 well as jointly and severally with Miller Canfield Paddock & Stone PLC; Ira P.  
20 Gould and Ryan C. Greely, individually as well as jointly and severally with the  
21 Gould Law Group, and George L. Hampton IV and Colin C. Holley, individually as  
22 well as jointly and severally with HamptonHolley LLP.

23                   **I. ADDITIONAL FACTS AND ARGUMENT**

24                   In addition to the facts and argument contained in the subject motion, the  
25 Adams Defendants highlight the following frivolous positions taken by Bryan  
26 Pringle and his attorneys of record throughout this litigation:

- 27                   • Persisting in maintaining that any members of The Black Eyed Peas  
28

1 factually copied any musical material from “Take a Dive,” “Take a Dive (Dance  
2 Version),” and chiefly, what Pringle has referred to as the “guitar twang sequence”  
3 throughout this litigation. Even assuming the correctness of Pringle’s theory of  
4 infringement (a difficult endeavor, given its chameleonic, counterfactual, and  
5 fraudulent nature), Pringle and his attorneys have long been aware that the  
6 instrumental portion of “I Gotta Feeling,” was furnished to William Adams by  
7 David Guetta and Frederic Riesterer, and further, that it was composed by the latter  
8 two individuals. Adams Depo. Tr. at 75:3-25; Declaration of Frederic Riesterer in  
9 Support of a Motion for Summary Judgment by Defendants Shapiro, Bernstein &  
10 Co, Inc., Frederic Riesterer, and David Guetta [Dkt No. 166], dated Nov. 9, 2011, at  
11 ¶¶4, 6; Declaration of David Guetta in Support of Motion for Summary Judgment  
12 by Defendants Shapiro, Bernstein & Co, Inc., Frederic Riesterer, and David Guetta  
13 [Dkt No. 167], dated Nov. 9, 2011, at ¶¶4, 6. The members of The Black Eyed Peas  
14 contributed to the composition by providing lyrics and vocal melodies. Adams  
15 Depo. Tr. at 78:24-79:11. These facts directly undercut any contention that any  
16 member of The Black Eyed Peas copied or sampled either of Pringle’s musical  
17 compositions (*i.e.*, “Take a Dive” and “Take a Dive (Dance Version)”, as well as the  
18 sound recordings in which they are embodied.

19 • Claiming that any of the lyrics and vocal melodies of “I Gotta Feeling”  
20 infringe on any expression as contained in either “Take a Dive” or “Take a Dive  
21 (Dance Version).” *See* First Amended Complaint for Copyright Infringement [Dkt.  
22 No. 9], dated Nov. 18, 2010, at ¶40 (Pringle alleges that “I Gotta Feeling,” “as a  
23 whole,” is substantially similar to “Take a Dive.”). There are no vocal parts  
24 contained in “Take a Dive (Dance Version)” and neither of Pringle’s musicologists  
25 have ever pointed to the vocal portions of “I Gotta Feeling” in reaching their  
26 conclusions that infringement allegedly occurred. *See* generally Declaration of Alex  
27 Norris in Opposition to Defendants’ Motion for Summary Judgment [Dkt. No. 192]  
28

1 (“Norris Decl.”), dated Dec. 19, 2011; Declaration of Dr. Alexander Stewart in  
2 Opposition to Defendants’ Motion for Summary Judgment [Dkt. No. 194] (“Stewart  
3 Decl.”), dated Dec. 19, 2011. In addition, both of Pringle’s musicologists agree  
4 with Defendants’ musicologist, Dr. Lawrence Ferrara, that there are no meaningful  
5 similarities in the vocal melodies and lyrics in “Take a Dive” and “I Gotta Feeling.”  
6 See Declaration of Lawrence Ferrara, Ph.D [Dkt. No. 172], dated Nov. 17, 2011 at  
7 ¶¶62-64; Stewart Decl., at ¶26; Stewart Depo. Tr. At 61:3-62:4; Norris Depo. Tr. At  
8 49:11-51:14.

9         • Persisting in claiming that William Adams had access to any of  
10 Pringle’s works via the latter’s purported mailings to virtually every music industry  
11 participant throughout the globe, despite an utter dearth of documentary evidence  
12 that such ever occurred. Specifically, Pringle admits that he had never met, spoken  
13 to, or exchanged e-mails with William Adams. Pringle Depo. Tr. At 63:20-64:3.  
14 Though Pringle claims to have sent a demo CD via postal service to William Adams  
15 c/o Interscope Records, Pringle has no record of any mailings whatsoever, testified  
16 that he does not recall the mailing’s precise contents, testified that he never received  
17 proof of receipt of such a mailing by Mr. Adams or Interscope, testified that he  
18 never received a response from Adams, and finally, Pringle claimed he mailed the  
19 demo to an address on Burbank Drive somewhere in California. Pringle Depo. Tr.  
20 At 64:3-73:13; 111:13-15. Interscope Records is located on Colorado Avenue in  
21 Santa Monica, California, a city that has no “Burbank Drive.” And if Pringle was  
22 perhaps mistakenly referring to “Burbank Boulevard,” that street is located in  
23 Burbank, California, a city greater than twenty miles away from Santa Monica.

24         • Persisting in claiming that any other member of The Black Eyed Peas,  
25 *i.e.*, Stacy Ferguson, Allan Pineda, or Jaime Gomez had any access to Pringle’s  
26 works through the latter’s purported mailings. Pringle has adduced no evidence that  
27 he ever had any communications with any of those individuals, and further, admitted  
28

1 at deposition that he never received any correspondence from them. Pringle Depo.  
2 Tr. at 111:13-112:5.

3       • Persisting in claiming that any alleged copyright infringement with  
4 respect to “Take a Dive” or “Take A Dive (Dance Version)” by any member of The  
5 Black Eyed Peas was done so willfully. Plaintiff and his attorneys have long been  
6 aware that it was David Guetta and Frederic Riesterer who composed the  
7 instrumental portion of “I Gotta Feeling” and BEP Music, LLC acquired the rights  
8 to use such musical material based upon a written agreement, dated September 24,  
9 2008 (BEP-PR000666-701). If any infringement had occurred (which, again,  
10 invites the Court to place stock in a fabricated and counterfactual story), the  
11 members of The Black Eyed Peas used the material under color of title, and  
12 reasonably believed that their use of same was lawful. Courts have held that use of  
13 infringing material under such circumstances forecloses a claim of willfulness.<sup>1</sup> See  
14 *Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 959 (9th Cir. 2001) (allegedly infringing  
15

16 <sup>1</sup> To prevent Pringle and his attorneys from advancing a frivolous straw man  
17 argument, the Adams Defendants preemptively state that this point should not be  
18 construed to mean that knowledge or intent have any factor in determining copyright  
19 liability. In fact, copyright infringement is a strict liability tort, and as such,  
20 knowledge and intent are not determinative as to whether liability has been incurred;  
21 knowledge and intent, however, can be relevant to the calculation of damages, and  
22 whether the infringement was innocent or willful. *Perfect 10, Inc. v. Cybernet*  
23 *Ventures, Inc.*, 213 F. Supp. 2d 1146, 1166 (C.D. Cal. 2002) (“Direct infringement  
24 does not require intent or any particular state of mind, although willfulness is  
25 relevant to the award of statutory damages.”); *Peer Int’l Corp. V. Pausa Records,*  
26 *Inc.*, 909 F.2d 1332, 1336 n.3 (9th Cir. 1990) (“[I]t seems clear that as here used  
27 ‘willfully’ means with knowledge that the defendant’s conduct constitutes copyright  
28 infringement.”). Since copyright law does not contemplate punitive damages  
(WILLIAM F. PATRY, PATRY ON COPYRIGHT § 22:151 (2012) (“Punitive damages are  
never available in copyright infringement actions brought under the 1976 Copyright  
Act.”) (emphasis in original); NIMMER ON COPYRIGHT § 14.02[B] (2012) (“[T]he  
cases are clear that exemplary or punitive damages should not be awarded in a  
statutory copyright infringement action”), the primary reason allegations of  
willfulness are included in a complaint is for purposes of recovering enhanced  
statutory damages. Pringle, however, is not entitled to statutory damages with  
respect to “Take a Dive (Dance Version)” because he has failed to comply with the  
strictures of 17 U.S.C. § 412. As such, no valid basis exists to include willfulness  
allegations in the pleadings, and it is respectfully submitted that such were likely  
included simply to sensationalize this case.

1 works were subject to complex chain of title issues and were produced under color  
2 of title, “an arrangement that defeats the willfulness claim in this circumstance.”);  
3 *Frank Music Corp., v. MGM, Inc.*, 772 F.2d 505, 515 (9th cir. 1985) (holding that,  
4 when defendants reasonably could have believed that they had a valid license to use  
5 plaintiffs’ works, it was not clearly erroneous for the district court fo find no willful  
6 infringement.); *Milton H. Greene Archives, Inc. v. Julien’s Auction House, LLC*, 345  
7 Fed. Appx. 244, 247 (9th Cir. 2009) (evidence of willingness to negotiate a license  
8 fee was “properly admitted to show the absence of bad faith (refuting [plaintiff]’s  
9 claim that [defendant] had willfully infringed the copyrights.”); *Allen-Myland, Inc.*  
10 *v. Int’l Bus. Machs. Corp.*, 770 F. Supp. 1014, 1027 (E.D. Pa. 1991) (holding that  
11 the alleged copyright infringement was not willful due to a reasonable, good faith  
12 belief that the challenged conduct was non-infringing based on the fact that the  
13 terms of the license were “not easily interpreted”); *see also* MELVILLE & DAVID  
14 NIMMER, NIMMER ON COPYRIGHT § 14.04[B][3] (“It would seem to follow that one  
15 who has been notified that his conduct constitutes copyright infringement, but who  
16 reasonably and in good faith believes the contrary, is not ‘willful’ for these  
17 purposes.”).

18 ///  
19 ///  
20 ///

21  
22  
23  
24  
25  
26  
27  
28

BRYAN CAVE LLP  
3161 MICHELSON DRIVE, SUITE 1500  
IRVINE, CALIFORNIA 92612-4414

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**II. CONCLUSION**

For the foregoing reasons, as well as the facts and argument contained in the subject motion, the Adams Defendants join the Guetta Defendants in their request that the Court issue sanctions against Pringle and his counsel, and respectfully submit that the motion be granted in all respects.

Dated: February 6, 2012

**BRYAN CAVE LLP**

By: /s/ Justin Righettini  
Justin Righettini  
Attorneys for Defendants  
WILLIAM ADAMS; STACY FERGUSON;  
ALLAN PINEDA; and JAIME GOMEZ, all  
individually and collectively as the music  
group THE BLACK EYED PEAS; will.i.am  
music, llc; TAB MAGNETIC  
PUBLISHING; CHERRY RIVER MUSIC  
CO.; HEADPHONE JUNKIE  
PUBLISHING, LLC; JEEPNEY MUSIC,  
INC.; EMI APRIL MUSIC, INC.

1 **PROOF OF SERVICE**  
2 **CCP 1013A(3) REVISED 5/1/88**

3 STATE OF ILLINOIS, COUNTY OF COOK

4 I am employed in the County of Cook, State of Illinois. I am over the age of  
5 18 and not a party to the within action. My business address is: 161 North  
6 Michigan Avenue, Suite 4300, Chicago, IL 60601.

7 On February 6, 2012, I served the foregoing document(s) described as:

8 **NOTICE OF JOINDER OF ADAMS DEFENDANTS TO MOTION**  
9 **FOR SANCTIONS AGAINST PLAINTIFF AND HIS COUNSEL PURSUANT**  
10 **TO FED.R.CIV.P. 11 BY DEFENDANTS SHAPIRO, BERNSTEIN & CO,**  
11 **INC., FREDERIC RIESTERER AND DAVID GUETTA**

12 on all interested parties in this action by placing  a true copy  the  
13 original thereof enclosed in sealed envelopes addressed as follows:

14 Dean A. Dickie  
15 Kathleen E. Koppenhoefer  
16 Miller Canfield Paddock and Stone,  
17 P.L.C.  
18 225 West Washington Street, Suite 2600  
19 Chicago, IL 60606

20 Attorneys for Plaintiff BRYAN  
21 PRINGLE  
22 Phone: 312-460-4217  
23 Fax: 312-460-4288  
24 Email:  
25 [dickie@millercanfield.com](mailto:dickie@millercanfield.com);  
26 [koppenhoefer@millercanfield.com](mailto:koppenhoefer@millercanfield.com)

27 Ira Gould  
28 Ryan L. Greely  
29 Gould Law Group  
30 120 North LaSalle Street, Suite 2750  
31 Chicago, IL 60602

32 Phone: 312-781-0680  
33 Fax: 312-726-1328  
34 Email: [gould@igould.com](mailto:gould@igould.com)  
35 [rgreely@igould.com](mailto:rgreely@igould.com)

36 George L. Hampton IV  
37 Colin C. Holley  
38 Hampton Holley LLP  
39 2101 East Coast Highway, Suite 260  
40 Corona del Mar, CA 92625

41 Phone: 949-718-4550  
42 Fax: 949-718-4580  
43 Email:  
44 [ghampton@hamptonholley.com](mailto:ghampton@hamptonholley.com)  
45 [cholley@hamptonholley.com](mailto:cholley@hamptonholley.com)

46 Linda M. Burrow  
47 Alison Mackenzie  
48 Caldwell Leslie & Proctor, PC  
49 1000 Wilshire Blvd., Suite 600  
50 Los Angeles, CA 90017-2463

51 Attorneys for UMG Recordings,  
52 Inc.; Interscope Records  
53 Phone: 213-629-9040  
54 Fax: 213-629-9022  
55 Email: [burrow@caldwell-](mailto:burrow@caldwell-leslie.com)  
56 [leslie.com](mailto:mackenzie@caldwell-leslie.com); [mackenzie@caldwell-](mailto:mackenzie@caldwell-leslie.com)

BRYAN CAVE LLP  
3161 MICHELSON DRIVE, SUITE 1500  
IRVINE, CALIFORNIA 92612-4414



BRYAN CAVE LLP  
3161 MICHELSON DRIVE, SUITE 1500  
IRVINE, CALIFORNIA 92612-4414

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

leslie.com

Donald A. Miller  
Loeb & Loeb LLP  
10100 Santa Monica Blvd., Suite 2200  
Los Angeles, CA 90067-4120

Attorneys for Shapiro, Bernstein  
& Co., Inc.; Rister Editions; David  
Guetta; Frederic Riesterer  
Phone: 310-282-2000  
Fax: 310-282-2200  
Email: dmiller@loeb.com;  
bslotnick@loeb.com;  
tdickstein@loeb.com

Barry I. Slotnick  
Tal E. Dickstein  
Loeb & Loeb LLP  
345 Park Avenue  
New York, NY 10154

Phone: 212-407-4000

BY CM/ECF NOTICE OF ELECTRONIC FILING: I caused said document(s) to be served by means of this Court's electronic transmission of the Notice of Electronic filing through the Court's transmission facilities, to the parties and/or counsel who are registered CM/ECF Users set forth in the service list obtained from this Court.

BY MAIL - As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

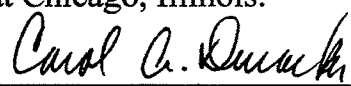
BY OVERNIGHT DELIVERY - Depositing the above document(s) in a box or other facility regularly maintained by FedEx in an envelope or package designated by FedEx with delivery fees paid or provided for.

BY PERSONAL DELIVERY - I caused such envelope to be hand delivered to the offices of the addressee.

BY EMAIL - I caused a true copy of the foregoing document(s) to be served by electronic email transmission at the time shown on each transmission, to each interested party at the email address shown above. Each transmission was reported as complete and without error.

FEDERAL - I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on February 6, 2012, at Chicago, Illinois.

  
\_\_\_\_\_  
Carol A. Duracka