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11 BRYAN PRINGLE

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

16 BRYAN PRINGLE, an individual,) Case No. SACV 10-1656 JST(RZx)
17 Plaintiff,)
18 v.) **PLAINTIFF’S OPPOSITION TO**
19 WILLIAM ADAMS, JR.; STACY) **DEFENDANTS’ APPLICATION**
FERGUSON; ALLAN PINEDA; and) **TO STRIKE PLAINTIFF’S SUR-**
20 JAIME GOMEZ, all individually and) **REPLY [DOC. 244] OR, IN THE**
collectively as the music group The Black) **ALTERNATIVE, TO FILE A**
21 Eyed Peas, *et al.*,) **RESPONSE**
22 Defendants.)

23
24 Defendants’ personal attacks and unfounded theories aside, at oral argument
25 Defendants inaccurately “paraphrased” key testimony and miscast key evidence in
26 this case. These statements needed to be corrected so that this Court has an accurate
27 record before it when ruling on the Defendants’ motion for summary judgment. For
28

1 the reasons stated below, Plaintiff requests this Court deny Defendants’ application
2 to strike.

3 No matter how they attempt to frame it, Defendants’ characterization of the
4 evidence is wrong.

- 5 • Barbara Frederikson-Cross and David Gallant undeniably concluded
6 that there is no evidence Mr. Pringle backdated any files.
- 7 • Mr. Pringle was clear about what he did when submitting his song to the
8 Copyright Office: He re-loaded the creation files and pressed play.
9 There was no “trial and error” as characterized by Defendants. He did
10 not manipulate or change anything. He converted the NRG file to an
11 mp3 file, a file format accepted by the Copyright Office.
- 12 • Finally, Mr. Pringle could not have and did not copy mp3 files from
13 www.beatport.com to convert them into NRG files. Defendants have no
14 evidence to the contrary, but, rather, have simply proffered an
15 alternative theory (albeit unfounded) to deflect liability for Defendants’
16 infringement.

17 Defendants ask this Court to accept their (misconstrued) characterizations of
18 the evidence as uncontested “facts” that support their motion for summary judgment.
19 This is not permitted. “[A] court should not prevent a case from reaching a jury
20 simply because the court favors one of several reasonable views of the evidence.”
21 *Abraham v. Raso*, 183 F.3d 279, 287 (3d Cir. 1999). “[T]he judge's function is not
22 [herself] to weigh the evidence and determine the truth of the matter but to determine
23 whether there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
24 242, 249, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *see also Abraham*, 183 F.3d at
25 287. “A genuine issue of material fact exists if the evidence could lead reasonable
26 people to different conclusions.” *Phoenix Sav. & Loan, Inc. v. Aetna Casualty &*
27 *Sur. Co.*, 381 F.2d 245, 249 (4th Cir. 1967).

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1 Plaintiff has presented uncontroverted evidence of his creation, in 1999, of the
2 song at issue in this case, as well as the significant steps he took to preserve that
3 evidence. Plaintiff has presented evidence of access and, notwithstanding that,
4 Defendants' experts agree that the songs at issue are strikingly similar and that
5 sampling has occurred. Defendants' opportunistic and unfounded theory, at best,
6 creates an issue of fact. Even if this Court finds that the statements made by
7 Defendants' counsel were more incomplete than incorrect, the briefing sets forth
8 numerous genuine issues of material fact that warrant the denial of Defendants'
9 motion for summary judgment, a conclusion further underscored by the Defendants
10 in the instant application. *Capital Records, LLC v BlueBeat, Inc.*, 765 F. Supp. 2d
11 1198, 1201 (C.D. Cal. 2010).

12 For these reasons, Plaintiff respectfully requests that the Court accept his
13 supplementary brief and deny Defendants' application to strike.

14 Dated: March 8, 2012

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17 By: /s/ Dean A. Dickie

Dean A. Dickie

Attorneys for Plaintiff Bryan Pringle

CERTIFICATE OF SERVICE

1 On March 8, 2012, I electronically filed the foregoing PLAINTIFF'S
2 OPPOSITION TO DEFENDANTS' APPLICATION TO STRIKE PLAINTIFF'S
3 SUR-REPLY [DOC. 244] OR, IN THE ALTERNATIVE, TO FILE A RESPONSE
4 using the CM/ECF system which will send notification of such filing to the following
5 registered CM/ECF Users:
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1 I am unaware of any attorneys of record in this action who are not registered
2 for the CM/ECF system or who did not consent to electronic service.

3 I certify under penalty of perjury under the laws of the United States of
4 America that the foregoing statements are true and correct.

5 Dated: March 8, 2012 /s/Colin C. Holley

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