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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA**

HONORABLE JOSEPHINE STATON TUCKER, JUDGE PRESIDING

BRYAN PRINGLE,)
)
 PLAINTIFF,)
)
 VS.) SACV NO. 10-1656-JST
)
 WILLIAM ADAMS, JR., ET CETERA, ET)
 AL.,)
)
 DEFENDANTS.)
 _____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
SANTA ANA, CALIFORNIA
MONDAY, JANUARY 31, 2011
10:00 A.M.

**DEBORAH D. PARKER, CSR 10342
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UNITED STATES DISTRICT COURT
411 WEST FOURTH STREET
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SANTA ANA, CALIFORNIA 92701
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DEBORAH D. PARKER, U.S. COURT REPORTER

1 APPEARANCES OF COUNSEL:

2 FOR THE PLAINTIFF, BRYAN PRINGLE:

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16 ET AL.:17 BARRY I. SLOTNICK
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1 APPEARANCES OF COUNSEL:

2 FOR THE DEFENDANTS, WILLIAM ADAMS, ALLAN PINEDA,
3 JAIME GOMEZ, STACY FERGUSON, WILL.I.AM MUSIC, LLC;
4 TAB MAGNETIC PUBLISHING COMPANY; JEPPNEY MUSIC;
5 HEADPHONE JUNKIE; EMI APRIL MUSIC
6 AND CHERRY RIVER MUSIC COMPANY:

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14 JAIME GOMEZ, STACY FERGUSON, WILL.I.AM MUSIC, LLC;
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16 HEADPHONE JUNKIE; EMI APRIL MUSIC
17 AND CHERRY RIVER MUSIC COMPANY:

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25

1 SANTA ANA, CALIFORNIA; MONDAY, JANUARY 31, 2011; 10:00 A.M.

2 THE COURT: GOOD MORNING.

3 THE CLERK: CALLING CALENDAR ITEM NO. 1,
4 SACV 10-16560-JST, BRYAN PRINGLE VERSUS WILLIAM ADAMS, JR.,
5 ET CETERA, ET AL.

6 COUNSEL, YOUR APPEARANCES, PLEASE.

7 MS. KELLER: GOOD MORNING, YOUR HONOR.

8 DEAN DICKIE, APPEARING ON BEHALF OF PLAINTIFF.

9 MR. HAMPTON: GOOD MORNING, YOUR HONOR.

10 GEORGE HAMPTON, APPEARING ON BEHALF OF PLAINTIFF.

11 MR. SLOTNICK: GOOD MORNING, YOUR HONOR.

12 BARRY SLOTNICK, APPEARING ON BEHALF OF SHAPIRO
13 BERNSTEIN AND DAVID GUETTA, DEFENDANTS.

14 MS. BURROW: GOOD MORNING, YOUR HONOR.

15 LINDA BURROW, UMG RECORDINGS AND INTERSCOPE
16 RECORDS.

17 MS. CENAR: GOOD MORNING, YOUR HONOR.

18 KARA CENAR AND JONATHAN PINK, AND I HAVE THE
19 LONGEST LIST: ADAMS, PINEDA AND GOMEZ, FERGUSON. WILL.I.AM
20 MUSIC, LLC; TAB MAGNETIC COMPANY; JEEPNEY MUSIC, HEADPHONE
21 JUNKIE.

22 THE COURT: I'M SORRY. SLOW DOWN A LITTLE BIT FOR
23 THE BENEFIT OF OUR COURT REPORTER.

24 MS. BURROW: EMI APRIL MUSIC AND CHERRY RIVER.

25 THE COURT: AND WAS OUR COURT REPORTER ABLE TO GET

1 THAT?

2 WE'LL HAVE YOU READ THAT LIST TO HER OFF THE
3 RECORD LATER.

4 ALL RIGHT. AND WE ARE HERE ON THE REQUEST FOR
5 PRELIMINARY INJUNCTION FILED BY PLAINTIFF IN THE CASE, AND
6 SO I WILL HEAR FROM PLAINTIFF FIRST.

7 AND I DO HAVE A COUPLE OF QUESTIONS.

8 MR. DICKIE: GOOD MORNING, YOUR HONOR. MAY IT
9 PLEASE THE COURT.

10 BEING SOMEWHAT FAMILIAR WITH THE COURT'S
11 PROCEDURES, I'M HAPPY TO ADDRESS THE QUESTIONS.

12 I KNOW THERE ARE SUBSTANTIAL PAPERS WHICH HAVE
13 BEEN FILED, WHICH I DON'T INTEND TO GO OVER. I THINK THE
14 ARGUMENTS ARE SET FORTH IN OUR REQUEST FOR THE RELIEF IS
15 WHAT WE BELIEVE TO BE A VALID COPYRIGHT ACCESS AND
16 SUBSTANTIAL SIMILARITY OF SOUND IS ALWAYS SET FORTH IN THE
17 PLEADINGS.

18 I WOULD BE HAPPY, YOUR HONOR, IF YOU HAVE SOME
19 QUESTIONS TO ADDRESS THOSE.

20 THE COURT: THE ORIGINAL VERSION OF TAKE A DIVE?

21 MR. DICKIE: YES, MA'AM.

22 THE COURT: WHILE THE COURT UNDERSTANDS FOR
23 PURPOSES OF YOUR MOTION TO DISMISS THAT THE FACT THAT IT WAS
24 PART OF A COLLECTION MEANS THAT EVEN THOUGH IT MAY NOT HAVE
25 BEEN INDIVIDUALLY LISTED AS TAKE A DIVE IF IT WAS PART OF

1 THAT COLLECTION AND IT WAS ALLEGED THAT IT WAS PART OF THAT
2 COLLECTION, THAT'S FINE FOR, AGAIN, MOTION TO DISMISS
3 PURPOSES.

4 CAN YOU TELL ME WHAT EVIDENCE DID YOU PROVIDE FOR
5 THE PRELIMINARY INJUNCTION TO REFLECT -- THAT REFLECTS THAT
6 THAT PARTICULAR SONG, TAKE A DIVE, THE ORIGINAL VERSION, WAS
7 PART OF THE DEADBEAT CLUB 1998 CD.

8 LET ME ASK A MORE -- A SIMPLER QUESTION, FIRST,
9 PERHAPS: YOU DID NOT PROVIDE TO THE COURT THE DEADBEAT CLUB
10 1998 CD FOR WHICH YOUR CLIENT OBTAINED A COPYRIGHT; CORRECT?

11 MR. DICKIE: I BELIEVE THAT IS CORRECT, YOUR
12 HONOR.

13 THE COURT: WHAT EVIDENCE DO I HAVE THAT THAT
14 ORIGINAL VERSION IS PART OF THAT COLLECTION?

15 MR. DICKIE: YOU HAVE THE DECLARATION OF
16 MR. PRINGLE. YOU HAVE AS WELL -- YOU ALSO HAVE BEFORE YOU
17 THE REGISTRATION OF THE SOUND RECORDING FOR TAKE A DIVE, THE
18 DANCE VERSION WHICH GOES BACK TO 1999, ACCORDING TO THE
19 COPYRIGHT REGISTRATION.

20 THE COURT: THAT'S THE DERIVATIVE VERSION;
21 CORRECT?

22 MR. DICKIE: YES, SIR.

23 THE COURT: AND THAT'S THE COPYRIGHT FOR THE SOUND
24 RECORDING; CORRECT?

25 MR. DICKIE: THAT'S CORRECT. AND, THEN, I BELIEVE

1 WE SUBMIT THE CD, ITSELF; BUT WE DID SUBMIT, AS I SAID,
2 MR. PRINGLE'S DECLARATION WITH RESPECT TO WHAT WAS CONTAINED
3 IN THAT VERSION. THAT IS EVIDENCE OF THAT.

4 THE COURT: WELL, YOU'RE REQUESTING A PRELIMINARY
5 INJUNCTION, THOUGH, CORRECT? AND SO WOULD YOU THINK THAT IT
6 WOULD BE APPROPRIATE FOR THE COURT TO ISSUE A PRELIMINARY
7 INJUNCTION IF THE ONLY EVIDENCE I HAD ON SOME VERY
8 SIGNIFICANT POINTS WERE YOUR CLIENT'S DECLARATION ON THAT?

9 MR. DICKIE: YOUR HONOR, I THINK YOU HAVE MORE
10 THAN THAT. I THINK YOU HAVE THE -- ARE ABLE TO COMPARE THE
11 SUBSTANTIAL SIMILARITY OF THE RECORDINGS THEMSELVES OF THE
12 MUSIC, BECAUSE THAT WAS SUBMITTED TO COMPARE THEM TO SEE IF
13 THEY'RE SUBSTANTIALLY THE SAME.

14 THE COURT: BUT I CAN'T DO THAT IF I'M -- IF I
15 DON'T KNOW THAT THAT SONG IS ACTUALLY PART OF THE
16 COPYRIGHT -- COPYRIGHTED COLLECTION IN DEADBEAT CLUB 1998;
17 CORRECT?

18 MR. DICKIE: WITHOUT -- IF YOU'RE SAYING THAT
19 WITHOUT HAVING DEADBEAT CLUB 1998 THAT SPECIFIC CD, AND THEN
20 BEING ABLE TO GO INTO IT, AND YOU'RE NOT WILLING TO TAKE THE
21 DECLARATION OF MR. PRINGLE, THEN THERE IS NO FURTHER SUPPORT
22 FOR THAT, BASED ON WHAT HAS BEEN SUBMITTED, AT LEAST THAT
23 I'M AWARE OF IN THE PAPERS.

24 THE COURT: LET ME MOVE ON TO THE DERIVATIVE
25 VERSION, THE 1999 VERSION OF THE SONG. THAT IS COPYRIGHTED

1 AS TO THE SOUND RECORDING; CORRECT?

2 MR. DICKIE: YES.

3 THE COURT: NOW HOW DO YOU RESPOND TO THE
4 DECLARATION, BECAUSE I DON'T -- I DON'T THINK I SAW A
5 SIGNIFICANT RESPONSE, IF ANY, IN THE REPLY PAPERS TO THE
6 DEFENDANTS' EXPERT THAT DECLARES THAT IT CAN'T BE SAMPLED --
7 IT COULDN'T HAVE BEEN SAMPLED.

8 LET ME BACK UP AGAIN. I'M GOING TO ASK AN EVEN
9 SIMPLER QUESTION: IN ORDER FOR YOU TO SHOW COPYRIGHT
10 INFRINGEMENT WHEN IT'S BASED ON A SOUND RECORDING, YOU HAVE
11 TO SHOW SAMPLING; CORRECT?

12 MR. DICKIE: YES.

13 THE COURT: NOW, THAT I'VE GOT THAT QUESTION OUT
14 OF THE WAY, THE FUNDAMENTAL QUESTION, HOW DO YOU RESPOND TO
15 THE DEFENDANTS' EXPERT DECLARATION THAT SAYS -- THAT
16 CONTRADICTS YOUR EXPERT'S DECLARATION AND SAYS, COULD NOT
17 HAVE BEEN SAMPLED. IN OTHER WORDS, WHAT I WOULD HAVE
18 EXPECTED TO SEE, PERHAPS, IN A REPLY BRIEF IS A FURTHER
19 DECLARATION BY THE PLAINTIFF'S EXPERT SAYING, *NO, HE'S*
20 *WRONG, AND HERE IS WHY.*

21 I DIDN'T SEE THAT.

22 MR. DICKIE: THAT'S CORRECT, YOUR HONOR. AND,
23 IN FACT, AT LEAST FOR PURPOSES OF THAT ISSUE, WE ARE IN THE
24 PROCESS OF GATHERING ADDITIONAL INFORMATION WITH RESPECT TO
25 THAT ISSUE. BUT THE WHOLE IDEA OF THE SAMPLING AND THE

1 SOUND RECORDING IS ONE WHICH I THINK THERE IS A QUESTION OF
2 FACT, AND THAT CAN BE RESOLVED BY THE ISSUE OF LISTENING TO
3 THE TWO SONGS AND COMPARING THEM. I MEAN, IF THEY ARE SO
4 SUBSTANTIALLY SIMILAR IF NOT IDENTICAL, ONE HAS TO ASSUME
5 FROM THAT THAT THERE WAS SOME FORM OF COPYING AT LEAST FOR
6 PURPOSES OF AN INITIAL PROCEEDING. AND INDEED --

7 THE COURT: I'M SORRY. WAIT. WE'RE TALKING ABOUT
8 SAMPLING NOW. SO YOU'RE ON TO SUBSTANTIAL SIMILARITY ACCESS
9 AND SUBSTANTIAL SIMILARITY, WHICH AT LEAST IN THE COURT'S
10 VIEW -- AND I DON'T CLAIM TO BE AN EXPERT IN THIS AREA AT
11 THIS POINT, BUT I HAVE READ AS MANY OF THE CASES AS I CAN.
12 AND I DON'T SEE WHERE SUBSTANTIAL SIMILARITY AND ACCESS COME
13 INTO PLAY WHEN WE'RE TALKING ABOUT SOUND RECORDING AND
14 SAMPLING.

15 SO MAYBE WE CAN BACK UP, AND YOU COULD EXPLAIN
16 THAT.

17 MR. DICKIE: I'M NOT SURE THAT I CAN DO IT ANY
18 BETTER THAN WHAT WE HAVE ALREADY DISCUSSED, YOUR HONOR, IN
19 THE SENSE OF WE DID NOT SUBMIT AND HAVE NOT BEEN ABLE TO AT
20 THIS POINT TO COMPLETE THE WORK NECESSARY TO SUBMIT THE
21 REJOINDER TO THAT DECLARATION WITH RESPECT TO THE VARIOUS
22 VERSIONS THAT EXIST IN TERMS OF SAMPLING.

23 THE COURT: OKAY.

24 MR. DICKIE: THAT IS AN ISSUE WHICH, I THINK, AS
25 YOU NOTED IN THE MOTION TO DISMISS OPINION WHICH WILL BE THE

1 SUBJECT OF ADDITIONAL PROOFS THAT WILL HAVE TO BE FLESHED
2 OUT AS WE GO FORWARD.

3 THE COURT: VERY WELL. ANYTHING YOU WISH TO ADD?
4 THOSE ARE THE COURT'S ONLY QUESTIONS TODAY.

5 MR. DICKIE: NO, YOUR HONOR, EXCEPT THAT I WOULD
6 ADD -- I GUESS THE ANSWER IS, YES, I THINK, YOUR HONOR,
7 BASED ON YOUR EARLIER QUESTION. ON A PRELIMINARY BASIS,
8 GIVEN ALL OF THE THINGS THAT ARE BEFORE THE COURT, THAT
9 THERE IS A DEMONSTRATED SUBSTANTIAL SIMILARITY WHICH
10 ENTITLES US TO SOME RELIEF, AT LEAST ON A PRELIMINARY BASIS,
11 SINCE THEY HAVE NOT IN ANY WAY SENT AN EXPERT TO REFUTE THE
12 SIMILARITY OF THESE VERSIONS AND OF THESE SONGS, AND THAT
13 OURS GO BACK A LONG TIME. AND I THINK THAT ON THAT BASIS
14 THE COURT DOES HAVE AMPLE SUPPORT FOR THE ISSUANCE OF THE
15 INJUNCTION REQUESTED BASED UPON THE PLEADINGS, AND THE
16 UNREFUTED DECLARATIONS WITH RESPECT TO THE MUSIC, THE
17 SIMILARITY AND SO FORTH.

18 THE COURT: THANK YOU.

19 MR. DICKIE: THANK YOU.

20 THE COURT: ANYTHING FROM DEFENDANTS?

21 MR. SLOTNICK: GOOD MORNING, YOUR HONOR.

22 THE COURT: GOOD MORNING.

23 MR. SLOTNICK: YOUR HONOR, HAVING HEARD
24 MR. DICKIE, I'M SORT OF AT A LOSS TO KNOW WHAT TO REBUT.
25 YOUR HONOR HAS ASKED THE SAME QUESTIONS THAT WE WOULD HAVE

1 ASKED OF HIM. THERE IS NO IDENTIFIABLE EVIDENCE REGARDING
2 THE INITIAL WORK. AND WITH RESPECT TO THE DERIVATIVE WORK,
3 THE ONE THAT PURPORTEDLY WAS CREATED IN 1999 BUT WAS NOT
4 REGISTERED UNTIL 2010, A YEAR OR SO AFTER THE DEFENDANTS'
5 WORK WAS REGISTERED, THE COURT ASKED THE RIGHT QUESTION.
6 SUBSTANTIAL SIMILARITY IS NOT ENOUGH. STRIKING SIMILARITY
7 IS NOT ENOUGH. ACCESS IS NOT ENOUGH.

8 IN ORDER TO PROVE A COPYRIGHT INFRINGEMENT OF THE
9 SOUND RECORDING, THE PLAINTIFF MUST PROVE COPYING. COPYING
10 IS NOW, I GUESS, IN THE VERNACULAR, SAMPLING. THEY HAVEN'T
11 PROVEN IT. THEY CAN'T PROVE IT, OR AT LEAST THEY HAVEN'T
12 PROVEN IT TO DATE. OBVIOUSLY, THE DEFENDANTS EXPENDED A
13 GREAT DEAL OF TIME DEALING WITH A MOTION TO DISMISS, BECAUSE
14 WE THINK THAT, FRANKLY, THE PLAINTIFF'S ALLEGATIONS ARE A
15 SHELL GAME, EXCEPT THAT WHEN YOU REMOVE -- WHEN YOU TURN
16 OVER ALL THREE OF THE SHELLS, THERE'S NO PEA UNDER ANY OF
17 THEM.

18 SO WHAT WE'RE -- YOU KNOW, WHAT WE'RE ASKING FOR
19 NOW IS, YOU KNOW, WHAT'S THE RUSH TO AN INJUNCTION WHEN THEY
20 CAN'T PROVE A COPYRIGHT IN THE UNDERLYING WORK? THEY CAN'T
21 PROVE COPYING OF THE SOUND RECORDING. WE HAVE CHALLENGED
22 THAT WITH AN EXPERT, AND THEY HAVE NOT REBUTTED THAT. THERE
23 REALLY IS NO THERE, THERE. AND, YOU KNOW, THE NATURE OF THE
24 ALLEGATIONS IN THE FIRST AMENDED COMPLAINT AS REPEATEDLY
25 MODIFIED BY THE VARIOUS DECLARATIONS OF THE PARTIES, JUST

1 LEAVE US EVEN MORE AT SEA AS TO WHAT THE PLAINTIFF REALLY
2 DID, WHAT HE CREATED, WHAT HE MAY HAVE COPIED FROM THE
3 DEFENDANTS FOR ALL WE KNOW.

4 NOW, IT JUST SEEMS STRIKING TO ME THAT WHEN THE
5 PLAINTIFF THOUGHT THAT MY CLIENTS, MY INDIVIDUAL CLIENTS
6 WERE RESIDENTS OF CALIFORNIA, HIS TESTIMONY AS IT WERE, WAS
7 THAT HE SUBMITTED COPIES OF THESE DERIVATIVE WORKS TO
8 EVERYBODY IN THE MUSIC BUSINESS IN THE UNITED STATES. ONCE
9 HE FOUND OUT THAT THEY WERE FRENCH, LO AND BEHOLD, HE AND
10 HIS BROTHER MADE A ROAD TRIP. AND NOW, APPARENTLY, THERE IS
11 ACCESS BY GOING TO FRANCE AND SUBMITTING THIS TO SOMEONE IN
12 FRANCE. IF THEIR CORPORATE RECEIPT IS INSUFFICIENT TO BIND
13 TWO PEOPLE IN A CORPORATION, I DON'T THINK HANDING THESE OUT
14 AT CHARLES DEGAUL CONSTITUTES A LEVEL OF LIABILITY FOR THE
15 FRENCH AUTHORS WHO HAVE ALREADY SAID, *WE INDEPENDENTLY*
16 *CREATED THIS*. THEY GAVE CHAPTER AND VERSE HOW THEY DID IT.
17 IF THE PLAINTIFF EVER SERVES MR. RISTER, I'M SURE THAT HE
18 WILL TESTIFY AT GREAT LENGTH AS TO EXACTLY WHAT HE DID AND
19 WHEN HE DID IT.

20 YOU KNOW, FRANKLY, I DON'T THINK WE NEED TO
21 BELABOR THE POINT, BUT I DO WANT TO MAKE ONE POINT REGARDING
22 IRREPARABLE INJURY. IT'S 18 MONTHS AFTER THE FACT THAT THEY
23 BRING THEIR LAWSUIT. IT'S 20 MONTHS AFTER THE FACT THAT
24 THEY SEEK A PRELIMINARY INJUNCTION. AND THE FACT THAT WE'RE
25 TALKING ABOUT, REALLY, IS THAT FOR 10 YEARS, THE PLAINTIFF

1 ALLEGEDLY WENT THROUGH HEAVEN AND EARTH TO GET HIS WORK
2 EXPLOITED. TO SUBMIT THIS TO EVERYBODY, APPARENTLY, ON TWO
3 CONTINENTS, MAYBE MORE. TO SUBMIT THIS WORK IN SUCH A WAY
4 THAT IT WOULD GET EXPLOITED. NOT THAT IT WOULD BE LOCKED IN
5 A CLOSET. HE WASN'T SENDING THIS TO EVERYONE SAYING, *SEE*
6 *HOW GOOD I AM? I DON'T WANT YOU EVER TO USE IT.*

7 HE WANTED PEOPLE TO USE IT. IF, IN THE UNLIKELY
8 EVENT THAT PLAINTIFF CAN ACTUALLY PROVE THAT HE CREATED THIS
9 WORK FIRST AND THAT IT WAS COPIED, THEN HE IS MORE -- THEN
10 HE WILL BE MORE THAN AMPLY JUSTIFIED IN COLLECTING DAMAGES.

11 YOUR HONOR CAN LOOK AT THE NAMES OF THE
12 DEFENDANTS. I THINK WE'RE ALL GOOD FOR THE MONEY. THERE IS
13 JUST NO POINT FOR BEING HERE NOW. THEY HAVE A CASE. WE'LL
14 TAKE DISCOVERY. THEY'LL TAKE DISCOVERY, AND THEY'LL SERVE
15 THE REST OF THE DEFENDANTS, AND WE'LL COME BACK TO YOUR
16 HONOR IN EIGHT OR NINE MONTHS, IF WE HAVEN'T MOVED FOR
17 SUMMARY JUDGMENT LONG BEFORE THAT, AND WE'LL HAVE A PROPER
18 HEARING AT A PROPER TIME WITH OSTENSIVELY PROPER EVIDENCE.

19 I SUSPECT THE PLAINTIFF IS GOING TO PROVIDE
20 EXACTLY THE SAME EVIDENCE THAT PLAINTIFF HAS PROVIDED TODAY,
21 WHICH IS NOTHING.

22 THANK YOU FOR YOUR TIME, YOUR HONOR.

23 THE COURT: THANK YOU.

24 ANYBODY ELSE WISH TO BE HEARD ON THE DEFENDANTS'
25 SIDE, OR DOES THAT COVER IT?

1 I HAVE NO QUESTIONS.

2 MS. CENAR: NO, YOUR HONOR.

3 THE COURT: VERY WELL. ANYTHING FURTHER FROM
4 PLAINTIFF?

5 MR. DICKIE: YOUR HONOR, I WOULD LIKE TO JUST
6 ADDRESS SOMETHING THAT COUNSEL RAISED WITH RESPECT TO THE
7 TIME FRAME AND THE DELAY IN BRINGING OF THE MOTION.

8 I THINK AS PART OF WHAT'S ALLEGED IN THIS
9 COMPLAINT IS, IN FACT, THAT THE DEFENDANTS HAVE APPROACHED,
10 IF YOU WILL, NEW AND NON-FAMOUS COMPOSERS AND AUTHORS OF
11 MUSIC. AND WITH THE WHOLE VIEW THAT IT'S DIFFICULT FOR THEM
12 TO TAKE ON PEOPLE WHO STAND BEFORE THE COURT AND SAY, *WE*
13 *HAVE SO MUCH MONEY, YOU NEED NOT WORRY ABOUT IT. IN THE*
14 *EVENT THAT THERE'S A JUDGMENT, WE CAN OBVIOUSLY PAY IT.*

15 AND THE FACT IS, IT TOOK TIME, FOR ONE, FOR
16 MR. PRINGLE TO OBTAIN COUNSEL, AND THEN THERE WERE
17 NEGOTIATIONS AND ATTEMPTS TO SETTLE THE CASE WHICH TOOK A
18 PERIOD OF TIME. AND THOSE WERE UNSUCCESSFUL OVER A PERIOD
19 OF TIME. A LAWSUIT WAS BROUGHT.

20 SO I DON'T THINK IN THE CONTEXT OF THE
21 INTELLECTUAL PROPERTY RIGHTS, SUGGESTING THAT UNDER THE
22 FACTS IN THIS CASE AND GIVEN THE PECUNIARY CIRCUMSTANCES OF
23 THE PLAINTIFF THAT THAT WOULD BE A BASIS ON WHICH THE COURT
24 COULD DENY OR SAY THAT WE WERE LAX IN BRINGING THE MATTER TO
25 THE COURT'S ATTENTION AND SEEKING THE RELIEF THAT WE SOUGHT

1 UNDER THE CIRCUMSTANCES.

2 WITH RESPECT TO THE OTHER ISSUE, COUNSEL TALKED
3 ABOUT WE HAVE TO PROVE IT. AT THE PRELIMINARY STAGE, I
4 BELIEVE THE LAW IS THAT WE HAVE TO RAISE A SUBSTANTIAL
5 QUESTION OF WHETHER OR NOT THERE WAS A COPYRIGHT
6 INFRINGEMENT, NOT THAT WE HAVE TO PROVE IT AS IF IT WAS A
7 TRIAL ON THE MERITS.

8 THE COURT: WELL, NOW, WAIT A SECOND. YOU HAVE TO
9 RAISE A SERIOUS ISSUE -- YOU KNOW, A SERIOUS ISSUE GOING TO
10 THE MERITS. AND YOU DON'T RAISE IT BY ASKING QUESTIONS.
11 YOU DON'T RAISE IT BY ALLEGATIONS. YOU RAISE IT BY
12 PRESENTING EVIDENCE.

13 IF YOU CAN SHOW ME A CASE THAT SAYS THAT A
14 PRELIMINARY INJUNCTION DOES NOT NEED TO BE BASED ON
15 EVIDENCE, I.E., PROOF, THEN I'LL TAKE A LOOK AT THAT.

16 MR. DICKIE: NO, YOUR HONOR, I WASN'T SUGGESTING
17 THAT WE DIDN'T HAVE TO SUBMIT SOME EVIDENCE. BUT PROVE IT
18 IN THE SENSE OF THE SAME LEVEL OF PROOF THAT WOULD BE
19 REQUIRED. WHAT I HAVE TO SHOW BY EVIDENCE IN THE PLEADINGS,
20 IN THE RECORDS, IN THE DECLARATIONS IS A SUBSTANTIAL
21 LIKELIHOOD OF SUCCESS. AND I WOULD SUBMIT THAT THE CASES DO
22 NOT REQUIRE THAT A SUBSTANTIAL LIKELIHOOD OF SUCCESS BE,
23 MEANING A FULL BURDEN THAT THE JURY WOULD IMPOSE AFTER THE
24 CLOSE OF ALL OF THE EVIDENCE. THAT WAS MY ONLY POINT. I
25 WASN'T SUGGESTING THAT YOU DIDN'T HAVE TO SHOW SOMETHING.

1 BUT WHAT I DO THINK, ON THE DECLARATIONS THAT ARE HERE, THAT
2 THERE IS SHOWING THAT IS SUBSTANTIAL ENOUGH ON THE
3 DECLARATIONS AND THE DOCUMENTS SUBMITTED TO WARRANT THE
4 ISSUANCE OF THE RELIEF REQUESTED.

5 THAT WAS THE POINT.

6 THE COURT: OKAY.

7 MR. DICKIE: THANK YOU, YOUR HONOR.

8 THE COURT: THANK YOU VERY MUCH.

9 IT WILL BE TAKEN UNDER SUBMISSION, AND YOU'LL
10 RECEIVE THE COURT'S RULING WHEN IT'S POSTED ON THE DOCKET.

11 THANK YOU.

12 THE CLERK: ALL RISE.

13 *(AT 10:19 A.M., PROCEEDINGS WERE ADJOURNED.)*

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CERTIFICATE

I HEREBY CERTIFY THAT PURSUANT TO SECTION 753,
TITLE 28, UNITED STATES CODE, THE FOREGOING IS A TRUE AND
CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED
PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE
TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE
REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

DATE: JANUARY 31, 2011

DEBORAH D. PARKER, OFFICIAL REPORTER