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12 GOMEZ, all individually and collectively as the music group THE BLACK EYED
PEAS; will.i.am music, llc; TAB MAGNETIC PUBLISHING; CHERRY RIVER
13 MUSIC CO.; HEADPHONE JUNKIE PUBLISHING, LLC; JEEPNEY MUSIC,
INC.; EMI APRIL MUSIC, INC.

14 **UNITED STATES DISTRICT COURT**
15 **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. SACV10-01656 JST (RZx)

Hon. Josephine Staton Tucker
Courtroom 10A

**DECLARATION OF KARA E. F.
CENAR IN SUPPORT OF MOTION
FOR AN AWARD OF
ATTORNEYS' FEES AND FULL
COSTS AGAINST PLAINTIFF AND
HIS COUNSEL**

Date: June 25, 2012

Time: 10:00 a.m.

Dept.: 10A

Complaint Filed: October 28, 2010

DECLARATION OF KARA E. F. CENAR

1
2 1. I, Kara E. F. Cenar, submit this declaration in connection with the
3 Defendants' Motion For An Award Of Attorneys' Fees And Full Costs Against
4 Plaintiff and His Counsel Motion for Attorneys' Fees and Costs. I am an attorney
5 with the law firm of Bryan Cave, LLP. I am lead counsel of record for defendants
6 William Adams, Stacy Ferguson, Allan Pineda, and Jaime Gomez, all individually
7 and collectively as the music group The Black Eyed Peas; will.i.am. music, llc;
8 Jeepney Music, Inc.; Tab Magnetic Publishing; Headphone Junkie Publishing, LLC;
9 Jeepney Music, Inc.; EMI April Music, Inc.; and Cherry River Music Co. ("Adams
10 Defendants") in the current lawsuit. I have personal knowledge of the matters set
11 forth in this Declaration and, if called upon to testify regarding such matters, I could
12 and would competently do so.

13 **Background**

14 2. Most of the Adams Defendants were sued by Plaintiff Bryan Pringle
15 ("Pringle") for willful copyright infringement and for purportedly conspiring with
16 David Guetta, Frederic Riesterer, and Shapiro Bernstein & Co, Inc. ("Guetta
17 Defendants") and UMG Recordings, Inc. and Interscope Records ("UMG
18 Defendants") to carry out same. (FAC, at ¶¶64-65. Other of the Defendants were
19 sued for contributory or vicarious copyright infringement by Pringle. *Id.* at ¶66.

20 3. On November 17, 2011, the Guetta Defendants filed a Motion for
21 Summary judgment that challenged in full Pringle's copyright infringement claim.
22 Dkt. No. 159.

23 4. After a full round of briefing and oral argument, on March 30, 2012,
24 the Court granted the Guetta Defendants' Motion for Summary Judgment based on
25 substantive grounds, as well as Pringle's willful despoliation of evidence.
26 Specifically, the Court held that Pringle had no standing to pursue a claim of
27 copyright infringement with respect to "Take a Dive (Dance Version)"; that "no
28 reasonable juror could find substantial similarity between 'Take a Dive' and 'I Gotta

1 Feeling” and finally; that outright dismissal was “an appropriate sanction for
2 Pringle’s willful despoliation of his Hard Drives.” Order Granting Defendants’
3 Motion for Summary Judgment [Dkt. No. 252] (“Summary Judgment Order”), dated
4 Mar. 30, 2012, at 8-17.

5 5. On May 03, 2012, the Court granted summary judgment in favor of the
6 Adams and UMG Defendants, as well as Rister Editions, because the same facts,
7 law, and bases for granting the Guetta Defendants’ Motion for Summary Judgment
8 applied equally to the Adams and UMG Defendants, and Rister Editions. Order (1)
9 Granting Summary Judgment in Favor of Remaining Defendants; and (2) Denying
10 Plaintiff’s Motion for Voluntary Dismissal as Moot [Dkt. No. 275], dated May 3,
11 2012, at 2.

12 6. On May 15, 2012, the Court entered judgment in favor of all
13 Defendants and against Pringle. Judgment [Dkt. No. 276], dated May 15, 2012, at
14 1.

15 7. Accordingly, the Adams Defendants, as have all Defendants in this
16 action, prevailed on the claim that Pringle brought against them, and therefore, the
17 Adams Defendants seek the attorneys’ fees and costs they incurred in defending this
18 action.¹

19 ///

20 ///

21 ¹ This Motion follows the multiple conferences of counsel that took place pursuant
22 to L.R. 7-3. Such conferences occurred on June 27, 2011, April 5, 2012, and May 8,
23 2012, during which the various bases of this Motion were discussed, including Fed.
24 R. Civ. P. 11, 17 U.S.C. § 505, 28 U.S.C. § 1927, and the Court’s inherent authority.
25 Pringle, through his counsel, opposed the bases set forth by the Defendants and
26 declined the request to privately resolve the attorneys’ fees and costs issues
27 contemplated in this Motion. In addition, this Motion is brought pursuant to the
28 Court’s Apr. 16, 2012 oral directive that all bases for attorneys’ fees and costs be
combined into one omnibus motion, as memorialized in the Court’s May 15, 2012
entry of judgment. Finally, it is the understanding of the Adams Defendants that the
Court desired one, omnibus attorneys’ fees motion to cover all of the Defendants in
this action and all bases for attorneys’ fees. Should the Court desire additional
briefing to cover issues related specifically to the Adams Defendants, they will be
happy to provide same.

1 **Bryan Cave, LLP Provides Legal Services to the Adams Defendants**

2 8. Bryan Cave, LLP (“Bryan Cave”) provided the Adams Defendants with
3 legal services in connection with the current litigation since May of 2010. The
4 Adams Defendants were charged for the attorneys’ fees and costs incurred in
5 connection with this representation. Those charges of attorneys’ fees and costs were
6 billed to the Adams Defendants and have either been paid, or are in the process of
7 being paid. In addition, a small amount of fees have been incurred that have yet to
8 be billed to the Adams Defendants, but will be included in the next billing cycle.

9 9. Each Bryan Cave professional who performed services for the Adams
10 Defendants maintained detailed time records of the time expended and services they
11 rendered on a daily basis. These records are entered into a computer database
12 maintained and supported by Bryan Cave’s accounting department in the regular
13 and ordinary course of business.

14 10. Attached hereto as Exhibit A are redacted copies of the Bryan Cave
15 invoices that were submitted to the Adams Defendants in connection with this
16 litigation. The invoices contain itemizations for the services rendered and the
17 various costs that the Adams Defendants incurred via Bryan Cave’s representation
18 from May of 2010 through March of 2012.

19 **Reasonableness of Bryan Cave’s Fees**

20 11. I have reviewed the Bryan Cave invoices, and based on my
21 interpretation of Ninth Circuit authority concerning the factors weighed in assessing
22 the reasonableness of attorneys’ fees, my twenty-three years of experience as a
23 litigator of intellectual property matters, and my knowledge of the facts of this case,
24 the itemized entries reflect time and costs reasonably and necessarily expended in
25 the representation the Adams Defendants in light of the specialized and complex
26 subject matter of music copyright and concomitant digital issues, as well as the
27 unique circumstances surrounding Pringle’s claim for copyright infringement. The
28 fees and costs are also reasonable due to the manner in which Pringle’s counsel

1 aggressively pursued this action, namely by: (1) advancing frivolous theories and
2 arguments and (2) unreasonably and vexatiously multiplying the proceedings. In
3 response to the actions of Pringle and his counsel, Bryan Cave professionals
4 undertook, among other things, the following courses of action:

5 • Analyze the copyright infringement claim Pringle began to assert
6 in the spring of 2010 through his attorneys (who had also been responsible for filing
7 a concurrent music copyright infringement case against The Black Eyed Peas). This
8 included: (a) researching the factual claims Pringle set forth regarding the creation
9 of his “Take a Dive” and “Take a Dive (Dance Version)”,² (b) researching the
10 factual backdrop of the Defendants’ creation of “I Gotta Feeling”, (c) researching
11 the musical hardware and software applications that Pringle claimed to have used in
12 creating his music, (d) computer forensics analysis and research concerning the
13 backdating of digital files and the preservation of electronic data, (e)
14 communications with Pringle’s counsel and specifically, requesting that Pringle
15 preserve whatever electronic data he had that touched on the musical compositions
16 and sound recordings that he claimed were infringed, and (f) attempts to resolve the
17 claim without judicial intervention, including entreating Pringle’s counsel, Ira
18 Gould, to fulsomely evaluate and vet the bases of Pringle’s claim given that music
19 copyright was a new area to Mr. Gould as well as the fact that, Pringle was an
20 unknown entity who had only contacted Mr. Gould out of the blue in response to
21 Gould’s filing of his other case against The Black Eyed Peas;

22 • Analyze the copyright infringement claim Pringle ultimately
23 asserted when he filed suit in October of 2010 and determine response and defense
24 strategy;

25
26

27 ² This included subsequent examinations to assess the various assertions of Pringle
28 and his counsel concerning Pringle’s creation of “Take a Dive (Dance Version),”
which continued to evolve throughout the course of this litigation.

1 • Review, research, and prepare briefing in response to Pringle’s
2 Request for a Temporary Restraining Order that Pringle’s counsel elected to file
3 during the same week as Thanksgiving, which included conferring with expert
4 witnesses and the preparation of concomitant submissions;

5 • Research, drafting, and reviewing in connection with
6 Defendants’ Motions to Strike, for a More Definite Statement, and/or to Dismiss
7 briefing, which sought to remove impertinent allegations from the pleadings (*e.g.*,
8 allegations of a purported pattern and practice of willful copyright infringement,
9 purported violations of California’s Business and Professions Code, and a purported
10 entitlement to attorneys’ fees, which were barred based on Pringle’s tardy copyright
11 registration). These moving papers also sought to elucidate precisely which work(s)
12 Pringle claimed were infringed, a vexing problem that persisted throughout this case
13 due to Pringle’s chameleonic infringement theories, a point that the Court
14 specifically noted in ruling on summary judgment (Summary Judgment Order, at 7-
15 8);

16 • Review, research, and prepare briefing in response to Pringle’s
17 Motion for Preliminary Injunction, including attendance of hearing on same. This
18 Motion was filed weeks before Super Bowl XLV, at which The Black Eyed Peas
19 were scheduled to perform numerous of their works, including “I Gotta Feeling.”
20 Pringle’s counsel had also filed another Motion for Preliminary Injunction in the
21 other case they pursued against The Black Eyed Peas, this one related to the song
22 “Boom Boom Pow,”³ which was also slated to be performed at the event. Both
23 Motions were filed more than a year after the respective plaintiffs claimed to have
24 first heard the accused works, thus making it abundantly clear that mitigation of any
25 purported irreparable harm was not the goal, but rather, the frustration of The Black
26 Eyed Peas’ performance and contractual obligations;

27 ³ Notably, summary judgment was also granted in favor of The Black Eyed Peas in
28 this case as it was held that no jury could find that “Boom Boom Pow” was
substantially to the Plaintiffs’ musical composition in that case.

1 • Preparing an early and comprehensive discovery plan, which
2 dealt specifically with the preservation of electronic data, and involved several
3 discussions with Pringle’s counsel, including the lack of cooperation in discovery
4 related to ESI. Unfortunately, Pringle still destroyed relevant evidence and, as has
5 been expressed in Pringle’s briefing and expert submissions, Pringle’s counsel
6 apparently never advised him of a duty to preserve his hard drives;

7 • Preparing numerous sets of highly particularized discovery
8 requests, all aimed at proving the falsity of Pringle’s allegations and/or lack of
9 evidentiary support therefor, including Pringle’s purported creation of what he has
10 referred to throughout this litigation as the “guitar twang sequence”, other issues
11 related to music composition and analysis, computing issues, and his purported
12 activities in submitting his music to virtually every music industry participant
13 throughout the globe;

14 • Responding to Pringle’s voluminous discovery requests served
15 on all ten of the Adams Defendants (even all four of the band members’ publishing
16 designees), which were oftentimes overly broad and called for information that was
17 utterly irrelevant to the prima facie elements of a copyright infringement claim.
18 This even included substantial internal review of tens of thousands of financial
19 documents related to the musical works of The Black Eyed Peas for purposes of
20 determining responsiveness to Pringle’s “damages” discovery requests,
21 determination of privilege, and redaction where necessary. All of this was done in
22 spite of Pringle having no good faith basis to seek the financial data of any of the
23 Defendants in this action given that his counterfactual claim of infringement meant
24 Defendants had no copyright liability, and thus, Pringle had no right to monetary
25 relief;

26 • Preparing for and defending the full day depositions of all four
27 individual members of The Black Eyed Peas (even though they did not compose any
28 of the allegedly infringing musical material in this case), including dealing with the

1 abusive deposition practices of Pringle's counsel, and in particular, their forcing of
2 Allan Pineda, who suffers from Nystagmus and is legally blind, to scour the fine
3 print in a multitude of documents and mocking the request and/or refusing to
4 enlarge the documents or otherwise provide accommodations to Mr. Pineda;⁴

5 • Preparing for and taking the depositions of Bryan Pringle and his
6 computer forensics experts, David Gallant and Barbara Fredericksen-Cross, as well
7 as preparing for and defending the deposition of Erik Laykin and Paul Geluso,
8 which required analysis of, and familiarity with, complex subject matter related to
9 computing and electronic data issues, as well as the functionality of electronic
10 musical hardware and software applications;

11 • Preparing for and taking the depositions of Dr. Alexander
12 Stewart and Dr. Alexander Norris, which required specialized and extensive
13 questioning concerning musical theory and compositional analysis to expose that,
14 despite the verbiage contained in their reports, Pringle's designated music experts
15 acknowledged that many, many differences existed between the original version of
16 "Take a Dive" and "I Gotta Feeling," and that any similarities those works shared
17 related to musical building blocks that no person has the ability to claim a copyright
18 monopoly over, and thus, are not protectible under copyright law;

19 • Researching, preparing, briefing, and arguing successful motion
20 to compel Pringle's response to interrogatories concerning his fantastical claims.
21 Notably, Magistrate Zarefsky found that many of Pringle's objections to the subject
22 interrogatories were meritless and evasive, and Pringle was ordered to supplement
23 his interrogatory responses (*See* Declaration of Tal E. Dickstein in Support of
24 Motion for Sanctions Against Plaintiff and His Counsel Pursuant to Fed. R. Civ. P.
25 11 [Dkt. No. 239], dated Mar. 1, 2012, ¶10, Exh. 9);

26 ⁴ At many instances, Mr. Pineda exhibited manifest difficulty reading the
27 documents, including the typical symptomology of Nystagmus, *i.e.*, rapid and
28 involuntary eye movement. *See* <http://www.ballerstatus.com/2011/01/18/black-eyed-peas-apl-de-ap-says-hes-legally-blind/>.

1 • Researching, strategizing, reviewing, and providing commentary
2 and analysis with respect to the Guetta Defendants' Summary Judgment briefing,
3 including assistance with expert submissions, marshaling of evidence and
4 preparation of evidentiary objections to the submissions of Pringle in opposition to
5 summary judgment, and hearing attendance;

6 • Briefing in connection with Pringle's Motion for Voluntary
7 Dismissal; and

8 • Researching, strategizing, reviewing, providing commentary and
9 analysis, and writing with respect to the briefing and applications in support of the
10 Defendants' requests for attorneys' fees and costs incurred in this action.

11 12. With respect to each of the foregoing types of legal services, care was
12 taken to minimize duplicative effort and intelligently allocate work based on the
13 collective resources at the disposal of the three groups of Defendants and related law
14 firms in this action.

15 13. It should be noted that much of the attorneys' fees and costs that the
16 Adams Defendants incurred in this case occurred after Pringle became perfectly
17 aware through discovery that the instrumental portion of "I Gotta Feeling" was
18 furnished to William Adams by David Guetta and Frederic Riesterer, and further,
19 that it was composed by the latter two individuals. Thus, no member of The Black
20 Eyed Peas composed the "guitar twang sequence," which was the only musical
21 material that was relevant to this litigation. The members of The Black Eyed Peas
22 contributed to "I Gotta Feeling" by providing lyrics and vocal melodies. These facts
23 directly undercut any contention that any member of The Black Eyed Peas copied or
24 sampled either of Pringle's musical compositions (*i.e.*, "Take a Dive" and "Take a
25 Dive (Dance Version)", as well as the sound recordings in which they are embodied.
26 Moreover, the Adams Defendants acquired the rights to use the musical material
27 created by David Guetta and Frederic Riesterer based upon a written agreement,
28 dated September 24, 2008. If any infringement had occurred (which invites the

1 Court to place stock in a fabricated and counterfactual story), the members of The
2 Black Eyed Peas used the material under color of title, and reasonably believed that
3 their use of same was lawful. Courts have held that use of infringing material under
4 such circumstances forecloses a claim of willfulness.⁵ Despite the foregoing,
5 Pringle and his attorneys persisted in asserting claims of willful copyright
6 infringement as against the Adams Defendants.

7 14. In addition, a substantial portion of the attorneys' fees and costs that the
8 Adams Defendants incurred in this case occurred after the January 31, 2011 hearing
9 on Pringle's Motion for Preliminary Injunction at which Pringle's counsel admitted
10 he had no response to Defendants' argument that sampling the guitar twang
11 sequence from "Take a Dive (Dance Version)" and placing it in an artifact-free
12 manner in "I Gotta Feeling" (which is as it appears) was factually impossible. In
13 December of 2011, Pringle himself agreed with Defendants regarding the factual
14 impossibility of sampling, thus demonstrating that many of the fees and costs the
15 Defendants in this expended in this case were wholly unnecessary and could have
16 been avoided had Pringle's counsel honestly re-evaluated the plausibility of their
17 client's copyright claim at that time (Declaration of Bryan Pringle in Opposition to
18

19 ⁵ See *Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 959 (9th Cir. 2001) (allegedly
20 infringing works were subject to complex chain of title issues and were produced
21 under color of title, "an arrangement that defeats the willfulness claim in this
22 circumstance."); *Frank Music Corp., v. MGM, Inc.*, 772 F.2d 505, 515 (9th cir.
23 1985) (holding that, when defendants reasonably could have believed that they had a
24 valid license to use plaintiffs' works, it was not clearly erroneous for the district
25 court to find no willful infringement.); *Milton H. Greene Archives, Inc. v. Julien's
26 Auction House, LLC*, 345 Fed. Appx. 244, 247 (9th Cir. 2009) (evidence of
27 willingness to negotiate a license fee was "properly admitted to show the absence of
28 bad faith (refuting [plaintiff]'s claim that [defendant] had willfully infringed the
copyrights."); *Allen-Myland, Inc. v. Int'l Bus. Machs. Corp.*, 770 F. Supp. 1014,
1027 (E.D. Pa. 1991) (holding that the alleged copyright infringement was not
willful due to a reasonable, good faith belief that the challenged conduct was non-
infringing based on the fact that the terms of the license were "not easily
interpreted"); see also MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON
COPYRIGHT § 14.04[B][3] ("It would seem to follow that one who has been notified
that his conduct constitutes copyright infringement, but who reasonably and in good
faith believes the contrary, is not 'willful' for these purposes.").

1 Defendants' Motion for Summary Judgment [Dkt. No. 198], dated Dec. 19, 2011, at
2 ¶ 125).

3 15. I am a partner in the Chicago office of Bryan Cave. I have twenty-
4 three years of experience as a litigator and trial lawyer in intellectual property cases,
5 including numerous jury trials, bench trials, preliminary injunction hearings,
6 hearings on emergency temporary restraining orders, seizure and impoundment
7 orders, Section 337 claims before the International Trade Commission, *Markman*
8 hearings, litigation strategy for pre-trial litigation, discovery, and pre-trial motions.
9 My practice focuses entirely on intellectual property litigation, and I have taken lead
10 trial and litigation roles in important and complex patent, copyright, trademark, and
11 trade secret matters for domestic and international companies of all sizes, as well as
12 individuals. I handle matters for the enforcement of intellectual property rights and
13 the defense of alleged violations of the intellectual property rights of others. I hold a
14 law degree and a bachelor's degree from Loyola University-Chicago. Through the
15 end of March of 2012, I billed 589.60 hours in connection with the defense of this
16 matter, for total billed fees of \$315,535.01, such that my average hourly rate in
17 connection with this matter was \$535.17.

18 16. Jonathan Pink is chair of Bryan Cave's Internet and New Media Group,
19 and is resident in the firm's Irvine and Los Angeles offices. His practice focuses on
20 intellectual property and commercial litigation, with a specialty in entertainment,
21 technology and Internet-related matters. He has successfully represented Fortune
22 1000 companies, midcap, microcap and emerging growth businesses in courtrooms
23 across the nation, and served as lead counsel on a number of high profile copyright
24 lawsuits including the seminal case that invalidated as unconstitutional Section
25 511(a) of the Copyright Act. During law school, he was Editor-in-Chief of the
26 *Southwestern Journal of Law and Trade*, 1994-1995. Mr. Pink was named a
27 "Southern California Super Lawyer" by *Los Angeles Magazine* in 2006-2012.
28 Through the end of March of 2012, Mr. Pink billed 552.13 hours in connection with

1 the defense of this matter, for total billed fees of \$212,685.92, such that his average
2 hourly rate in connection with this matter was \$385.21.

3 17. Mariangela M. Seale is an intellectual property associate in the Chicago
4 office of Bryan Cave, and has been licensed to practice law in the State of Illinois
5 since 2007. She is a graduate of the Notre Dame Law School and Cornell
6 University. Mrs. Seale's practice focuses on intellectual property litigation and
7 counseling, as well as commercial litigation matters in both federal and state courts.
8 Her litigation experience includes patent infringement, trademark and service mark
9 infringement, trade secret issues, copyright infringement, contract disputes, breach
10 of warranty actions, and other matters. Ms. Seale's experience ranges from large,
11 multi-party cases worth millions of dollars to small, single-party claims. Through
12 the end of March of 2012, Mrs. Seale billed 253.30 hours in connection with the
13 defense of this matter, for total billed fees of \$82,295.49, such that her average
14 hourly rate in connection with this matter was \$324.89.

15 18. Justin M. Righettini is an attorney within Bryan Cave's intellectual
16 property and entertainment groups, and has been licensed to practice law in the State
17 of California since 2006. Mr. Righettini has extensive experience litigating
18 intellectual property matters, specifically concentrating on copyright, music, and
19 dignitary torts. He is currently a Dean's Merit Scholar M.P.A. candidate at the
20 University of Southern California, and he received a J.D. from Southwestern Law
21 School in 2006, where he was a member of the Editorial Board for the Journal of
22 International Media & Entertainment Law. He is also a classically trained guitarist,
23 having received graduate and undergraduate music performance degrees from the
24 Thornton School of Music at the University of Southern California and California
25 State University Northridge. Mr. Righettini has authored publications on copyright
26 and given presentations at copyright at various law schools, and most recently, was
27 recently invited to teach an LL.M course on music copyright infringement. Through
28 the end of March of 2012, Mr. Righettini billed 431.65 hours in connection with the

1 defense of this matter, for total billed fees of \$136,873.52, such that his average
2 hourly rate in connection with this matter was \$317.09.

3 Timekeeper	Position	Billed Hours	Rate	Dollars
4 Kara Cenar	Partner	589.60	\$535.17	\$315,535.01
5 Jonathan Pink	Counsel	552.13	\$385.21	\$212,685.92
6 Mariangela Seale	Associate	253.30	\$324.89	\$82,295.49
7 Justin Righettini	Associate	431.65	\$317.09	\$136,873.52

8 19. In addition to the foregoing billed hours and fees, The Adams
9 Defendants have incurred attorneys' fees for the months of April and May of 2012.
10 The Adams Defendants have yet to be billed for these fees, but will be in due
11 course. Bryan Cave accounting data reflect that: (a) I worked 2.00 hours in April
12 and May in connection with this matter, at a cost of \$1,160.00; (b) Mr. Pink worked
13 32.60 hours in April and May in connection with this matter, at a cost of
14 \$13,040.00; (c) Mrs. Seale worked 7.2 hours in April and May in connection with
15 this matter, at a cost of \$2,808.00; and (d) Mr. Righettini worked 96.1 hours in April
16 and May in connection with this matter, at a cost of \$35,076.50. These additional,
17 unbilled fees total \$52,084.50.

18 20. In addition to the foregoing four attorneys, various other attorneys,
19 paralegals, and legal professionals assisted with the defense of this matter, a
20 substantial portion of which was required because of the extensive review and
21 redaction required for the financial data related to this case. Their combined fees
22 total \$108,586.66 (which includes an unbilled amount of \$6,096.50 that will be
23 included in the next billing cycle).⁶ Attached hereto as Exhibit B is a true and
24 correct copy of a Bryan Cave accounting record reflecting those time keepers, the
25 amount of hours worked, as well as the amount billed to the Adams Defendants.⁷

26 ⁶ The figure \$108,586.66 was reached by taking the total amount of fees set forth in
27 Exh. B and subtracting the time and fees of the four primary billing attorneys in this
case, *i.e.*, Kara Cenar, Jonathan Pink, Mariangela Seale, and Justin Righettini.

28 ⁷ This Exhibit also sets forth the total billed and unbilled hours and fees related to

1 21. In addition to counsel at Bryan Cave, The Adams Defendants also
2 retained the services of Ms. Rachel Rosoff, Esq. of Goldring, Hertz & Lichtenstein,
3 LLP in connection with the defense of this matter. If the Court awards the Adams
4 Defendants their fees and costs, we request leave to submit Ms. Rosoff's statements
5 as to her rate and time.

6 22. Based on my experience and personal knowledge, the hourly rates
7 charged by Bryan Cave partners, associates, and paralegals in this case are
8 commensurate with those generally charged for similar work done by similarly
9 qualified attorneys and professionals at large law firms in markets with a high cost
10 of living, such as Los Angeles, New York City, or Chicago. Attached hereto as
11 Exhibit C is a true and correct copy of the National Law Journal billing summary
12 from December 19, 2011. The survey shows that a billing rate of \$375-\$550 is
13 commensurate with or lower than the rates charged for other similarly qualified
14 partners at large law firms in Los Angeles, New York City, or Chicago. The survey
15 likewise shows that a billing rate of \$300-\$350 is commensurate with the rates
16 charged for high level associates at large law firms in the same legal markets.

17 23. In addition and as reflected in the American Intellectual Property Law
18 Association Law Practice Management Committee "Report of the Economic Survey
19 2011," the fees charged by Bryan Cave here are in line with the average billing rates
20 for intellectual property partners and associates in major markets, as well as the total
21 amount of fees and costs for copyright litigations where greater than \$25 million is
22 at stake (as was true in this case). A true and correct copy of excerpts of the
23 American Intellectual Property Law Association Law Practice Management
24 Committee's "Report of the Economic Survey 2011" is attached hereto as Exhibit
25 D.

26 ///

27
28 the four primary timekeepers in this action.

1 26. Witness Fees. The Adams Defendants hired Vince Leoni, a forensic
2 accountant with Moss Adams, LLP, in connection with this case. Mr. Leoni's
3 services were necessary to examine the finances of The Black Eyed Peas and
4 calculate elements of profit related to "I Gotta Feeling" in response to Pringle's
5 discovery requests concerning his purported right to monetary relief. Mr. Leoni
6 expended a substantial amount of effort in this matter in reviewing financial data
7 and preparing an expert report. The Black Eyed Peas for paid \$42,027.00 for Mr.
8 Leoni's services, which amount the seek to recover as part of their full costs. This
9 amount was broken down into three payments: (a) an initial \$15,000 retainer fee that
10 was paid by BEP Music, LLC; (b) a Dec. 21, 2011 invoice for \$24,243.00 that was
11 paid; and (c) a Jan. 24, 2012 invoice for \$2,784.00 that was paid. Attached hereto as
12 Exhibit E is a true and correct copy of the foregoing invoices reflecting charges
13 incurred with respect to Mr. Leoni's services.

14 27. In addition, the Adams Defendants seek to recover certain expert
15 witness fees that were generated by the taking of the depositions of two of Pringle's
16 expert witnesses if and when they are properly invoiced: David Gallant and Barbara
17 Fredericksen-Cross. Though the parties had agreed to pay the witness fees for each
18 opposing expert witness they deposed, Pringle has yet to furnish invoices for the
19 deposition charges of the foregoing two witnesses, and as such, the Adams
20 Defendants either: (a) reserve the right to seek reimbursement for whatever fees they
21 will pay to the subject witnesses once invoices have been received or (b) perhaps
22 more expeditiously, request that Pringle be required to bear these costs himself.

23 28. Electronic Research Fees. In defending this action, the Adams
24 Defendants incurred substantial electronic research fees. Those fees include: (a)
25 \$40,508.14 for Westlaw legal research and (b) \$3,269.59 for Lexis legal research,
26 for a total of \$43,777.73. Electronic research fees are paid by Bryan Cave to the
27 provider of such services and are customarily charged by the firm to its clients.
28 Attached hereto as Exhibit F is a true and correct copy of a Bryan Cave accounting

1 record setting forth the electronic research fees incurred in the defense of this
2 matter, which have been billed to the Adams Defendants.

3 29. Based on the foregoing, the Adams Defendants seek to recover the
4 combined amount of the expert witness and electronic research fees that they
5 incurred in this case in an amount not less than \$85,804.73 as part of their full costs.

6 I declare under penalty of perjury under the laws of the State of California
7 and the United States of America that the foregoing is true and correct.

8 Executed this 24th day of May, 2011, at Chicago, Illinois.

9 /s/ Kara Cenar

10 Kara Cenar

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