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

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

15 BRYAN PRINGLE, an individual,
16
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
Black Eyed Peas; DAVID GUETTA;
21 FREDERICK RIESTERER; UMG
RECORDINGS, INC.; INTERSCOPE
22 RECORDS; EMI APRIL MUSIC,
INC.; HEADPHONE JUNKIE
23 PUBLISHING, LLC; WILL.I.AM.
MUSIC, LLC; JEEPNEY MUSIC,
24 INC.; TAB MAGNETIC
PUBLISHING; CHERRY RIVER
25 MUSIC CO.; SQUARE RIVOLI
PUBLISHING; RISTER EDITIONS;
26 and SHAPIRO, BERNSTEIN & CO.,

27 Defendants.
28

Case No. SACV10-1656 JST(RZx)

Hon. Josephine Staton Tucker
Courtroom 10A

**DEFENDANTS' NOTICE OF
MOTION AND MOTION TO
DISMISS FIRST AMENDED
COMPLAINT; MOTION TO
STRIKE AND MOTION FOR MORE
DEFINITE STATEMENT;
DECLARATIONS OF JONATHAN
S. PINK AND KARA E. F. CENAR**

Hearing

Date: January 24, 2011
Time: 10:00 a.m.
Courtroom.: 10A

Complaint Filed: October 28, 2010
Trial Date: Not Assigned

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on January 24, 2011, at 10:00 a.m., at the
3 above-listed courthouse located at 411 West Fourth Street, Santa Ana, California
4 92701, Courtroom 10A, Defendants William Adams; Stacy Ferguson; Allan Pineda;
5 Jaime Gomez; Tab Magnetic Publishing; Headphone Junkie Publishing, LLC;
6 will.i.am. music, llc; Jeepney Music, Inc.; Cherry River Music Co.; and EMI April
7 Music, Inc. (collectively, “Defendants”) will move this Court for an Order
8 dismissing the First Amended Complaint of Plaintiff Bryan Pringle (“Plaintiff”)
9 pursuant to Rules 12(b)(6) of the Federal Rules of Civil Procedure for failure to state
10 a claim upon which relief can be granted. Specifically, this motion is based on: (1)
11 the fact that Plaintiff has not obtained a copyright registration in the 1999 Twang
12 Version work, the numerous variations (¶ 3), the songs of others (¶55) and the other
13 Pringle songs (¶ 56), and therefore is precluded from instituting an action for
14 copyright infringement pursuant to 17 U.S.C. §411(a); and (2) the fact that Plaintiff
15 has failed to sufficiently allege access.

16 PLEASE TAKE FURTHER NOTICE THAT, Defendants also move to
17 dismiss pursuant to Federal Rules of Civil Procedure 8 (a)(2) for failure to plead a
18 short and plain statement showing Plaintiff is entitled to relief.

19 PLEASE TAKE FURTHER NOTICE THAT, Defendants also move this
20 Court for an Order pursuant to Rule 12(e) of the Federal Rules of Civil Procedure
21 for an Order requiring Plaintiff to provide a more definite statement on the basis that
22 Paragraphs 3, 27 through 39 of the First Amended Complaint are so vague and
23 ambiguous that Defendants cannot reasonably prepare a response thereto.

24 PLEASE TAKE FURTHER NOTICE THAT, at that same time, Defendants
25 move this Court for an Order pursuant to Rule 12(f) of the Federal Rules of Civil
26 Procedure striking portions of the First Amended Complaint on the basis that the
27 following paragraphs are comprised of redundant, immaterial, impertinent, or
28 scandalous matter:

1 1. **Page 4, lines 2 through 8:** “is what appears to be a general pattern and
2 practice by UMG, Interscope and members of The Black Eyed Peas, of deliberate
3 and intentional copyright infringement as to songs written by other
4 artists/songwriters and submitted in good faith to one or more of these Defendants.
5 There also is a disturbing pattern and practice of taking bits and pieces of other
6 artist’s songs and copying them as part of songs performed by The Black Eyed Peas,
7 even if the copied portions do not rise to the level of copyright infringement.”

8 2. **Page 4, lines 9 through 16:** “There is an important need and public
9 benefit for the legal rights and music of copyright owners to be protected. This can
10 be especially true for unknown artists and songwriters, such as the Plaintiff, who are
11 financially vulnerable to instances where there is a callous disregard of their rights
12 by famous and wealthy artists and major record labels. Granting the relief and
13 remedies sought herein, in response to the facts and circumstances alleged, will
14 serve to help maintain and further the integrity of the music industry and the
15 interests of music consumers at large.”

16 3. **Page 10, lines 4 through 6:** “as well as other songs that he and the
17 Defendant Black Eyed Peas unlawfully and willfully plagiarized, as alleged below,
18 as part of a repeated pattern and practice of intentional copyright infringement.”

19 4. **Page 10, lines 7 through 9:** “Will.I.Am’s A&R role with Interscope,
20 while at the same time being a major artist signed to the label, posed a conflict of
21 interest and incentivized and encouraged the doing of the kind of wrongful acts
22 alleged herein.”

23 5. **Page 10, lines 22 through 25:** “Defendants UMG and Interscope are,
24 upon information and belief, also direct infringers due to their conspiracy with the
25 members of The Black Eyed Peas to conduct an ongoing pattern and practice of
26 intentional copyright infringement, as alleged below.”

27 6. **Page 14, line 20 through page 15, line 9:** “Defendants’ Conspiracy to
28 Engage in and Conduct a Pattern and Practice of Ongoing Willful Copyright

1 Infringement as to Others

2 47. The actions alleged herein are not a single isolated incident.
3 Rather, they are part of a general pattern and practice and in fact, on information and
4 belief, a civil conspiracy by and among Defendants UMG, Interscope and the Black
5 Eyed Peas. The conspiracy consists of a bad-faith pattern and practice among these
6 Defendants of cavalierly and intentionally disregarding statutory copyright laws by
7 either copying songs, or portions thereof, from other artists and/or songwriters, and
8 changing them slightly in order to make them appear as original works, or sampling
9 other songs. This is routinely done without gaining the proper authorization from
10 the copyright holders, who otherwise are looking to collaborate on their songs with
11 the Defendants when they send them their music, and who rightfully expect to be
12 given appropriate compensation, credits and legal protections.

13 48. The foregoing course of conduct demonstrates the element of
14 willfulness relative to the infringing acts perpetrated against the Plaintiff, as well as
15 demonstrating the bad faith motives of Defendants UMG, Interscope and the Black
16 Eyed Peas.”

17 7. **Page 15, lines 12 through 14:** “They knew, or should have known,
18 that having Will.I.Am as an A&R for Interscope presented the distinct probability, if
19 not the inevitability, that the actions engaged in herein would take place.”

20 8. **Page 15, lines 16 through 17:** “these parties had an understanding or
21 agreement between themselves that the conduct complained of herein would and
22 could take place.”

23 9. **Page 15, line 20 through page 16, line 17:** “UMG, Interscope and
24 the Black Eyed Peas know that, from a business standpoint, the intentional copyright
25 infringement of songs from an independent or unknown artist and/or songwriter can
26 create a major financial windfall to them, while at the same time injure or damage
27 the financial and professional interests of the artist and/or songwriter. This is
28 because they know or expect that when they engage in intentional copyright

1 infringement either of the following will happen:

2 (a) The independent/unknown artist and/or songwriter either does
3 not have the financial means of pursuing a lengthy and costly copyright
4 infringement case against a major recording group and record label, or simply will
5 never find out about the infringement and come forward and claim ownership of
6 his/her song, and thus the infringing parties will have successfully gotten away with
7 copyright infringement, and reaped the profits off of someone else's copyrighted
8 material; or

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

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

19 10. **Page 16, lines 18 through 28:** “The Defendants’ actions alleged
20 herein, are essentially the engaging in unfair business practices under California
21 law. The Defendants have artists and songwriters voluntarily submitting their music
22 to UMG and Interscope, which they willingly accept, and they simply pick and
23 choose the best music to copy, knowing that the artists/songwriters who submitted
24 the music have no practical or adequate way to protect their intellectual property.
25 This course of conduct ensures that UMG’s and Interscope’s artists always have
26 access to the “best” music in the marketplace. This practice, along with UMG’s and
27 Interscope’s superior financial capabilities, also ensures that the submitting
28 artists/songwriters, who may otherwise be talented enough to have their music

1 heard, will never get the proper credit for their music or get a chance to properly
2 promote themselves as musicians.”

3 11. **Page 17, line 13 through page 18, line 19:** “The conspiracy, pattern
4 and practice among these particular Defendants of knowingly and intentionally
5 engaging in, or allowing there to be, repeated instances of willful copyright
6 infringement is demonstrated by the following examples, among others, in addition
7 to the allegations contained herein:

8 (a) Grounded Music Inc. filed a lawsuit in United States District Court
9 for the Central District of California in 2009, Case No. 09- cv-06776, alleging
10 Will.I.Arn and Fergie willfully and intentionally copied the group Groundation’s
11 song “Waterfall” in writing Fergie’s song “Voodoo Doll,” which was featured on
12 her debut solo album, The Dutchess. A comparison of these two songs
13 demonstrates that they are substantially similar, and that certain portions of the two
14 songs are identical. On April 1, 2010, the Court entered an Order granting the
15 parties’ Stipulation to Dismiss Case pursuant to a conditional settlement (the
16 “Stipulation”). The case has not been reified by Groundation within the 60 days
17 allotted in the terms of the Stipulation and in the event a settlement could not be
18 reached, and therefore, upon information and belief, the Black Eyed Peas have
19 settled this claim.

20 (b) In or around the fall of 2009, musician Adam Freeland (“Freeland”)
21 accused Will.I.Am and the other individual members of the Black Eyed Peas of
22 intentionally sampling (taking an audio segment from an original recording and
23 inserting it directly into a new recording) his song “Mancry,” without authorization,
24 which ended up as the background music on the Black Eyed Peas’ hit song “Party
25 All the Time.” A comparison of these two songs demonstrates that the Black Eyed
26 Peas did in fact sample Freeland’s song “Mancry,” and simply added a drum pattern
27 and lyrics on top of the sample. This dispute was reported in the media to have been
28 recently settled out of court before a case was filed by Freeland.

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

6 12. **Page 18, line 21 through page 19, line 2:** “there are other instances
7 where the Black Eyed Peas copied portions of Pringle’s songs from the demo CDs
8 that he submitted to UMG, EMI and Interscope, from around 1994 to 2008, when
9 writing songs on The E.N.D. album, as well as several songs from Will.I.Am’s
10 Songs About Girls album. On information and belief, Guetta also copied the guitar
11 twang sequence when he wrote his hit song “Love is Gone.” While the above
12 instances of copying may not rise to the level of copyright infringement of Pringle’s
13 musical compositions, they further establish a pattern and practice of copying music
14 from other songwriters, in turn establishing the willfulness of Defendants’
15 infringement with respect to “Take a Dive.””

16 13. **Page 19, lines 3 through 7:** “The foregoing actions in Paragraphs 55
17 and 56 above occurred in the same relative time period as did the acts alleged herein
18 as to “Take a Dive” and “I Gotta Feeling.” The actions also have a remarkable
19 similarity in methodology as between the circumstances alleged herein as to
20 Plaintiff’s song, “Take a Dive,” and in regards to how these other songs and their
21 songwriters/artists were wronged.”

22 14. **Page 19, lines 9 through 13:** “their actions and illustrate their practice
23 and pattern of willful copyright infringement of songs from unknown artists and/or
24 songwriters, and their complete disregard for compliance with statutory copyright
25 laws.

26 59. The Black Eyed Peas have, in effect, launched their careers to
27 new heights off of copying copyrighted material of other artists. ”

28 15. **Page 19, line 22 through page 20, line 2:** “The fact that the actions

1 herein as to the Plaintiff are not an isolated occurrence, but part of a general pattern
2 and practice, as alleged herein, where there were similar occurrences of willful
3 copyright infringement, makes the actions of the Defendants reprehensible, and
4 taken with a callous disregard of the rights of artists and songwriters who, like the
5 Plaintiff, are highly vulnerable to such actions by famous and wealthy artists and
6 major record labels. If these actions go unchecked and are not punished, they will
7 have a damaging effect on the integrity of the music industry and encourage other
8 famous artists and major record labels to engage in similar wrongful and bad faith
9 behavior.”

10 16. **Page 22, line 2:** “and advantages”

11 17. **Page 22, lines 18 through 21:** “the practice of their willful copyright
12 infringement as to the works of other artists . . . Defendants pay Plaintiff’s costs and
13 reasonable attorney’s fees for his prosecution of this claim[.]”

14 18. This Motion also seeks to strike paragraphs relating to the points raised
15 in the aforementioned motion to dismiss.

16 This Motion will be based upon this Notice, the attached Memorandum of
17 Points and Authorities, all pleadings and papers on file in this action, and all other
18 matter that the Court may consider. It is made following the conference of counsel
19 pursuant to Central District Local Rule 7-3, which took place on December 6, 2010.

20 Dated: December 13, 2010

BRYAN CAVE LLP

Kara Cenar
Jonathan Pink

21
22 By: /s/ Jonathan Pink

Jonathan Pink

23 Attorneys for Defendants WILLIAM
24 ADAMS; STACY FERGUSON; ALLAN
25 PINEDA; JAIME GOMEZ; TAB
26 MAGNETIC PUBLISHING;
27 HEADPHONE JUNKIE
28 PUBLISHING, LLC; will.i.am. music, llc;
JEEPNEY MUSIC, INC.;
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