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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**

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
28 Defendants.

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS' MOTION TO
DISMISS FIRST AMENDED
COMPLAINT; MOTION TO
STRIKE; AND MOTION FOR
MORE DEFINITE STATEMENT**

Hearing

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TABLE OF CONTENTS

Page

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

I. PRELIMINARY STATEMENT 1

II. FACTUAL BACKGROUND..... 3

III. THIS COURT SHOULD DISMISS PLAINTIFF’S FIRST AMENDED COMPLAINT IN ITS ENTIRETY BECAUSE PLAINTIFF FAILED TO REGISTER THE WORK HE CLAIMS WAS INFRINGED 5

 A. Legal Standard..... 5

 B. Legal Argument..... 6

 1. Dismissal is Appropriate Because Plaintiff Has Failed To Comply with 17 U.S.C. § 411 6

 2. Dismissal Is Proper Because The Complaint Fails To Sufficiently Allege Access..... 10

IV. THE COURT SHOULD DISMISS THE FAC PURSUANT TO RULE 8(A)(2)..... 11

V. THIS COURT SHOULD ORDER PLAINTIFF TO PLEAD WITH GREATER SPECIFICITY PURSUANT TO FED. R. CIV. P. 12(E)..... 12

VI. THIS COURT SHOULD STRIKE ALL ALLEGATIONS WHICH ARE IMMATERIAL AND SERVE NO PURPOSE OTHER THAN TO PLACE DEFENDANTS IN A NEGATIVE LIGHT 14

 A. Legal Standard..... 14

 B. Allegations of Third Party Accusations of Copying Should Be Stricken..... 17

 C. All References To “Conspiracy” to Commit Copyright Infringement and Unfair Business Practices Under California Law Should Be Stricken as Immaterial 19

 D. All References to Any Alleged “Pattern and Practice” of Copyright Infringement Should Be Stricken as Immaterial and Impertinen..... 20

 E. All References to Attorneys Fees and Costs Should Be Stricken as Plaintiff is Not Entitled to Any Statutory Recovery of the Same 21

VII. CONCLUSION..... 22

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TABLE OF AUTHORITIES

Page

Cases

1

2

3

4 *Ashcroft v. Iqbal*,
129 S.Ct. 1937 (2009)..... 5, 9

5 *Associated Gen. Contrs. of Am. v. Metropolitan Water Dist.*,
159 F.3d 1178 (9th Cir. 1998) 5, 13

6

7 *Bailey v. Black Entertainment Television*,
C.A. No. 3:09CV787, 2010 WL 1780403, at *3 (E.D. Va. May 3, 2010)..... 11

8 *Balistreri v. Pacifica Police Dept.*,
901 F.2d 696 (9th Cir. 1988)..... 5

9

10 *Bell Atlantic Corp. v. Twombly*,
550 U.S. 544, 127 S.Ct. 1955 (2007)..... 5

11 *Bureerong v. Uvawas*,
922 F.Supp. 1450 (CD CA 1996) 21

12

13 *Cairns v. Franklin Mint Co.*,
24 F. Supp. 2d 1013 (C.D. Cal. 1998) 6

14 *Conley v. Gibson*,
355 U.S. 41: 78 S. Ct. 99 (1957)..... 5

15

16 *Corrections USA v. Dawe*,
504 F. Supp. 2d 924 (E.D. Cal. 2007)..... 16

17 *Cosmetic Ideas, Inc. v. IAC/InteractiveCorp*,
606 F.3d 612 (9th Cir. 2010)..... 6, 7, 8

18

19 *Fantasy, Inc. v. Fogerty*,
984 F.2d 1524 (9th Cir. 1993) 15, 17

20 *Feldman v. Twentieth Century Fox Film Corp., C.A.*
No. 09-10714, 2010 WL 2787698, at *7 (D. Mass. July 13, 2010) 10

21

22 *Fogerty v. Fantasy, Inc.*,
510 U.S. 517 (1994)..... 15, 22

23 *Ghahremani v. Borders Group, Inc.*,
2010 U.S. Dist. LEXIS 107202 (S.D. Cal. 2010)..... 16, 18, 20

24

25 *Gillibeau v. City of Richmond*,
417 F.2d 426 (9th Cir. 1969)..... 12

26 *Jorgensen v. Epic/Sony Records*,
351 F.3d 46 (2d Cir. 2003)..... 11

27

28 *Kodadek v. MTV Networks, Inc.*,
152 F.3d 1209 (9th Cir. 1998) 7, 8

1 *LeDuc v. Kentucky Cent. Life Ins. Co.*,
 814 F. Supp. 820 (N.D. Cal. 1992) 15, 16

2

3 *Loree Rodkin Mgmt. Corp. v. Ross-Simons, Inc.*,
 315 F. Supp. 2d 1053 (C.D. Cal. 2004) 6

4 *Martinez v. McGraw*,
 No. 3:08-0738, 2010 WL 1493846, at *5 (M.D. Tenn. Apr. 14, 2010) 10

5

6 *Mendiondo v. Centinela Hosp. Med. Ctr.*,
 521 F.3d 1097 (9th Cir. 2008) 5

7 *Meta-Film Assocs., Inc. v. MCA, Inc.*,
 586 F. Supp. 1346 (C.D. Cal. 1984) 10, 11

8

9 *Metro-Goldwyn-Mayer, Inc. v. American Honda Motor Co., Inc.*,
 900 F. Supp. 1287 (C.D. Cal. 1995) 10

10 *Morris v. Bus. Concepts, Inc.*,
 259 F.3d 65 (2d Cir. 2001)..... 10

11

12 *Murphy v. Kirkeby*,
 9 F.R.D. 725 (S.D.N.Y. 1949) 16

13 *Neilson v. Union Bank of California, N.A.*,
 290 F. Supp. 2d 1101 (C.D. Cal. 2003) 15

14

15 *Newton v. Diamond*,
 388 F.3d 1189 (9th Cir. 2004) 12

16 *Nova Design Build, Inc. v. Grace Hotels, LLC*,
 2010 WL 747896, at *3 (N.D.Ill. Feb. 26, 2010) 9

17

18 *Reed Elsevier, Inc. v. Muchnick*, --- U.S. ----,
 130 S.Ct. 1237, 176 L.Ed.2d 17 (2010)..... 6, 10

19 *Santrayll v. Burrell*,
 1998 WL 24375 (S.D.N.Y. 1998)..... 17, 20

20

21 *Schrock v. Learning Curve International, Inc.*,
 586 F.3d at 517 (quoting *Feist Publ'ns, Inc.*, 499 U.S. at 361)..... 9

22 *Seiler v. Lucasfilm, Ltd.*,
 808 F.2d 1316 (9th Cir. 1986) 8

23

24 *Survivor Prods. LLC v. Fox Broad. Co.*,
 2001 U.S. Dist. LEXIS 25512 (C.D. Cal. 2001)..... 17, 19, 20

25 *Swirsky v. Carey*,
 376 F.3d 841 (9th Cir. 2004)..... 13, 16

26

27 *Tisi v. Patrick*,
 97 F. Supp. 2d 539 (S.D.N.Y. 2000)..... 2

28

1 *Todhunter, Mandava, & Assoc. v. I.C.C.I. Pty., Ltd.*,
2 1991 U.S. Dist. LEXIS 11353 (D.D.C. 1991) 18, 20
3
4 *Video Pipeline, Inc. v. Buena Vista Home Entertainment, Inc.*,
5 275 F. Supp. 2d 543 (D.N.J. 2003) 7
6
7 *Wilkerson v. Butler*,
8 229 F.R.D. 166 (E.D. Cal. 2005) 15, 16, 20, 21
9
10 **Statutes**
11 17 U.S.C. § 301 20
12 17 U.S.C. § 407 8
13 17 U.S.C. § 408(b) 2, 7, 8
14 17 U.S.C. § 411 14
15 17 U.S.C. § 412(a)..... 22
16 17 U.S.C. §411 1, 2, 6
17 *Derek Andrew, Inc. v. Poof Apparel Corp.*,
18 528 F.3d 696 (9th Cir. 2008)..... 22
19 Fed. R. Civ. P. 12(e)..... 13, 14
20 Fed. R. Civ. P. 12(f) 14, 15
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PRELIMINARY STATEMENT**

3 This lawsuit involves a legally deficient First Amended Complaint (“FAC”)
4 asserting a single claim for copyright infringement, by plaintiff Bryan Pringle
5 (“Plaintiff”), against *seventeen* (17) different defendants (collectively,
6 “Defendants”) including the Grammy Award winning musical group, The Black
7 Eyed Peas, and the world renowned DJ and music producer, David Guetta
8 (“Guetta”).

9 The suit concerns the song “I Gotta Feeling” released by The Black Eyed
10 Peas in June 2009, and appears to be directed solely at the “musical bed” of this
11 song. Plaintiff claims that “I Gotta Feeling” infringes his song “Take a Dive,”
12 which he alleges (but attaches no contemporaneous support)¹ he provided to a few
13 (but not all) of the Defendants on numerous occasions over a decade through
14 unsolicited submissions.

15 As shown in public information readily accessible to Plaintiff and his counsel,
16 the accused musical foundation was created by Frederic Riesterer (“Riesterer”) and
17 produced by Guetta. (*See also this Court Docket e.g.*, Declaration of Frederic
18 Riesterer, submitted in Opposition to Plaintiff’s November 2010 *Ex Parte*
19 Application for a TRO.)² Both Riesterer and Guetta reside in France.

20 _____
21 ¹ All requests for a copy of the actual song from the audio CD Pringle contends he
sent out have been refused. See Cemar Decl., par. 3.

22 ² As set forth in that Declaration, which is part of the Court record in this case, Mr.
23 Riesterer independently created the guitar twang sequence in “I Gotta Feeling,”
24 having composed it in his own studio from October 2008 through February or
25 March of 2009. (Riesterer Decl., par. 3.) Indeed, Mr. Riesterer states in that
26 declaration that the “guitar twang” was derived from an earlier song of his, entitled
27 “Never Mind,” composed on February 4, 2007, and was itself licensed from a
28 French music library known as Univers Sons. (Riesterer Decl., pars. 3-5.) Mr.
Riesterer states that the instrumentation ultimately used for the “guitar twang”
sequence in “I Gotta Feeling” was the sound bank known as “Strat with SM57
Crunch” from the Univers Sons music library. (Riesterer Decl., par. 6.) Mr.
Riesterer never had access to any musical works created by Mr. Pringle. (Riesterer
Decl., par. 7.)

1 Plaintiff does not allege he directly provided Riesterer or Guetta—or indeed
2 any member of The Black Eyed Peas—with any unsolicited CD or demo of any of
3 his work, let alone with the work he claims was infringed. Riesterer has not been
4 served and Guetta, and defendants Rister Editions (“Rister”) and Shapiro Bernstein
5 & Co. (“Shapiro”) have moved to dismiss the Complaint for, among other things,
6 failure to allege access by them.³

7 Against the foregoing backdrop, this Motion addresses three main
8 deficiencies in Plaintiff’s First Amended Complaint (“FAC”):

9 1) failure to meet the statutory requirement of registration under 17 U.S.C.
10 §411 for the “numerous variations” alleged in FAC, ¶¶ 3 and 29 including but not
11 limited to, the failure to meet the statutory requirement of a complete application
12 with a bona fide copy deposit copy as required in 17 U.S.C. § 408(b) for the version
13 of the work Plaintiff claims was infringed and the other songs in FAC, ¶¶ 55 and 56.

14 2) failure to plead facts sufficient to allege that any Defendant had access to
15 Plaintiff’s work, instead relying upon vague and speculative assertions “on
16 information and belief” of second and third hand “access” over 10 years of
17 unsolicited submissions of “multiple” unidentified versions by Plaintiff to unnamed
18 individuals (or even entities) within large corporate conglomerates;⁴ and

19 3) improper inclusion of “redundant, immaterial, impertinent, or scandalous
20 matter” (pursuant to Fed. R. Civ. P. 12(f)).

21 Defendants respectfully request that the FAC be dismissed, and that Plaintiff
22 be ordered to strike from this or any later pleading all improper matter.

23
24 ³ The parties to this Motion join in Guetta, Rister and Shapiro’s motion on the issue
of lack of access.

25 ⁴ Unsolicited submissions, by law, are insufficient allegations to establish access.
26 *Merrill v. Paramount Pictures Corp.*, No. 05-cv-1150, 2005 WL 3955653, at *7
27 (C.D. Cal. Dec. 19, 2005); *Ferguson v. National Broadcasting Co.*, 584 F.2d 111,
28 113 (5th Cir. 1978); *Tisi v. Patrick*, 97 F. Supp. 2d 539, 547 (S.D.N.Y. 2000)
(holding an unsolicited submission of a musical work to a record company does not
establish access by the recording artist).

1 **II. FACTUAL BACKGROUND**

2 Although difficult to ascertain from Plaintiff’s twenty-three page FAC, this
3 case involves a single one-count complaint of copyright infringement. Plaintiff
4 alleges that he wrote and recorded a song entitled “Take a Dive” in 1998, which he
5 registered as part of an album entitled “Dead Beat Club: 1998.” FAC, ¶¶ 27, 28,
6 Exh. B. That registration, however, does not list “Take A Dive” as one of the songs.
7 Plaintiff further alleges that he created “numerous derivative versions” of “Take a
8 Dive” over a period of years, FAC, ¶ 3, and that he submitted these versions,
9 unsolicited, to record companies, including Defendants Interscope, EMI April Music
10 Inc.⁵ and UMG Recordings, Inc. over a ten-year period. FAC, ¶¶ 3, 31. Plaintiff
11 alleges that he added a “guitar twang sequence of notes” to at least one of these
12 derivative versions (the “Twang Version”). FAC, ¶ 29. Plaintiff alleges the 2009
13 song “I Gotta Feeling” infringes the Twang Version (FAC, ¶ 40), but continues to
14 remain ambiguous as to whether any of the other “numerous variations” (FAC, ¶ 3)
15 are at issue.

16 Scratching the surface of this seemingly simple story, however, the flaws in
17 Plaintiff’s allegations become immediately apparent. First, the 1998 Dead Beat
18 Club registration does not list “Take a Dive” as one of the tracks covered by the
19 registration, FAC, Exh. B, and even if it did, Plaintiff concedes that the guitar
20 “twang” he claims was infringed was not included in his original work. FAC, ¶ 29.
21 Thus reference to this song, and unsolicited submissions of this song, is immaterial
22 to his FAC.

23 Second, while Plaintiff alleges that he has now applied to register the Twang
24

25
26 ⁵ Plaintiff has refused EMI April Music Inc.’s request for a more definite statement
27 regarding whether the allegations of unsolicited submissions were to EMI, the
28 record label, as opposed to Defendant EMI April Music Inc. Defendant EMI April
Music Inc. herein moves for a more definite statement under Rule 12e Fed. R. Civ.
P.

1 Version of “Take a Dive,”⁶ for unknown reasons he does not attach that application
2 or the status report of the application to the FAC, nor has he alleged or supplied
3 Defendants or the Court with the required *bona fide* copy of Twang Version he
4 claims to have created in 1999 and sent as part of the unsolicited submissions.⁷

5 Third, Plaintiff does not allege facts indicating when and to whom the alleged
6 Twang Version submissions were made. Fourth, Plaintiff does not alleges any *facts*
7 tying these unsolicited submissions to any of the alleged songwriters of “I Gotta
8 Feeling”, and in particular to any of the individuals in France involved in the
9 particular musical bed at issue.⁸ Instead, Plaintiff alleges, that, “on information and
10 belief,” one of the Black Eyed Peas, Guetta, and/or, Riesterer accessed one or more
11 of Pringle’s demo CDs.” FAC, ¶ 37.⁹

12 Although substantively deficient, Plaintiff’s FAC is also replete with
13 improper irrelevant and scurrilous allegations of other unrelated *alleged* but
14 unconfirmed infringements by The Black Eyed Peas, as well as vague references to
15 other legal theories not alleged in the FAC. *See, e.g.*, FAC, ¶¶ 47-59. As described
16 below, Plaintiff’s FAC fails to satisfy the statutory prerequisites for pleading a
17 copyright infringement action, and should be dismissed on that ground. Moreover,
18 should Plaintiff’s FAC survive Defendants’ motion to dismiss, this Court should
19 strike Plaintiff’s numerous irrelevant allegations and should order Plaintiff to refile
20 his FAC with a “short and plain statement” of his claim for relief, as the Federal

21 _____
22 ⁶ There was no registration or application for registration at the time of filing the
Original Complaint on October 28, 2010.

23 ⁷ See FAC, ¶ 27, confirming that version of song submitted on CD Exhibit A was
24 made by counsel. See DKT 9.

25 ⁸ See co-pending motion to dismiss filed by Guetta, Rister and Shapiro.

26 ⁹ Plaintiff also alleges “on information and belief,” that one of the Black Eyed Peas,
27 defendant William Adams, Jr. (professionally known as “will.i.am”), held “an A&R,
28 or some similar position” at Interscope, but fails to tie that speculation to any
purported timing or version of unsolicited submission containing the Twang Version
or any version.

1 Rules require.

2 **III. THIS COURT SHOULD DISMISS PLAINTIFF'S FIRST AMENDED**
3 **COMPLAINT IN ITS ENTIRETY BECAUSE PLAINTIFF FAILED TO**
4 **REGISTER THE WORK HE CLAIMS WAS INFRINGED**

5 **A. Legal Standard**

6 Under Fed. R. Civ. P. 12(b)(6), a court must dismiss where the complaint
7 lacks a cognizable legal theory or sufficient facts to support a cognizable legal
8 theory.” *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir.
9 2008); *Conley v. Gibson*, 355 U.S. 41, 45-46: 78 S. Ct. 99, 102 (1957) (dismissal
10 appropriate where it “appears beyond doubt that the plaintiff can prove no set of
11 facts in support of his claim which would entitle him to relief”).

12 To survive a motion to dismiss on this ground, a plaintiff must “plead enough
13 facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v.*
14 *Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 1974 (2007). This means that the plaintiff
15 must provide “more than labels and conclusions, and a formulaic recitation of the
16 elements of a cause of actions. . . . Factual allegations must be enough to raise a
17 right to relief above the speculative level.” *Id.* at 1964-65 (internal citations
18 omitted). A facially plausible claim is one where “the plaintiff pleads factual
19 content that allows the court to draw the reasonable inference that the defendant is
20 liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009).
21 “[C]onclusory allegations of law and unwarranted inferences are not sufficient” to
22 defeat a motion to dismiss. *Associated Gen. Contrs. of Am. v. Metropolitan Water*
23 *Dist.*, 159 F.3d 1178, 1181 (9th Cir. 1998).

24 To this end, a motion to dismiss pursuant to Rule 12(b)(6) tests the legal
25 sufficiency of plaintiff’s claims such that dismissal may be based either on the “lack
26 of a cognizable legal theory” or “the absence of sufficient facts alleged under a
27 cognizable legal theory.” *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th
28 Cir. 1988); *see also Cairns v. Franklin Mint Co.*, 24 F. Supp. 2d 1013, 1023 (C.D.

1 Cal. 1998). Here, dismissal is justified based on the latter: Plaintiff cannot allege
2 facts sufficient to support a claim for copyright infringement.

3 **B. Legal Argument**

4 **1. Dismissal is Appropriate Because Plaintiff Has Failed To**
5 **Comply with 17 U.S.C. § 411**

6 **a. Registration is a *Required* Pre-Condition to Filing**

7 Pursuant to 17 U.S.C. §411(a), a plaintiff must register with the United States
8 Copyright Office the work allegedly infringed *prior* to instituting an action for
9 copyright infringement. *Id.* The language of the statute is clear: “*no action for*
10 *infringement of the copyright in any United States work shall be instituted until*
11 *registration of the copyright claim has been made in accordance with this title.*”
12 *Id.* (emphasis added); *see also Cosmetic Ideas, Inc. v. IAC/InteractiveCorp*, 606
13 F.3d 612, 615 (9th Cir. 2010) (citing to *Reed Elsevier, Inc. v. Muchnick*, --- U.S. ---,
14 130 S. Ct. 1237, 1237 (2010) (holding “[s]ection 411(a)’s registration requirement is
15 a pre-condition to filing a claim”).

16 Plaintiff has failed to allege he registered the work he claims was infringed,
17 which bars his claim of infringement in this case. *See Loree Rodkin Mgmt. Corp. v.*
18 *Ross-Simons, Inc.*, 315 F. Supp. 2d 1053, 1056 (C.D. Cal. 2004). That is, until he
19 submits a complete application, and the Copyright Office registers or refuses to
20 register the work(s) at issue, he cannot plead facts sufficient to state a claim for
21 copyright infringement. *Loree Rodkin Mgmt. Corp. v. Ross-Simons, Inc.*, 315 F.
22 Supp. 2d 1053, 1056 (C.D. Cal. 2004) (lack of registration bars an infringement
23 claim against the alleged infringers).

24 **b. Plaintiff’s Attempted November 15, 2010 Filing Is**
25 **Insufficient**

26 A few weeks prior to filing his FAC, Plaintiff filed his original complaint,
27 which purported to rely on the 1998 registration for “Dead Beats Club: 1998.” *See*
28 Dkt. No. 1, ¶ 28. Plaintiff conceded in the original complaint, however, as he does

1 in the FAC, that the “guitar twang sequence” was not in this original version, *See*
2 *id.*, ¶ 29; *see also* FAC, ¶ 29. Plaintiff’s original registration (if it relates at all) was
3 therefore insufficient as a matter of law. *See, e.g., Video Pipeline, Inc. v. Buena*
4 *Vista Home Entertainment, Inc.*, 275 F. Supp. 2d 543, 556 (D.N.J. 2003) ([W]here a
5 preexisting work is registered, but the derivative work is not, a suit for infringement
6 may be maintained as to any preexisting work, but not as to any element original to
7 the unregistered derivative work”).

8 In his FAC, Plaintiff attempts to cure this defect by alleging that he has
9 recently filed a “pending” application for the Twang Version, *see* FAC, ¶ 29,
10 although he does not attach the pending application or any status report from the
11 Copyright Office. *See* FAC, ¶29. Plaintiff also does not allege that he deposited a
12 *bona-fide* copy of the Twang Version, and thus has not alleged the requirement of
13 the pending registration of a complete application.

14 Notably a reconstructed version of the Twang Version is not a proper deposit
15 of a bona fide copy for an application. As part of the registration application
16 requirement, the copyright owner must submit a proper deposit of the work at issue.
17 *Cosmetic Ideas, supra*, 606 F.3d at 621 (registration is not complete without a
18 submission of bona fide copies of the work; a reconstruction of the same will not
19 suffice); *see also Kodadek v. MTV Networks, Inc.*, 152 F.3d 1209, 1211 (9th Cir.
20 1998) (drawings made in 1993 from memory of drawings originally made in 1991
21 did not satisfy deposit requirement because they were not made by “directly
22 referring to the originals,” nor were they “bona fide copies of the originals”); *see*
23 *also* 17 U.S.C. § 408(b).

24 In *Kodadek*, the plaintiff sued MTV for infringing his alleged copyright in the
25 two animated characters on which MTV’s series “Beavis and Butthead” was based.
26 Kodadek alleged he had created the characters in 1991, but did not seek to register
27 them until 1993, after the series had already begun to air. More important, Kodadek
28 did not deposit his purported original sketches of the characters, but instead

1 deposited reconstructions sketched in 1993 of the original images he claimed to
2 have created two years earlier. The Ninth Circuit found that because Kodadek’s
3 1993 drawings were not created by “directly referring to the originals,” they were
4 not “bona fide copies of the originals” and did not satisfy the deposit requirements.
5 *Id.* at 1212; *see also Seiler v. Lucasfilm, Ltd.*, 808 F.2d 1316, 1322 (9th Cir. 1986)
6 (finding that deposit of a recreation of an original drawing did not satisfy the deposit
7 requirement).

8 Here, as in *Kodadek*, Plaintiff has failed to allege that he has complied with
9 17 U.S.C. § 408(b) by depositing *bona fide* copies of the work allegedly infringed,
10 and thus his *pending* application will not satisfy 17 U.S.C. § 411(a). *Kodadek*, 152
11 F.3d at 1211; 17 U.S.C. § 408(b). Plaintiff must allege, at the very least, that he has
12 submitted a *bona fide* copy of the version he claims Defendant infringed. Unless
13 and until Plaintiff alleges compliance with 17 U.S.C. § 408(b) by having deposited
14 such copies, he is legally barred from pursuing this case. *See Cosmetic Ideas*, 606
15 F.3d at 621. Absent that registration, and an allegation of full compliance with 17
16 U.S.C. § 407, the FAC must be dismissed for failure to satisfy the registration
17 prerequisite set forth in 17 U.S.C. § 411.

18 **c. No Registrations for Numerous Variations**

19 Plaintiff has also failed to allege either registration or application for
20 registration of any of the “numerous variations” alleged to exist in FAC, ¶ 3. If any
21 of those variations are being asserted, and are different, such allegations are a
22 required prerequisite to bringing an action on those variations. Their absence from
23 the pleadings requires dismissal with respect to those variations.

24 **d. No Registrations of Other Songs**

25 Similarly, in FAC, ¶56 Pringle makes allegations regarding alleged copying
26 of “other [Pringle] songs” and admits that the same “may not rise to the level of
27 copyright infringement.” Pringle has failed to state a claim for these “other songs”
28

1 and has failed to meet the statutory prerequisite (17 U.S.C. § 411) for bring such a
2 claim in the FAC. Dismissal is appropriate under Rule 12(b)(6) Fed. R. Civ. P. with
3 respect to allegations directed to “other songs.”

4 Finally, dismissal is appropriate for the assertions made in FAC, ¶ 55, with
5 respect to songs of others, as Pringle has no standing to make such allegations, and
6 has not alleged standing or ownership.¹⁰ Pringle has also failed to meet the statutory
7 prerequisite for making such a claim, registration, (17 U.S.C. § 411) and has
8 otherwise failed to state a claim upon which relief can be granted for such songs of
9 others.

10 Because Plaintiff has failed to allege these basic, but necessary facts, his FAC
11 “stops short of the line between possibility and plausibility of entitlement to relief.”
12 *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (quoting *Twombly*, 550 U.S. at 557).
13 Plaintiff’s FAC should be dismissed for this reason alone.

14 **e. The Document Attached to the Complaint as**
15 **Exhibit “B” Does Not Fulfill the Registration**
16 **Requirement of 17 U.S.C. Section 411(a) Even if it**
17 **Applied to the Derivative Work**

18 Even assuming the copyright registration attached to the FAC as Exhibit “B”
19 otherwise applies to the 1999 Twang Version (which it does not), it still fails to
20 satisfy Plaintiff’s registration obligation. As noted above, the registration attached
21 as Exhibit B purports to register a *compilation* of songs—not one of which is titled
22 “Take a Dive.” See FAC, Ex. B. Accordingly, while a registration of a compilation
23 can sometimes suffice to register the compilation’s constituent parts where the
24 registrant owns the rights in the underlying works,¹¹ see, e.g., *Morris v. Bus*.

25 ¹⁰ *Schrock v. Learning Curve International, Inc.*, 586 F.3d at 517 (quoting *Feist*
26 *Publ’ns, Inc.*, 499 U.S. at 361) (stating in addition that “[i]n this circuit,
27 copyrightability is an issue of law for the court”). *Nova Design Build, Inc. v. Grace*
28 *Hotels, LLC*, 2010 WL 747896, at *3 (N.D.Ill. Feb. 26, 2010). Plaintiff has not and
cannot allege the first ownership element for its allegations of infringement of the
songs of others.”

¹¹ The registration does not fall within these exceptions because of its many other

1 *Concepts, Inc.*, 259 F.3d 65, 68 (2d Cir. 2001), *abrogated on other grounds by Reed*
2 *Elsevier, Inc. v. Muchnick*, --- U.S. ----, 130 S.Ct. 1237, 176 L.Ed.2d 17 (2010),
3 Exhibit B does not appear even to includes a song titled “Take A Dive” the alleged
4 work on which the 1999 derivative was based, let alone the guitar “twang” and other
5 elements—which according to the FAC (FAC, ¶ 29) are found only in the 1999
6 derivative—that Plaintiff claims were infringed.

7 **2. Dismissal Is Proper Because The Complaint Fails To**
8 **Sufficiently Allege Access**

9 To allege access, the plaintiff “must show more than that the defendant had a
10 ‘bare possibility’ of access . . . instead, the plaintiff must demonstrate that the
11 defendant had a ‘reasonable possibility’ to view the plaintiff’s work.” *Meta-Film*
12 *Assocs., Inc. v. MCA, Inc.*, 586 F. Supp. 1346, 1355 (C.D. Cal. 1984) (citations
13 omitted); *see Metro-Goldwyn-Mayer, Inc. v. American Honda Motor Co., Inc.*, 900
14 F. Supp. 1287, 1297 (C.D. Cal. 1995) (“Access may not be inferred through mere
15 ‘speculation or conjecture.’”) (quoting *Ferguson v. National Broadcasting Co.*, 584
16 F.2d 111, 113 (5th Cir.1978); 4 Melville B. Nimmer & David Nimmer, *Nimmer on*
17 *Copyright* § 13.02[A], at 13-22 (Rev. ed. 2010) (same)).

18 Because access to plaintiff’s work is necessary to establish unauthorized
19 copying, complaints will be dismissed where they do not contain plausible and non-
20 speculative allegations of access. *See, e.g., Martinez v. McGraw*, No. 3:08-0738,
21 2010 WL 1493846, at *5 (M.D. Tenn. Apr. 14, 2010) (“Plaintiff failed to state a
22 plausible claim of copyright infringement, as he fails to allege beyond mere
23 speculation that Defendants had access to his copyrighted work.”); *Feldman v.*
24 *Twentieth Century Fox Film Corp.*, C.A. No. 09-10714, 2010 WL 2787698, at *7
25 (D. Mass. July 13, 2010) (granting motion to dismiss where “[p]laintiff has failed to
26 allege facts sufficient to demonstrate a reasonable opportunity of access . . . and

27
28 material defects in the registration attached as Exhibit B.

1 therefore cannot prove actual copying”); *Bailey v. Black Entertainment Television*,
2 C.A. No. 3:09CV787, 2010 WL 1780403, at *3 (E.D. Va. May 3, 2010) (“Plaintiff’s
3 claim must fail as he has not submitted any evidence or allege any facts of
4 Defendants’ access prior to [creation of the allegedly infringing work]”).

5 Accordingly, generalized allegations of unsolicited submissions of
6 unidentified numerous variations, or of works not at issue, to a large corporate
7 defendant are insufficient to state a claim for infringement. *See Merrill v.*
8 *Paramount Pictures Corp.*, No. CV 05-1150 SVW (MANx), 2005 WL 3955653, at
9 *7 (C.D. Cal. Dec. 19, 2005) (“A plaintiff cannot create a triable issue merely by
10 showing ‘corporate receipt’ of his work by an individual who shares a common
11 employer with the alleged copier.”) (quoting *Jorgensen v. Epic/Sony Records*, 351
12 F.3d 46, 51-52 (2d Cir. 2003)); *Ferguson v. National Broadcasting Co.*, 584 F.2d
13 111, 113 (5th Cir. 1978); *Meta-Film Assocs., Inc.*, 586 F. Supp. at 1357-58.

14 The FAC allegations are directed to the musical bed of “I Gotta Feeling”,
15 which is a creation of Guetta and Riesterer. Riesterer has not been served, and
16 defendants Guetta, Rister and Shapiro have moved to dismiss, and movants herein
17 join in that motion on that issue. Accordingly we will not restate those arguments
18 herein, but instead incorporate them by reference.

19 Dismissal is further appropriate because Plaintiff’s allegations directed to the
20 defendants other than Guetta or Riesterer are nothing more than generalized
21 allegations of deficient unsolicited submissions of nonspecific “numerous
22 variations” and “other works” (not at issue) to unnamed entities, (departments or
23 individuals) within large corporate entities. The allegations are not specific with
24 respect to even time of such submissions. Under the above authority, the Complaint
25 is deficient in alleging access, and therefore it should be dismissed.

26 **IV. THE COURT SHOULD DISMISS THE FAC PURSUANT TO**
27 **RULE 8(A)(2).**

28 Good cause likewise exists for this Court to dismiss Plaintiff’s FAC, for

1 failure to comply with Rule 8(a)(2). That rule requires a plaintiff to plead a “short
2 and plain statement of the claim showing that the pleader is entitled to relief.” *Id.*
3 Plaintiff’s verbose, redundant, and speculative pleadings violates Rule 8(a)(2) and
4 should be dismissed.

5 “The failure of a complaint to state a claim upon which relief can be granted
6 is usually dealt with by a motion made under Rule 12(b)(6), while the need for
7 supplying a more definite statement is ordinarily brought before the court by a
8 motion invoking Rule 12(e).” *Gillibeau v. City of Richmond*, 417 F.2d 426, 431
9 (9th Cir. 1969). “However, in an aggravated case a district court has discretion to
10 dismiss an action for failure to comply with the requirement of Rule 8(a)(2).” *Id.*
11 Dismissal is proper where the “complaint is so verbose, confused and redundant that
12 its true substance, if any, is well disguised.” *Id.* (internal citations and quotations
13 omitted).

14 Plaintiff’s FAC merits dismissal under this standard. It contains 69
15 paragraphs (many with lengthy subsections), is 23 pages long, yet asserts only a
16 single cause of action, a claim for copyright infringement. As this Court is well
17 aware, the elements of a claim for copyright infringement are relatively few,¹² and
18 may be stated succinctly. Accordingly, Defendants respectfully request that this
19 Court dismiss Plaintiff’s FAC with leave to amend consistent with Rule 8, and
20 provided the amended pleading is limited to allegations which directly concern the
21 parties, the purported infringement, and the alleged damages.¹³

22 **V. THIS COURT SHOULD ORDER PLAINTIFF TO PLEAD WITH**
23 **GREATER SPECIFICITY PURSUANT TO FED. R. CIV. P. 12(E)**

24
25 ¹² To establish a claim of copyright infringement, the plaintiff must demonstrate (1)
26 ownership of a valid copyright, and (2) violation of any of the exclusive rights of the
copyright owner. See generally *Newton v. Diamond*, 388 F.3d 1189 (9th Cir. 2004).

27 ¹³ Any leave granted to file amended pleadings should also include an order
28 requiring compliance with the requested portions of the First Amended Complaint to
be stricken, as discussed in Section V, below.

1 A motion for more definite statement should be granted “[i]f a pleading to
2 which a responsive pleading is permitted is so vague or ambiguous that a party
3 cannot reasonably be required to frame a responsive pleading.” Fed. R. Civ. P.
4 12(e). This Court should order a more definite statement in this case.

5 Here, Plaintiff claims to have made “numerous derivative versions of ‘Take a
6 Dive’” and to have sent those versions, unsolicited, to only three Defendants (UMG,
7 Interscope, & EMI April Music Inc.) over a ten-year period (1999-2008). *See* FAC,
8 ¶¶3, 31-33. He makes these claims generally, without specificity as when the
9 “numerous derivative versions” were created, how they differed, to whom they were
10 sent, and whether the Unsolicited Submissions allegedly sent to the three
11 Defendants included the version of “Take a Dive” at issue in this lawsuit. Notably
12 there are no allegations of Plaintiff having sent Unsolicited Submissions to Guetta or
13 Riesterer in France or any individual member of The Black Eyed Peas. Similarly,
14 FAC, ¶32 requires more specificity as to where, date, time and specific versions.
15 These allegations are especially problematic for purposes of framing a response
16 because Plaintiff leaps from vague and ambiguous and irrelevant allegations of
17 various works (not limited to the specific work at issue here) to conclusory
18 allegations of access and infringement. “[C]onclusory allegations of law and
19 unwarranted inferences are not sufficient” to defeat a motion to dismiss.”
20 *Associated Gen. Contrs. of Am. v. Metropolitan Water Dist.*, 159 F.3d 1178, 1181
21 (9th Cir. 1998).

22 The absence of specificity with respect to the Unsolicited Submissions is
23 more than mere sloppiness. As drafted, those allegations unfairly and prejudicially
24 hamper Defendants’ ability to respond to allegations of access, which is a key
25 element in establishing infringement. *See Swirsky v. Carey*, 376 F.3d 841, 844 (9th
26 Cir. 2004) (copying established by demonstrating access to and a substantial
27 similarity with the plaintiff’s work). They also mask the issue of whether the
28 statutory prerequisite of registration is necessary for any of the other alleged

1 numerous versions of Take a Dive. 17 U.S.C. § 411. Accordingly, pursuant to Fed.
2 R. Civ. P. 12(e), this Court should order Plaintiff to specifically allege on what dates
3 and to whom the Unsolicited Submissions of the Twang Version at issue were
4 sent,¹⁴ what specific version was part of the submission, whether such submission
5 included the work at issue in this lawsuit, and to specifically allege how Guetta
6 and/or Riesterer, and/or each individual member of The Black Eyed Peas allegedly
7 obtained access to the Unsolicited Submissions sent to others.

8 **VI. THIS COURT SHOULD STRIKE ALL ALLEGATIONS WHICH ARE**
9 **IMMATERIAL AND SERVE NO PURPOSE OTHER THAN TO**
10 **PLACE DEFENDANTS IN A NEGATIVE LIGHT**

11 The allegations Defendants seek to strike, fall into the following four areas:

- 12 1) allegations regarding unrelated third party “accusations” of copying;
13 2) allegations regarding “conspiracy” to commit infringement and “unfair business
14 practices,” where no claim has been, or could be, asserted; 3) allegations regarding a
15 “pattern and practice” of copyright infringement; and 4) requests for relief that are
16 unavailable as a matter of law, such as statutory damage and attorney fees.

17 As discussed below, the paragraphs containing these allegations are improper
18 and have no tangible bearing on the subject matter of this litigation. To this end,
19 unless these allegations are removed, the parties and this Court will be forced to
20 waste resources on issues that neither further this case nor the rights of the parties.
21 Plaintiff’s desire for flamboyant litigation and colorful pleadings does not trump his
22 obligation to edit extraneous allegations from his FAC. Indeed, had this been done
23 prior to filing, or following the parties’ Local Rule 7-3 conference, there would have
24 been no need for this motion.

25 **A. Legal Standard.**

26 Federal Rule Civil Procedure 12(f) authorizes a court to “strike from a

27 ¹⁴ The same particularity should be provided for any other version or song to be
28 asserted once that clarity is provided.

1 pleading . . . any redundant, immaterial, impertinent, or scandalous matter.” *Id.*
2 “The function of a 12(f) motion to strike is to avoid the expenditure of time and
3 money that must arise from litigating spurious issues by dispensing with those issues
4 prior to trial.” *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993). A
5 party may bring a motion to strike before responding to the pleading. Fed. R. Civ.
6 P. 12(f).

7 A Motion to Strike is appropriate where “it is clear that the matter to be
8 stricken could have no possible bearing on the subject matter of the litigation” or
9 may cause the objecting party prejudice. *LeDuc v. Kentucky Cent. Life Ins. Co.*, 814
10 F. Supp. 820, 830 (N.D. Cal. 1992); *see also Wilkerson v. Butler*, 229 F.R.D. 166,
11 170 (E.D. Cal. 2005). Matter is “immaterial” where it “has no essential or important
12 relationship to the claim for relief or the defenses being pleaded.” *See Fantasy*,
13 *supra*, 984 F.2d at 1527 (internal citations and quotations omitted). “Impertinent
14 matter consists of statements that do not pertain, and are necessary, to the issues in
15 question.” *Id.* Likewise, “[s]uperfluous historical allegations are a proper subject of
16 a motion to strike.” *Id.*

17 It is well established that “[t]he possibility that superfluous pleadings will
18 cause the trier of fact to draw ‘unwarranted’ inferences at trial is the type of
19 prejudice that will support the granting of a motion to strike.” *Neilson v. Union*
20 *Bank of California, N.A.*, 290 F. Supp. 2d 1101, 1152 (C.D. Cal. 2003). In *Neilson*,
21 the defendant, Union Bank, moved to strike allegations in the pleadings “regarding
22 corporate banking practices in general rather than practices of Union Bank in
23 particular.” *Id.* at 1152. Union Bank argued that the allegations were immaterial,
24 served no purpose other than confusion, and were unduly prejudicial. *Id.* The court
25 agreed and granted Union Bank’s motion to strike on the basis that this general
26 background information was immaterial, irrelevant, and, because it served no
27 purpose but to associate Union Bank “with practices that [were] not at issue in [the]
28 case,” and unduly prejudicial. *Id.* at 1152-53.

1 Here, as discussed in greater detail below, Plaintiff’s discourse on the
2 Defendants’ purported predatory practices, and inflammatory allegations of
3 “conspiracy” and “unfair business practices” (especially where no such causes of
4 action have been pled in this case), are immaterial to his single cause of action for
5 copyright infringement. They also are unduly prejudicial to the Defendants as these
6 claims have no bearing on the elements necessary to establish copyright
7 infringement of the Twang Version. *See Swirsky v. Carey*, 376 F.3d 841, 844 (9th
8 Cir. 2004). There is no need for hyperbolic language merely intended to demonize
9 Defendants. Establishing infringement requires evidentiary demonstration not
10 demonization. Thus, such allegations have no place this action.

11 Likewise, all allegations of prior unrelated lawsuits (in which Plaintiff had no
12 involvement) and similar unsupported accusations of rampant copying should be
13 stricken as irrelevant, prejudicial and immaterial. *See Murphy v. Kirkeby*, 9 F.R.D.
14 725 (S.D.N.Y. 1949) (striking allegations of evidence of prior similar losses, even
15 though they might become admissible upon trial, as irrelevant, unnecessary, and
16 prejudicial); *Corrections USA v. Dawe*, 504 F. Supp. 2d 924, 930 (E.D. Cal. 2007)
17 (allegations in pleading may be stricken where they “have no possible relation to the
18 controversy, and may cause prejudice to one of the parties”); *LeDuc, supra*, 814 F.
19 Supp. at 830 (“allegations supplying background or historical material or other
20 matter of an evidentiary nature will not be stricken unless unduly prejudicial to
21 defendant”).

22 Finally, a motion to strike is appropriate where the pleading contains
23 scandalous matter which serves no purpose other than to “improperly cast[] a
24 derogatory light on someone, usually a party.” *Wilkerson v. Butler, supra*, 229
25 F.R.D. at 170. “Allegations may be stricken as scandalous if the matter bears no
26 possible relation to the controversy or may cause the objecting party prejudice.” *Id.*;
27 *see also Ghahremani v. Borders Group, Inc.*, 2010 U.S. Dist. LEXIS 107202 (S.D.
28 Cal. 2010) (striking as prejudicial allegations of other acts of alleged infringement);

1 *Survivor Prods. LLC v. Fox Broad. Co.*, 2001 U.S. Dist. LEXIS 25512, *9-12 (C.D.
2 Cal. 2001) (striking news articles as prejudicial).

3 **B. Allegations of Third Party Accusations of Copying Should Be**
4 **Stricken.**

5 Plaintiff alleges that in 2009 various third parties filed or threatened to file
6 copyright infringement claims against The Black Eyed Peas. FAC, ¶ 55(a)-(c).
7 While Plaintiff purports to reference these earlier cases to demonstrate a “pattern
8 and practice” of copyright infringement, the allegations do not state a claim for
9 copyright infringement (see section III above) and are in fact immaterial and
10 impertinent to this lawsuit. *See Fantasy, supra*, 984 F.2d at 1527; *Santrayll v.*
11 *Burrell*, 1998 WL 24375 (S.D.N.Y. 1998) (evidence of prior copyright infringement
12 by the defendant held to have no relevance as to whether defendant subsequently
13 copied another work).

14 In *Fantasy*, a defendant asserted a counterclaim against the plaintiff and
15 included various allegations against the sole shareholder and general partner of the
16 plaintiff’s predecessor-in-interest, despite the fact that those issues had already been
17 litigated in a separate action. The Ninth Circuit upheld the District Court’s decision
18 striking the allegations, citing with approval the District Court’s reasoning that the
19 allegations created serious risk of prejudice to *Fantasy*, and holding that the district
20 court could properly strike the allegations in order to streamline the action and focus
21 the jury’s attention on the real issues in the case. *Fantasy*, 984 F.2d at 1528.

22 As in *Fantasy*, Plaintiff’s reference to other lawsuits here creates a serious
23 risk of prejudice to The Black Eyed Peas, and is likely to confuse the issues for the
24 trier of fact. This is especially so given that prior alleged copyright infringement
25 has no relevance as to whether a defendant has copied another work. *See Santrayll,*
26 *supra*. Plaintiff was not a party to any of the earlier actions and/or claims alleged in
27 their FAC, and would have no knowledge of whether or not such claims had basis or
28 were settled. Yet without knowing any details, Plaintiff seeks to act as judge, jury

1 and witness, deeming those ancillary claims meritorious and indicative of the
2 conduct alleged in this case. Such allegations unjustly and unfairly paint the
3 Defendants in a negative light, and are beyond inappropriate: they have no place in
4 this lawsuit and should not be tolerated by this Court.

5 Notably, this conclusion is consistent with Federal Rule of Evidence 404(b),
6 which provides that “[e]vidence of other crimes, wrongs, or acts is not admissible to
7 prove the character of a person in order to show action in conformity therewith.” As
8 such, if additional authority were needed to strike the subject allegations,
9 Section 404(b) and the case law interpreting it readily provides it. For example,
10 based on Rule 404(b), courts have repeatedly struck under Rule 12(f) allegations of
11 other wrongs. *See Ghahremani v. Borders Group, Inc.*, 2010 U.S. Dist. LEXIS
12 107202 (S.D. Cal. 2010); *Todhunter, Mandava, & Assoc. v. I.C.C.I. Pty., Ltd.*, 1991
13 U.S. Dist. LEXIS 11353 (D.D.C. 1991).

14 In *Ghahremani*, an artist claimed a publishing company infringed her design
15 in owls, and sought to bolster her claim by alleging that “[a]t least two other
16 independent artists claim to have been infringed in nearly the exact same way.” The
17 court struck the allegations under Rule 12(f) as immaterial and impertinent, holding
18 they “provide no historical background between Defendants’ alleged infringement
19 activities and Plaintiff’s owl designs” and fell short of proving “‘semi-automatic’
20 conduct, or a routine business practice of the Defendants.” In *Todhunter*, plaintiff
21 claimed the defendant’s wrongful use of the circle-R trademark symbol indicated its
22 willingness to engage in fraud. The court struck the allegation, holding that “[t]he
23 introduction of character evidence for this purpose would appear to be barred at trial
24 under Rule 404(b) of the Federal Rules of Evidence.”

25 As in *Ghahremani* and *Todhunter*, Plaintiff’s reference to third party
26 accusations of copying is inadmissible to show action in conformity therewith under
27 Rule 404(b). As such, these inappropriate allegations must be stricken. Indeed, in
28 addition to the authority listed above, Plaintiff’s allegations of prior copying – and

1 all reference to third party statements regarding the same – is inadmissible as
2 improper opinion evidence and hearsay. *Survivor Prods. LLC v. Fox Broad. Co.*,
3 2001 U.S. Dist. LEXIS 25512, *9-12 (C.D. Cal. 2001).

4 In *Survivor*, the producers of “Boot Camp” claimed the popular show
5 “Survivor” infringed their show. The court struck allegations that news articles
6 concluded “Survivor” copied “Boot Camp” on the ground the articles “amount to
7 nothing more than a post-hoc analysis of similarities between the programs by news
8 reporters, unguided by the legal standards that govern the comparison of two works
9 under copyright law.” *Id.*

10 Based on the foregoing, this Court has ample authority to bring Plaintiff’s
11 FAC into conformity with law and decorum. This Court should treat his allegations
12 as its sister-courts have done and strike the allegations expressed in the following
13 pages and lines of the FAC: page 4, lines 2 through 8, page 10, lines 4 through 5;
14 page 10 lines 7 through 9; page 10 lines 22 through 25; page 15, line 20 through
15 page 16, line 17; page 16, lines 18 through 28; page 17, line 13 through page 18,
16 line 19; page 18, lines 21 through page 19, line 2; page 19, lines 3 through 7; page
17 19, lines 9 through 13; page 19, line 22 through page 20, line 2; and page 22, lines
18 18 through 19.

19 **C. All References To “Conspiracy” to Commit Copyright**
20 **Infringement and Unfair Business Practices Under California Law**
21 **Should Be Stricken as Immaterial.**

22 Plaintiff alleges that the Defendants UMG/Interscope and The Black Eyed
23 Peas engaged in “a civil conspiracy” as part of “a bad-faith pattern and practice of
24 cavalierly and intentionally disregarding statutory copyright laws by either copying
25 songs, or portions thereof, from other artists and/or songwriters, and changing them
26 slightly in order to make them appear as original works, or sampling other songs.”
27 FAC, ¶ 47. Riesterer and Guetta are not alleged to be part of this “conspiracy.”
28 Furthermore, Plaintiff contends that Defendants “are essentially engaging in unfair

1 business practices under California law” by encouraging artists to submit their
2 music and then selecting “the best music to copy. . . .” Complaint ¶ 53.

3 Plaintiff does not, however, assert a claim either for conspiracy or for unfair
4 business practices. Nor could he. Section 301 of the Copyright Act expressly
5 preempts any state-law actions “that are equivalent to any of the exclusive rights
6 conferred by the Copyright Act and that come within the subject matter of
7 copyright.” 17 U.S.C. § 301. *RDF Media Ltd. v. Fox Broadcasting, Co.*, 372
8 F.Supp.2d 556, 566 (C.D. Cal. 2005) (dismissing civil conspiracy and unfair
9 business practice claims as preempted). As such, the terms “conspiracy” and “unfair
10 business practices” serve no legitimate purpose in this lawsuit. They do nothing
11 more than unnecessarily complicate what should be a straightforward claim,
12 effectively forcing the parties and this Court to sort through (and waste time
13 litigating) extraneous and superfluous assertions. This Court should therefore strike
14 from the FAC the following pages and lines: page 4, lines 2 through 8; page 4, lines
15 9 through 16; page 10, lines 4 through 5; page 10, lines 22 through 25; page 14, line
16 20 through page 15, line 9; page 15, lines 16 through 17; page 15, line 20 through
17 page 16, line 17; page 16, lines 18 through 28; page 17, line 13 through page 18,
18 line 19; page 19, lines 9 through 13; and page 19, line 22 through page 20, line 2.

19 **D. All References to Any Alleged “Pattern and Practice” of Copyright**
20 **Infringement Should Be Stricken as Immaterial and Impertinent.**

21 Plaintiff tries to “poison the well” by alleging a “pattern and practice” of
22 “copying songs . . . from other artists . . . , and changing them slightly in order to
23 make them appear as original works. . . .” FAC, ¶¶ 51, 55, 56. As a matter of law,
24 “any prior acts by [the defendant] have no relevance to whether [defendant] copied
25 from the plaintiffs in this case.” *Santrayll, supra*, 1998 WL 24375, *3; *see also*
26 *Wilkerson*, 229 F.R.D. at 170; *Ghahremani v. Borders, supra*, 2010 U.S. Dist.
27 LEXIS 107202; *Todhunter, supra*, 1991 U.S. Dist. LEXIS 11353 (D.D.C. 1991);
28 *Survivor v. Fox, supra*, 2001 U.S. Dist. LEXIS 25512. All references to a “pattern

1 and practice” of infringement should therefore be stricken as immaterial and
2 impertinent.

3 As discussed in Section A, above, such allegations have no relation to the
4 controversy at hand, and serve only to prejudice The Black Eyed Peas. They
5 provide no historical background as to these parties, and do not establish access to
6 or copying of Plaintiff’s song. The allegations also are improper as opinion
7 evidence and hearsay. If Plaintiff wants to avail himself of this Court, this Court
8 should not permit his inclusion of immaterial allegations that serve no purpose other
9 than to keep his name – and by extension, his music – in the press. This is a lawsuit,
10 not a PR campaign. Therefore, all references to any alleged practice of
11 systematically stealing music submitted by other artists, as expressed in the
12 following pages and lines of the FAC, should be stricken: page 4, lines 2 through 8;
13 page 4, lines 9 through 16; page 10, lines 4 through 5; page 10, lines 7 thorough 9;
14 page 10, lines 22 through 25; page 14, line 20 through page 15, line 9; page 15, lines
15 12 through 14; page 15, lines 16 through 17; page 15, line 20 through page 16, line
16 17; page 16, lines 18 through 28; page 17, line 13 through page 18, line 19; page 18,
17 line 21 through page 19, line 2; page 19, lines 3 through 7; page 19, lines 9 through
18 13; page 19, line 22 through page 20, line 2; and page 22, lines 18 through 19.

19 **E. All References to Attorneys’ Fees and Costs Should Be Stricken as**
20 **Plaintiff is Not Entitled to Any Statutory Recovery of the Same.**

21 A motion to strike may be used to strike a portion of the prayer for relief
22 where the damages sought are not recoverable as a matter of law. *See Bureerong v.*
23 *Uvawas*, 922 F.Supp. 1450, 1479, fn. 34; (CD CA 1996); *Wilkerson v. Butler*, 229
24 F.R.D. 166, 172 (ED CA 2005) (striking prayer for attorney fees is appropriate in
25 actions where such fees are not recoverable as a matter of law).

26 Plaintiff purports to seek attorneys fees based upon “Defendants willful
27 nature of the Defendants’ infringement [sic].” See FAC, at 22. A Plaintiff is only
28

1 entitled to fees, however, if he timely registers his work. See 17 U.S.C. § 412(a)
2 (barring an award of fees where plaintiff fails to register either prior to infringement
3 or within three months after the first publication of his work). While, as described
4 above, it is not clear whether Plaintiff has even registered the work he claims was
5 infringed, there can be no doubt that Plaintiff did not even attempt to register any
6 version of “Take a Dive” containing the “guitar twang sequence” until long after
7 that work was allegedly infringed. Plaintiff is therefore not, under any
8 circumstance, entitled to any award of fees, and his prayer for such fees should be
9 stricken.¹⁵ See *Derek Andrew, Inc. v. Poof Apparel Corp.*, 528 F.3d 696, 702 (9th
10 Cir. 2008) (holding that plaintiff was not entitled to fees because the infringement
11 occurred prior to the registration date). As such, Plaintiff’s prayer for fees or costs
12 is inappropriate and must stricken from page 22, lines 19 through 21.

13 **VII. CONCLUSION**

14 Based on the foregoing, Plaintiff’s Complaint fails to state facts sufficient to
15 constitute any claim against the Defendants. The Complaint also contains numerous
16 immaterial allegations that serve no purpose other than to place Defendants in a
17 negative light. All these allegations should be stricken. Finally, if this Court
18 permits this case forward, Plaintiff must plead critical issues regarding the
19

20 ///

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26 ¹⁵ Defendants would be able to recover their attorneys fees upon prevailing in this
27 action. See 17 U.S.C. § 505; see also *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 534
28 (1994) (providing that “[prevailing plaintiffs and prevailing defendants are to be
treated alike”).

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1 distribution of and alleged access to his 1999 work with greater specificity,
2 particularly with respect to Riesterer and Guetta.

3 Dated: December 13, 2010

BRYAN CAVE LLP

Kara Cenar
Jonathan Pink
Merili Seale

6
7 By: /s/ Jonathan Pink

Jonathan Pink

8 Attorneys for Defendants

9 WILLIAM ADAMS; STACY FERGUSON;
10 ALLAN PINEDA; JAIME GOMEZ; all
11 individually and collectively as the music
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14 HEADPHONE JUNKIE PUBLISHING,
15 LLC; will.i.am. music, llc; JEEPNEY
16 MUSIC, INC.; CHERRY RIVER MUSIC
17 CO.; and EMI APRIL MUSIC, INC.

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