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

BRYAN PRINGLE, an individual,

Plaintiff,

v.

WILLIAM ADAMS, JR.; STACY
FERGUSON; ALLAN PINEDA; and
JAIME GOMEZ, all individually and
collectively as the music group the
Black Eyed Peas; DAVID GUETTA;
FREDERICK RIESTERER; UMG
RECORDINGS, INC.; INTERSCOPE
RECORDS; EMI APRIL MUSIC,
INC.; HEADPHONE JUNKIE
PUBLISHING, LLC; WILL.I.AM.
MUSIC, LLC; JEEPNEY MUSIC,
INC.; TAB MAGNETIC
PUBLISHING; CHERRY RIVER
MUSIC CO.; SQUARE RIVOLI
PUBLISHING; RISTER EDITIONS;
and SHAPIRO, BERNSTEIN & CO.,

Defendants.

Case No. SACV10-1656 JST (RZx)

Hon. Josephine Staton Tucker
Courtroom 10A

**[PROPOSED] ORDER GRANTING
MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED
COMPLAINT, OR IN THE
ALTERNATIVE, MOTION TO
STRIKE AND FOR A MORE
DEFINITE STATEMENT**

Hearing

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

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

1 The Motion to Dismiss Plaintiff's First Amended Complaint, or in the
2 alternative, Motion for a More Definite Statement and Motion to Strike (the
3 "Motion") of Defendants WILLIAM ADAMS; STACY FERGUSON; ALLAN
4 PINEDA; and JAIME GOMEZ, all individually and collectively as the music group
5 THE BLACK EYED PEAS; will.i.am music, llc; TAB MAGNETIC
6 PUBLISHING; CHERRY RIVER MUSIC CO.; HEADPHONE JUNKIE
7 PUBLISHING, LLC; JEEPNEY MUSIC, INC.; EMI APRIL MUSIC, INC.
8 (collectively, "Defendants"), came on for hearing on the Court's regular motion
9 calendar on January 24, 2011, at 10:00 a.m.

10 The Court has read and considered the Motion papers filed in support of and
11 in opposition to the Motion, the arguments of counsel at the hearing, and the case
12 file in this action. Good cause appears for the requested relief. The Court therefore
13 finds that:

14 A. The First Amended Complaint must be dismissed pursuant to Fed. R.
15 Civ. P. Rule 12(b)(6) for failure to comply with 17 USC §411(a);

16 B. The First Amended Complaint must be dismissed pursuant to Fed. R.
17 Civ. P. Rule 8 (a)(2) for failure to plead a short and plain statement shown Plaintiff
18 is entitled to relief.;

19 C. Pursuant to Fed. R. Civ. P. Rule 12(e) Plaintiff must provide a more
20 definite statement as Paragraphs 3, 31 through 39, 55-56 of the First Amended
21 Complaint are so vague and ambiguous that Defendants cannot reasonably prepare a
22 response thereto;

23 D. Pursuant to Fed. R. Civ. P. Rule 12(f) that the following paragraphs are
24 comprised of redundant, immaterial, impertinent, or scandalous matter which are
25 therefore stricken from the First Amended Complaint:

26 1. Page 4, lines 2 through 8: "is what appears to be a general
27 pattern and practice by UMG, Interscope and members of The Black Eyed Peas, of
28 deliberate and intentional copyright infringement as to songs written by other

1 artists/songwriters and submitted in good faith to one or more of these Defendants.
2 There also is a disturbing pattern and practice of taking bits and pieces of other
3 artist's songs and copying them as part of songs performed by The Black Eyed Peas,
4 even if the copied portions do not rise to the level of copyright infringement."

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

13 3. Page 10, lines 4 through 5: "as well as other songs that he and
14 the Defendant Black Eyed Peas unlawfully and willfully plagiarized, as alleged
15 below, as part of a repeated pattern and practice of intentional copyright
16 infringement."

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

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

25 6.

26 7. Page 14, line 20 through page 15, line 9:

27 "Defendants' Conspiracy to Engage in and Conduct a Pattern
28 and Practice of Ongoing Willful Copyright Infringement as to

1 Others.

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

17 48. The foregoing course of conduct demonstrates the
18 element of willfulness relative to the infringing acts perpetrated
19 against the Plaintiff, as well as demonstrating the bad faith
20 motives of Defendants UMG, Interscope and the Black Eyed
21 Peas.”

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

26 9. Page 15, lines 16 through 17: “these parties had an
27 understanding or agreement between themselves that the conduct complained of
28 herein would and could take place.”

1 10. Page 15, line 20 through page 16, line 17: “UMG, Interscope
2 and the Black Eyed Peas know that, from a business standpoint, the intentional
3 copyright infringement of songs from an independent or unknown artist and/or
4 songwriter can create a major financial windfall to them, while at the same time
5 injure or damage the financial and professional interests of the artist and/or
6 songwriter. This is because they know or expect that when they engage in
7 intentional copyright infringement either of the following will happen:

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

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

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

26 11. Page 16, lines 18 through 28: “The Defendants’ actions alleged
27 herein, are essentially the engaging in unfair business practices under California
28 law. The Defendants have artists and songwriters voluntarily submitting their music

1 to UMG and Interscope, which they willingly accept, and they simply pick and
2 choose the best music to copy, knowing that the artists/songwriters who submitted
3 the music have no practical or adequate way to protect their intellectual property.
4 This course of conduct ensures that UMG's and Interscope's artists always have
5 access to the "best" music in the marketplace. This practice, along with UMG's and
6 Interscope's superior financial capabilities, also ensures that the submitting
7 artists/songwriters, who may otherwise be talented enough to have their music
8 heard, will never get the proper credit for their music or get a chance to properly
9 promote themselves as musicians."

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

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

27 (b) In or around the fall of 2009, musician Adam Freeland
28 ("Freeland") accused Will.I.Am and the other individual members of the Black

1 Eyed Peas of intentionally sampling (taking an audio segment from an original
2 recording and inserting it directly into a new recording) his song “Mancry,” without
3 authorization, which ended up as the background music on the Black Eyed Peas’ hit
4 song “Party All the Time.” A comparison of these two songs demonstrates that the
5 Black Eyed Peas did in fact sample Freeland’s song “Mancry,” and simply added a
6 drum pattern and lyrics on top of the sample. This dispute was reported in the
7 media to have been recently settled out of court before a case was filed by Freeland.

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

13 13. Page 18, line 21 through page 19, line 2: “there are other
14 instances where the Black Eyed Peas copied portions of Pringle’s songs from the
15 demo CDs that he submitted to UMG, EMI and Interscope, from around 1994 to
16 2008, when writing songs on The E.N.D. album, as well as several songs from
17 Will.I.Am’s Songs About Girls album. On information and belief, Guetta also
18 copied the guitar twang sequence when he wrote his hit song “Love is Gone.” While
19 the above instances of copying may not rise to the level of copyright infringement of
20 Pringle’s musical compositions, they further establish a pattern and practice of
21 copying music from other songwriters, in turn establishing the willfulness of
22 Defendants’ infringement with respect to “Take a Dive.””

23 14. Page 19, lines 3 through 7: “The foregoing actions in Paragraphs
24 55 and 56 above occurred in the same relative time period as did the acts alleged
25 herein as to “Take a Dive” and “I Gotta Feeling.” The actions also have a
26 remarkable similarity in methodology as between the circumstances alleged herein
27 as to Plaintiff’s song, “Take a Dive,” and in regards to how these other songs and
28 their songwriters/artists were wronged.”

1 15. Page 19, lines 9 through 13: “their actions and illustrate their
2 practice and pattern of willful copyright infringement of songs from unknown artists
3 and/or songwriters, and their complete disregard for compliance with statutory
4 copyright laws.

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

8 16. Page 19, line 22 through page 20, line 2: “The fact that the
9 actions herein as to the Plaintiff are not an isolated occurrence, but part of a general
10 pattern and practice, as alleged herein, where there were similar occurrences of
11 willful copyright infringement, makes the actions of the Defendants reprehensible,
12 and taken with a callous disregard of the rights of artists and songwriters who, like
13 the Plaintiff, are highly vulnerable to such actions by famous and wealthy artists and
14 major record labels. If these actions go unchecked and are not punished, they will
15 have a damaging effect on the integrity of the music industry and encourage other
16 famous artists and major record labels to engage in similar wrongful and bad faith
17 behavior.”

18 17. Page 22, line 2: “and advantages”

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

22 **IT IS ORDERED THAT** Defendants’ Motion to Dismiss Plaintiff’s First
23 Amended Complaint is Granted; or

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1 **IT IS ORDERED THAT** Defendants' Motion for a More Definite Statement
2 and Motion to Strike Plaintiff's First Amended Complaint is Granted.

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6 DATED: _____

7 Hon. Josephine Staton Tucker
8 United States District Judge
9 Central District of California

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13 Respectfully submitted by:

14 **BRYAN CAVE LLP**
15 Jonathan Pink

16 By: /s/ Jonathan Pink
Jonathan Pink

17 Attorney for Defendants
18 WILLIAM ADAMS; STACY
19 FERGUSON; ALLAN PINEDA;
20 and JAIME GOMEZ, all individually
21 and collectively as THE BLACK EYED
22 PEAS; will.i.am music, llc;
23 TAB MAGNETIC PUBLISHING;
24 CHERRY RIVER MUSIC CO.;
25 HEADPHONE JUNKIE PUBLISHING,
26 LLC; JEEPNEY MUSIC, INC.;
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